PROCUREMENT AND CONTRACT MANAGEMENT HANDBOOK

Procurement and Contracting Services

Texas Health and Human Services
Version 1.9
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TEXAS
Health and Human Services

The HHS System and Procurement and Contracting Services Division (PCS) are committed to making PCS electronic and information resources (EIR)—including all forms, documents, web pages, and software—comply with state, federal and EIR accessibility requirements so that PCS information is accessible to everyone, including people with visual, hearing, mobility, cognitive, and other disabilities.

Preface

- **Purpose of the Handbook**

Within the past decade, Texas has experienced a significant increase in population. This increase has led to more services being needed to meet the challenges of the expanding population, which in turn has led to the Health and Human Services Commission (HHSC) engaging in more procurements and contracting opportunities.

Accordingly, proper procedures, policies, and guidelines must be in place to provide efficiency and proper oversight to the procurement and contracting process, while simultaneously protecting the taxpayer's dollar; therefore, it is imperative that the HHSC Procurement and Contracting Services division (PCS) create a handbook to address various issues in the procurement and contracting process.

This HHS Procurement and Contract Management Handbook (Handbook) is designed to be a dynamic document; one that will evolve with legislative changes, best practices, and with feedback from program areas. As you read the Handbook and you find that minor changes need to be made, for example, typographical errors, please email PCS_DEC@hhsc.state.tx.us with those suggested changes. Minor, non-substantive changes will be made to the Handbook upon receipt.

- **Submitting Recommendations for Change**

If any division wants PCS to consider an amendment to any provision of the Handbook, such recommendations should be submitted to PCS at PCS_DEC@hhsc.state.tx.us.

All recommendations will be considered; however, the final content of the Handbook is subject to the approval of the Deputy Executive Commissioner of PCS and/or the Chief Operating Officer or HHS Executive Commissioner, if escalation is necessary.

- **Review Process for Substantive Amendments**

When considering substantive amendments and/or recommendations to the Handbook that could affect process and/or procedural changes to HHS divisions other than PCS, PCS will seek stakeholder input prior to approving and implementing such amendments.

PCS will also provide messaging of proposed changes throughout the process and at resolution, allowing sufficient time to plan for such change.

  - **Initial Review**

    More specifically, when substantive amendments and/or recommendations are submitted, within one week of receiving the proposed change,

The assigned PCS staff member will contact the person who submitted the recommended change to gather more information.

If, based on the information gathered, PCS determines that the proposed amendment or recommendation would benefit the Handbook, a member of the PCS team will arrange a meeting with identified stakeholders to review the proposed amendment or recommendation and review a draft of the proposed change.

- **Stakeholder Feedback**

Identified stakeholders will provide written feedback on the proposed change.

The PCS staff member assigned to the change will review the written feedback and incorporate what is necessary to achieve the goal of the proposed recommendation.

- **Additional Due Diligence**

As necessary and depending on the complexity and impact of the proposed changes, PCS may:

  - Complete research with third-party agencies;
  - Consult the Compliance and Quality Control division;
  - Consult the Office of Chief Counsel;
  - Consult HHS executive management; and
  - Complete any other due diligence necessary to support the recommendation.

- **Review and Approval**

Following completion of the review process, PCS will meet with the stakeholders one more time to ensure that the proposed change accurately reflects the goal and intended purpose of the amendment or recommendation.

Once the amendment or recommendation is approved by the stakeholders, the amendment/recommendation will be submitted to the Deputy Executive Commissioner of PCS and/or the Chief Operating Officer or HHS Executive Commissioner for final approval.

Once approved and properly messaged, the changes will be made to the Handbook and documented on the Revision History Log.

- **Biennial Review**

PCS will complete a review of the entire Handbook biennially to reflect substantive amendments not previously made and to conform with laws enacted by the Texas State Legislature. It is the goal of PCS to make appropriate changes to the Handbook in a timely fashion so that the Handbook remains useful and relevant.

- **Questions**

Any questions concerning the Handbook should be sent to PCS_DEC@hhsc.state.tx.us.

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General Information

1. Purpose

The purpose of the Procurement and Contract Management Handbook (Handbook) is to establish consistent procurement and contract management policies and procedures that must be followed by the Health and Human Services (HHS) System agencies: the Health and Human Services Commission (HHSC)[1] and the Department of State Health Services (DSHS).[2] Additionally, HHSC provides procurement services to the Department of Family and Protective Services (DFPS)[3] and the Texas Civil Commitment Office (TCCO).[4] The Handbook aligns with the vision and governing principles defined in the *Health and Human Services Procurement and Contracting System Strategic Plan*.

Additionally, this Handbook includes best practices to provide guidance for solicitations and managing HHS contracts.

1.1 The Three Lines of Defense Model Relating to Risk

Each HHS agency shall have an internal structure to identify and mitigate procurement and contracting risks that align with the Three Lines of Defense Model (TLDM). TLDM is designed to provide clarity and coordination to specific roles and responsibilities for risk management.

HHS Agency Executive Management is responsible for setting objectives to manage risks and defining strategies to achieve them, as well as establishing governance structures and processes. Under the TLDM, staff will share information and coordinate efforts across related customer organizations.

1.2 First Line of Defense

The first line of defense is the day-to-day ownership of identifying risks and developing, implementing, and managing controls and risk management processes. These include, but are not limited to:

1. **Procurement Planning:** Program, HHS Procurement and Contracting Services (PCS).

[1] *TEX. GOV'T CODE § 2155.144(j), (l).*
[2] *TEX. GOV'T CODE §§ 531.001(4)(B), 2155.144(p).*
[3] *Tex. Hum. Res. Code § 40.058(i).*
[4] *TEX. GOV'T CODE § 420A.011.*

2. **Procurement Processing:** Program, PCS.
3. **Evaluation:** HHS Compliance and Quality Control (CQC), Program, PCS.
4. **Negotiation:** Program, PCS.
5. **Contract Formation:** Program, PCS.
6. **Contract Management:** Program, contract manager.
7. **Contract Closeout/Termination:** Program, contract manager.

1.2.1 Second Line of Defense

The second line of defense is to facilitate and monitor the implementation of effective risk management practices to ensure they are operating as intended. It also provides for a compliance function to monitor risks associated with applicable policies, procedures, regulations, and statutes. The second line of defense includes the following, grouped by HHS procurement and contracting phase:

1. **Procurement Planning:** Program, PCS management, Budget.
2. **Procurement Processing:** Program, PCS management, CQC, System Contracting in the Office of Chief Counsel.
3. **Evaluation:** CQC, Program, PCS management.
4. **Negotiation:** Program, System Contracting.
5. **Contract Formation:** Program, PCS management, PCS Contract Management Support (CMS), Budget, System Contracting.
6. **Contract Management:** Program, CMS.
7. **Contract Closeout/Termination:** Program, CMS, Budget, System Contracting.

1.2.2 Third Line of Defense

The third line of defense is performed by Internal Audit. Internal Audit reviews processes to assess governance, risk management, and internal controls using an objective and disciplined approach.

1.3 Standards and Authority

1.3.1 Authority

This Handbook is established through the authority of the HHS Executive Commissioner and the Deputy Executive Commissioner of PCS. PCS administers the policies and develops processes and guidelines for implementing them.

HHS consolidated the HHS Procurement Manual and the HHS Contract Management Handbook into this Handbook to provide the HHS System standard procurement and contracting procedures, as did the Texas Comptroller of Public Accounts with the State of Texas Procurement and Contract Management Guide, published by the Texas Comptroller of Public Accounts (Comptroller's Guide). This Handbook replaces all references, forms, templates and other materials from the HHS Procurement Manual and the HHS Contract Management Handbook as of its publication date.

HHS agencies/divisions must develop internal contract management policies and procedures that align with HHS established requirements while supporting their organizational structure, program requirements, and business needs. HHS agencies must ensure their respective rules, policies, and procedures do not conflict with the requirements in this Handbook. In addition, agencies/divisions must incorporate quality review protocols to ensure compliance with established requirements.

This Handbook is intended to follow the rules, statutes, or other legal authorities that govern state procurement and contracting. In the event of a conflict, applicable law controls. Procurement and Contracting Services (PCS) cannot grant exceptions to agency requirements. In limited instances, policy specifies exemptions to certain requirements, based on factors such as but not limited to statutory requirements or State Agency oversight stipulations.

1.3.2 Standards

This Handbook is intended to be used as HHS internal policies and procedures only. It does not create any rights or responsibilities for vendors or contractors, nor does it alter any HHS contract. If a rule, statute, or other legal authority conflicts with any portion of this Handbook, the rule, statute, or legal authority prevails to the extent of the conflict. In addition, although every attempt has been made to use the words and terms in the same context as they are used in the underlying statutory authority or rule, a word or term may have different meanings depending on the statutory context.

This Handbook provides a baseline for policies and procedures that support:

1. Ethics and standards of conduct;
2. Vendor interaction;
3. Procurement methods;
4. Procurement process;
5. Solicitation advertisement;
6. Respondent evaluation;
7. Negotiations;
8. Contract award and notice;
9. Contracting activities through the contract lifecycle;
10. Contract management;
11. Grant performance oversight, escalation, and reporting of contract performance issues;
12. Contract termination and closeout; and
13. HHS contract reporting requirements.

PCS will regularly update the Handbook, to address changes in procurement and/or contracting laws, regulations, and policies. Additionally, PCS may incorporate changes due to audits, recommendations of state oversight agencies, and to incorporate evolving best practices.

To receive notice of updates to the Handbook, subscribe to the GovDelivery Topic: "HHS Contract Management Handbook Updates." Submit questions or recommendations about the materials or requirements in the Handbook to PCS at PCS_DEC@hhsc.state.tx.us. See Preface at the front of this Handbook for more information.

1.4 Applicability

HHSC has express statutory authority to create and administer policies and rules related to the procurement and contracting duties of HHS and the administrative procurement functions provided to DFPS and TCCO.

The Handbook serves as a resource for HHS agency staff on procurement and contracting processes. HHS PCS performs purchasing functions for multiple entities, including:

1. HHSC.[5]
2. DSHS.[6]
3. DFPS.[7]
4. TCCO.[8]

2. Introduction

The HHS System delivers services to Texans through a vast number of contracts that expend a significant amount of public funds.

HHS agencies must have authority to make necessary purchases and, in many cases, must have delegated authority to make those purchases independently. Certain state agencies hold legislative authority to purchase for the state (e.g., Texas Comptroller of Public Accounts, Department of Information Resources, and Texas Facilities Commission). Such agencies sometimes delegate purchasing authority and other times delegation is provided by statute. Under Texas Government Code § 2155.144, authority is delegated for purchases of certain goods or services acquired for the benefit or on behalf of clients for programs operated by the agency.[9] In addition, HHS has delegated authority for certain construction procurements.[10]

State agencies have authority to contract only to the extent provided by law. Prior to initiating a procurement, staff must ensure that the agency has authority to procure the goods or services sought. All applicable state purchasing requirements must be followed.

The purchasing process is driven by customer needs. The operational steps of the purchasing transaction are performed by the HHS PCS division. It is incumbent upon both program staff and PCS staff to be informed and mindful of the legal requirements of a purchasing transaction. To the extent possible, HHS has adopted for its statutory purchasing delegation the same legal requirements and best practices that apply to any other state agency purchasing transaction.

[5] *TEX. GOV'T CODE, Chapter 531*; *TEX. GOV'T CODE § 531.0055(c), (e), (f)(4)*.
[6] *TEX. GOV'T CODE, Chapter 531*; *TEX. GOV'T CODE §§ 531.001(4)(B)*, *531.0055(c), (e), (f)(4)*; *Tex. Health & Safety Code § 12.0001*.
[7] *Tex. Hum. Res. Code § 40.058(i)*.
[8] *TEX. GOV'T CODE § 420A.011*.
[9] *TEX. GOV'T CODE § 2155.144(b-1)(2)*.
[10] *TEX. GOV'T CODE § 2155.144(b-2)*.

In addition, many HHS contracts present significant areas of business and service delivery risk to the HHS System and Texas. Effective procurement and contract management is a critical part of quality contracting. This helps to ensure that the state receives the best value.

The CPA Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services. SPD established and published the Comptroller's Guide to provide state agencies guidance and a framework for the continued development of public procurement processes and best practices. State agencies are required by statute to comply with the Comptroller's Guide.[11]

SPD is also responsible for state-funded grant management and serves as the contact for state-administered, local government grant management related issues. SPD is responsible for uniform grant and contract management pursuant to Texas Government Code Chapter 783.

Each state agency is required to publish a contract management handbook[12] that establishes contracting policies and practices that must be consistent with the Comptroller's Guide. This Handbook fulfills this requirement as well as HHSC's specific requirements to publish a contract management handbook and to coordinate the procurement practices of all HHS agencies.[13]

2.1 Procurement and Contracting Authority

2.1.1 Overview

The Legislature delegates authority to state agencies. In some instances, the Legislature has directly delegated authority to HHSC. In other instances, authority is held by other agencies and may be further delegated to HHSC.

2.1.2 CPA Delegation by Rule[14]

SPD has delegated its purchasing authority to agencies for the following types of procurements (Appendix G - CPA Minimum Requirements for SPD Delegated Purchases):

1. One-time purchases of goods that do not exceed $50,000.
2. Purchases of services that do not exceed $100,000.
3. Direct publications.

[11] *TEX. GOV'T CODE § 2262.052(a).*
[12] *TEX. GOV'T CODE § 2261.256(b).*
[13] *TEX. GOV'T CODE § 2155.144(j), (l).*
[14] *Comptroller's Guide, SPD Delegation by Rule.*

4. Purchases of perishable goods.
5. Distributor purchases.
6. Fuel, oil, and grease purchases.
7. Internal repair purchases.
8. Emergency purchases.

2.1.3 CPA Delegation by Review

For the non-delegated purchase of goods with an estimated contract value of more than $50,000, the agency must submit its delegation request as an Open Market Request (OMR) to SPD. The purchaser is responsible for downloading the most current OMR form posted on the CPA website. The OMR with all applicable attachments must be submitted to open.market@cpa.texas.gov. If the delegation request is denied, SPD will procure the goods on behalf of the agency.

For procurements conducted under the CPA's procurement authority, purchasers request delegation of procurement authority for services procurements valued at $100,000 or greater. Delegation must be obtained before posting the solicitation and after the solicitation draft is complete and ready to post. The solicitation is uploaded to the CPA's Procurement Oversight and Delegation portal accessible through the Texas SmartBuy platform.

CPA reviews the solicitation and provides recommendations through the portal. This is typically completed within 30 calendar days. After receiving notification that the recommendations are complete, the purchaser must accept or reject each recommendation within the portal based on information received from the procurement's internal stakeholders. Rejected recommendations must have a justification documented in the portal. Finally, stakeholders will work to incorporate accepted recommendations into the solicitation prior to posting to the Electronic State Business Daily (ESBD).

2.2 Ethics and Professional Standards

All state employees are required to act in an ethical, impartial, transparent, and professional manner. HHS employees must uphold ethical values when carrying out their official duties and must adhere to the *HHS Standards of Ethical Conduct* as provided in the *HHS Ethics Policy*.

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business

transaction or professional activity, or incur an obligation of any nature that is in conflict with the proper discharge of the officer or employee's duties in the public interest.[15]

2.2.1 Statutory Prohibitions

All HHS staff should be aware of statutory prohibitions related to ethics and standards of conduct, including, but not limited to, the following:

1. Texas Penal Code Section 36.08 prohibits state employees from soliciting, accepting, or agreeing to accept any benefit from a person the employee knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.
2. Texas Government Code § 572.069 prohibits former state employees from accepting employment from a person or entity involved in a procurement or contract negotiation (even if the entity is not selected for the resulting contract) until at least two years after the contract was signed or the procurement terminated, if the employee participated on behalf of a state agency in a procurement or contract negotiation involving that person or entity.
3. Texas Government Code § 2252.901 prohibits state agencies from entering into an employment, professional services, or consulting services contract with a former or retired employee 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 under the contract.
4. Texas Government Code § 2155.004 prohibits a state agency from accepting a bid or awarding a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. For example, a vendor who is compensated by the agency to participate in drafting the specifications or statement of work for a particular solicitation is not eligible to bid on the resulting solicitation and potential contract.

2.2.2 Employee Conflict of Interest and Standards of Conduct

Additional information regarding employee conflict of interest and standards of conduct may be found in the Comptroller's Guide, the HHS Human Resources Policy Manual, the Human Resources Guidance Handbook, and the HHS Ethics Policy.

[15] *TEX. GOV'T CODE § 572.001*.

All contract and procurement personnel must disclose any actual or potential conflict of interest, and any situation that may create an appearance of impropriety. Disclosures must be timely, complete, and in compliance with agency procedures for notifying management of circumstances that could compromise the impartiality of the contract management and procurement process. See PCS Form 117, Health and Human Services Procurement-Specific Nondisclosure and Conflict of Interest Certification and PCS Form 130 Health and Human Services Employee Nondisclosure and Conflict of Interest Certification addressed further in the Nondisclosure, Conflict of Interest, Nepotism Certification section of this handbook.

If a conflict of interest is identified at any point in the procurement or contract management process, HHS management with oversight over that point must take immediate action to ensure that management of any particular matter or contract does not benefit or create an appearance of a benefit to any employee or employee's family member.[16]

In accordance with the HHS Ethics Policy, all HHS agency staff must report suspected ethics or standard of conduct violations. Any HHS employee or contractor who has reasonable cause to believe that fraud, waste, or abuse has occurred must report the questioned activity to the HHS Office of the Inspector General (OIG). See Circular 027.

2.2.3 Ethics and Conduct: HHS Procurement and Contracting Staff

Public procurement professionals are gatekeepers for the proper expenditure of the government's limited financial resources. They are entrusted to uphold the highest ethical standards and be good stewards of public funds with every purchasing decision they make. Any erosion of public trust or hint of impropriety is detrimental to the integrity of the procurement and contracting process.

All HHS staff involved in procurement and contracting must act in the best interest of the state and avoid any activity that could potentially impair their ability to carry out duties with independence and objectivity or even give the appearance of impropriety. Failing to abide by these rules or to disclose a potential conflict of interest may result in dismissal and/or referral to law enforcement.

2.2.3.1 HHS Staff Responsibilities

All HHS staff must:

1. Adhere to ethics requirements adopted in rule, ethics policies, and any code of ethics approved by the Executive Commissioner.

[16] *HHS Ethics Policy, HHS Connection*

2. Disclose, in writing, any potential or actual conflict of interest concerning any contract or procurement in which they are or may become engaged[17].

2.2.3.2 HHS Staff Prohibitions

To avoid conflicts of interest, HHS staff must not:

1. Participate in any work on a contract knowing that they, or a member of their immediate family, have an actual or potential financial interest in the contract, including, but not limited to, prospective employment.
2. Solicit or accept a benefit from a vendor.
3. Be employed by or agree to work for a vendor.
4. Disclose confidential information.

2.2.4 Vendor References and Endorsements

To ensure fair dealings with all HHS vendors, HHS personnel may not endorse or provide a reference for any HHS individual vendor or a vendor's products or services. In response to such requests, HHS personnel who have been authorized by their supervisor to communicate publicly about the contract or procurement at issue may only provide factual information, such as that a vendor worked for the agency and the type of work that was performed.

2.3 Nondisclosure, Conflict of Interest, Nepotism Certification

All HHS staff must disclose, in writing, any potential or actual conflict of interest concerning any contract or procurement in which they are or may become engaged.

HHS PCS ensures compliance with legal requirements for procurement and contracting-related nondisclosure, conflict of interest,[18] and nepotism[19] certifications.

The PCS Purchaser assigned to the procurement must ensure all purchasing personnel who participate in the procurement, including attorneys, complete the State Auditor's Office (SAO) nepotism disclosure form before the agency may award a major contract (a contract that has a value of at least $1 million) for the purchase of goods or services to a business entity.[20] Pursuant to Texas Government Code § 2262.004, "Purchasing personnel" means an

[17] *1 TEX ADMIN. CODE § 391.503(a),(b).*
[18] *TEX. GOV'T CODE § 2155.003; 34 TEX ADMIN CODE § 20.157, 34 TEX ADMIN CODE § 20.158.*
[19] *TEX. GOV'T CODE § 2262.004.*
[20] *TEX. GOV'T CODE § 2262.004(b).*

employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding:

1. Contract terms or conditions on a major contract.
2. Who is to be awarded a major contract.
3. Preparation of a solicitation for a major contract; or
4. Evaluation of a bid or proposal.[21]

2.3.1 Purchasing Personnel

Reference: PCS Policy 403

In accordance with PCS Policy 403, Nondisclosure, Conflict of Interest, and Nepotism Certification, agency "purchasing personnel" that meet the statutory definition may include, but are not limited to, the following positions:

1. Purchasers.
2. Contract approvers.
3. Evaluation committee members.
4. CQC solicitation reviewers and financial analysts.
5. Attorneys (SAO nepotism disclosure form only).
6. Technical advisors.
7. Contract negotiators.

2.3.2 Required Documentation

Procurement staff and other individuals involved in the procurement and contracting process may be required to complete the following forms:

1. Health and Human Services Employee Nondisclosure and Conflict of Interest Certification (PCS Form 130): HHS employees and HHS contract employees, as applicable, must complete PCS Form 130 no later than 30 days from their start date and at least once every fiscal year.
2. A completed PCS Form 130 is required before a person can participate in an HHS procurement, or in a procurement that HHS administers, or prior to accessing HHS's System of Contract Operation and Reporting (SCOR). The only exceptions are

[21] *TEX. GOV'T CODE § 2262.004(b)*.

attorneys, evaluation committee members, and technical advisors who do not work for HHS PCS, HHS CQC, DFPS, or TCCO and do not access SCOR.

3. Health and Human Services Procurement - Specific Nondisclosure and Conflict of Interest Certification (PCS Form 117): Evaluation committee members and technical advisors must complete PCS Form 117 for each procurement.
4. State Auditor's Office Disclosure Statement for Purchasing Personnel (SAO Nepotism Disclosure Form): Purchasing personnel must complete the SAO's Disclosure Statement for Purchasing Personnel for major contracts (with a value of at least $1 million) for the purchase of goods or services from a business entity. A new SAO Nepotism Disclosure Form must be completed for each applicable procurement.

2.3.3 Disclosure of Actual or Potential Conflict

If an evaluation committee member or technical advisor, purchasing personnel, or any person required to sign a PCS Form 130, PCS Form 117, or SAO Nepotism Disclosure Form discloses an actual or potential conflict of interest or relationship with a business entity, or if one arises, they must immediately:

1. Notify the PCS Purchaser assigned to the procurement.
2. If they are an HHS employee or contracted staff, notify their manager.
3. When notified of an actual or potential conflict of interest or relationship with a business entity, the PCS Purchaser assigned to the procurement must immediately notify their manager and deputy associate commissioner. The deputy associate commissioner must:
    a. Direct the purchaser or the purchaser's manager to request a determination from the HHS Ethics Office in writing.
    b. Direct an alternative to requesting a determination from the HHS Ethics Office in writing, such as assigning a different HHS employee or contracted employee to minimize disruption to the procurement schedule.

2.3.4 Completed Documentation

The PCS Purchaser must place all required documentation for each evaluation committee member or technical advisor, purchasing personnel or any person required to sign a PCS Form 130, PCS Form 117, or Nepotism Disclosure Form in the official procurement file. The PCS Purchaser must also save in the official procurement file written documentation about any reported actual or potential conflict of interest and how it was resolved.

HHS staff may get copies of completed PCS Form 130, PCS Form 117, and SAO Nepotism Forms by:

1. Emailing PCS_Records_Management@hhsc.state.tx.us to request a copy.
2. Finding the form in the completed forms library on the PCS SharePoint site.

3. Vendor Communications

Communication between public procurement professionals and vendors is important and encouraged. If used effectively, communication with industry representatives is a vital resource for public procurement professionals. Steps must be taken, however, to maintain a fair opportunity to compete for all vendors and to avoid any appearance of favoritism.

Agency personnel must be mindful that one-on-one communications with vendors occurring prior to contract award may be subject to enhanced scrutiny due to the importance of maintaining a "level playing field" among all eligible vendors during competitive procurements. The HHS Vendor Interaction Policy must be followed, including requirements to consult with PCS, supervisors, or the HHS Chief Ethics Officer for guidance. Contact the personnel identified in the HHS Vendor Interaction Policy and, if and when necessary, consult with System Contracting.[22]

Each employee is expected to use their best judgment when interacting with vendor representatives. Employees should be familiar with their agency's Ethics Policy to ensure that all training and disclosure requirements related to ethics are up to date prior to meeting with any vendor representative. If at any point an employee is faced with an ethical dilemma that is not addressed in their agency's ethics policies, the employee should immediately cease all communications with the vendor representative and consult with the agency's procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance. For more information, review the HHS Vendor Interaction Policy.

For any questions or assistance with vendor communications or facilitating a vendor meeting, please contact the Deputy Executive Commissioner of PCS at PCS_DEC@hhsc.state.tx.us.

4. Required Training

An HHSC employee must complete the Basic Texas Purchaser Course to engage in purchasing functions on behalf of HHSC if the employee holds the job title of "purchaser;"

[22] *HHS Vendor Interaction Policy; see also, Comptroller's Guide, Vendor Communication.*

performs purchasing activities as 15% or more of their job functions; or makes a purchase exceeding $10,000.[23]

Purchasing includes the receipt and processing of requisitions, development of specifications, development of statement of work, the issuance of purchase orders against existing statewide, cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily (ESBD)[24] (found on the Texas SmartBuy website) or in the *Texas Register*.[25]

Contract development refers to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation and advertising of solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.[26]

4.1 Certified Texas Contract Developer (CTCD)

A state agency employee or contractor must be certified as a Certified Texas Contract Developer (CTCD) to engage in contract development functions or develop, evaluate, negotiate, or award a contract posted to the ESBD or in the Texas Register on behalf of the agency[27].

To become certified, the agency employee must take the Certified Texas Contract Developer Course through the CPA, achieve an 80 percent or higher on the Certified Texas Contract Developer exam, have completed payment for the course and examination, and apply for certification[28].

New HHSC staff or staff that transfer to a position requiring a CTCD must obtain the required certification within the timeframe established by the hiring authority.

[23] *34 TEX ADMIN CODE § 20.133(c).*
[24] *Located at http://www.txsmartbuy.com/.*
[25] *34 TEX ADMIN CODE § 20.133(b)(1).*
[26] *34 TEX ADMIN CODE § 20.133(b)(2).*
[27] *34 TEX ADMIN CODE § 20.133(c)(2).*
[28] *34 TEX ADMIN CODE § 20.133(e)*

4.2 Certified Texas Contract Manager (CTCM)

Per Texas State Comptroller, an HHS employee must be certified as a Certified Texas Contract Manager (CTCM) to engage in contract management functions on behalf of HHS if the employee holds the job title of "Contract Manager," "Contract Administration Manager," or "Contract Technician;" performs contract management activities as 50% or more of their job activities; or manages any contract in excess of $5,000,000.[29]

HHS agencies and/or management staff have the discretion to assign a CTCM to any additional contracts.

New HHS staff or staff that transfer to a position requiring a CTCM must obtain the required certification within the timeframe established by the hiring authority.

4.3 Licensed Attorney

A licensed attorney employed by an agency is not required to be certified CTCD or CTCM to perform the functions described above.[30]

4.4 Continuing Education and Certification Renewal

Continuing education is required by the CPA to maintain certification, and all certifications are subject to mandatory renewal. For more information regarding these requirements, consult the Continuing Education and Certification Renewal page of the CPA's website.

4.5 Required Cybersecurity Training for HHS and Contracted Staff

HHS information and information resources (IR) are valuable assets that must be protected from unauthorized disclosure, modification, use, or destruction. HHS must ensure information and resources are maintained with integrity and confidentiality and that their availability is not compromised.

Texas law imposes mandatory cybersecurity training requirements.[31] HHS employees and contracted staff must complete the HHS Information Security/Cybersecurity Training within 30 days of hire or prior to accessing HHS IR, whichever is earlier.[32] HHS employees and contracted staff must also complete the HHS Information Security/Cybersecurity Training as

[29] *34 TEX ADMIN CODE § 20.133(c).*
[30] *34 TEX ADMIN CODE § 20.133(c)(5).*
[31] *TEX. GOV'T CODE § 2054.5191.*
[32] *Pursuant to HHS Policy relating to TEX. GOV'T CODE § 2054.5191.*

an annual requirement. HHS employees and contracted staff must access HHS's System Training Solutions/iLEARN to complete the training.[33]

If an HHS employee or contracted staff is in a role that handles regulated or confidential data types with additional requirements (e.g., employees who use federal tax information) or in an information technology (IT) role (e.g., information owner or custodian) with a security requirement, additional role-based annual training (e.g., Safeguarding Internal Revenue Service Federal Tax Information) may be required.

When an HHS employee or contracted staff leaves the agency, their supervisor is required to immediately terminate access to all HHS IR, in accordance with agency procedures. Failure to properly separate an employee or contracted staff from HHS IR may result in unauthorized access, fines, penalties or other security risks.

5. Procurement and Contracting Services Division (PCS)

PCS is the centralized office that handles procurement and contracting services for the HHS System. PCS partners with HHS staff, especially program staff and contract managers, as well as System Contracting, to provide procurement advice and forms, determine procurement methods, plan procurements, develop solicitation documents, manage procurement timelines, conduct vendor conferences, evaluate proposals, assist with negotiations when requested, and assist with awarding and executing contracts. Visit the Contracting with HHS web page for more information and resources. HHS staff should also refer to the PCS SharePoint site.

The PCS vision is to ensure that stakeholders can successfully carry out their mission, maximize operational performance, and minimize risk through a collaborative and transparent procurement and contracting system that provides high quality, timely, and value-added services.[34]

The HHS procurement and contracting operating model is complex and composed of many customers, stakeholders, decision-making processes, activities, tools, and information systems interacting with each other to improve the health, safety, and well-being of Texans while being good stewards of public resources.

[33] *HHS Information Security/Cybersecurity Training.*
[34] *Health and Human Services Procurement and Contracting System Strategic Plan.*

5.1 PCS Procurement Teams

PCS Purchasers and PCS Managers are responsible for facilitating the solicitation process for Invitations for Bids (IFB), Requests for Applications (RFA), Requests for Offers (RFO), Requests for Proposals (RFP), and Requests for Qualifications (RFQ).

Once a program area submits a requisition initiating a procurement in HHS's Centralized Accounting and Payroll/Personnel System (CAPPS) Financials, a purchaser is assigned to the procurement. The purchaser contacts the program area, reviews the requisition for compliance, coordinates with appropriate representatives from CQC, PCS Veteran Heroes United in Business (VetHUB) program office, Procurement Financial Support (PFS) and System Contracting, when applicable, and schedules a kick-off meeting to plan the procurement and develop timelines. Purchasers cannot commit to reduced timelines on behalf of other divisions. Any request for expedited timelines will need to be discussed with and agreed to with all parties involved.

5.1.1 The Goods Team

The Goods Team processes commodities and finished products procurements using:

1. Texas Correctional Industries.
2. The Texas Purchasing from People with Disabilities program, managed by the Texas Workforce Commission, and administered by WorkQuest by contract.
3. CPA Term Contracts.
4. The federal government.
5. Texas Multiple Award Schedule Contracts (TXMAS), as required.

When the Goods Team uses competitive procurement methods for goods, the most common is the IFB process. To better serve the HHS System, the Goods Team is divided into: Administrative Goods Team, IT Goods, and Client Goods Team.

5.1.1.1 Administrative Goods Team

This team purchases items needed to support administrative staff for all HHS agencies. The team purchases furniture, equipment, appliances, sit-stands, employee awards, retirement gifts, vehicles, golf carts, tools, construction supplies, books, promotional items, clothing, and a high volume of office supplies and paper.

5.1.1.2 Client Goods Team

Client Goods Team purchases include:

1. **Food:** The team purchases food to support clients living in State Supported Living Centers (SSLCs) and state hospitals. In addition, this team purchases food, drinks, and snacks for HHSC canteens, such as produce, dairy, ice cream, bread, dry goods, and frozen food. In addition, the team purchases kitchen equipment, kitchen supplies, linen, utensils, and paper goods. The team purchases a high volume of frozen food, which is distributed to various facilities as needed. They also purchase truckloads of water for distribution during declared emergencies.
2. **Medical:** The team purchases medical supplies to support all HHSC agencies, including clients living in the SSLCs and state hospitals. Items purchased include medical and dental equipment, mobility equipment, medical and dental goods, hospital beds, supplements, clothing, medications, and vaccines. The team also purchases items for DFPS, including car seats, drug kits, and other supplies.
3. **Laboratory:** The team purchases items to support multiple tests performed by DSHS and HHSC laboratories. These purchases include laboratory equipment and instruments, chemicals, consumables, labware, plasticware, gloves, and other supplies.
4. **Material Inventory Management System (MIMS):** The team purchases goods stocked in warehouses at SSLCs and state hospitals. These items are stocked to support patients at the state hospitals, residents at SSLCs, and administrative staff. HHSC has nineteen warehouses supplying twenty-four facilities that stock almost twelve thousand inventory items.

5.1.2 The Services Team

5.1.2.1 Administrative and Client Services Team

This team procures administrative and client-related services. The team purchases a variety of administrative services, including conference registrations, janitorial, equipment maintenance, temporary staffing services, and printing services.

Client purchases include services that support the clients living in SSLCs and state hospitals, services for DFPS Child Protective Services (CPS) and Adult Protective Services (APS) clients, health-related services for DSHS clients, and state disaster-related services.

The team uses SPD Term Contracts, Set Aside Programs, including Texas Correctional Industries (TCI) and WorkQuest, and TXMAS contracts prior to completing a competitive procurement for services. The competitive procurement is completed through the Invitation for Bid (IFB) method; this process is most appropriate when services are standardized or uniform, with price and meeting specifications being the principal considerations.

Administrative Service Purchases include:

1. **Courier Services:** The team purchases courier services as an open market purchase.
2. **Grounds Maintenance:** The team purchases lawncare services for the HHS regional offices, state hospitals, and SSLCs through open market purchase.
3. **Modular Furniture Installation:** If TCI grants a waiver for the purchase, the team purchases modular furniture installations as an open market purchase.

Client Service Purchases include:

1. **State Operated Facilities:** The team purchases services to support the clients residing in the state hospitals and SSLCs, including mental and dental services.
2. **DFPS Services:** DFPS provides services for APS and CPS. The services include medical and mental assessments, psychological and counseling services, and substance use disorder services.
3. **DSHS Services:** The team procures services necessary for DSHS clients. These services can include items needed to address health crises, campaigns for public service announcements, and preventative care to ensure the health of clients.
4. **Disaster Related Services:** The team supports clients through the distribution of large quantities of water and ice during declared emergencies.

5.1.3 The IT Procurement Team

The IT Procurement Team processes RFOs and DIR purchases, including DIR SOWs, in compliance with statutory guidelines and dollar thresholds. This team purchases goods and services from DIR contracts such as:

1. **IT Goods:** IT Goods are generally found on Texas Department of Information Resources (DIR) Cooperative Contracts. These contracts cover a wide variety of information technology products including laptops, desktops, peripherals, video equipment, telecommunication equipment, and other technology equipment with an AIS Automated Information Systems (AIS) designated NIGP code.
2. **Shared Technology Services (STS):** (e.g., Private Cloud, Public Cloud, Print/Mail/ Digitization); Subject to 1 Texas Administrative Code § 215.43, customers in the data center must procure software, Software as a Service (SaaS), and Platform as a Service (PaaS) through the Shared Technology Service (STS) program (e.g., private cloud, public cloud, print/mail/digitization). DIR has established the STS commodities process to accomplish this.

3. **Data Center Services:** These services include mainframe, server, network, data center, and print/mail services.
4. **Information Security:** These services ensure the integrity, availability, and confidentiality of information assets.
5. **Telecom:** These services include local and Long-Distance voice and data services, internet, wireless, Next Gen 911 and telecom managed services.
6. **Texas.gov:** These services include payment processing, custom app development, technology and operations, customer service, marketing and more.
7. **Services:** This includes specific services that fall under DIR Blanket and One-Time Exemptions within certain threshold requirements.

5.1.4 The Complex Team

A complex procurement is a procurement with a high degree of difficulty in developing specifications or statements of work due to the nature of the products or services being procured; a limited or specialty market; delivery to at-risk or vulnerable populations; or the addition of federal regulations and mandates. These procurements are typically high-risk, publicly scrutinized, and subject to multiple oversight entities.

Services procured by this group encompass a broad range of health care and professional services, including HHS's most complex procurements. The dollar value of these procurements can range into the billions. Most often, this team solicits via the Request for Proposals (RFP) and Request for Qualifications (RFQ).

5.1.5 Procurement Financial Support (PFS)

The PFS provides the following services:

1. Financial risk assessment of proposed procurements and assistance in identifying whether a financial capacity review of any respondents is necessary.
2. Serving as subject matter expert(s) to evaluate respondents submitted financial capacity materials.
3. Assisting with the development of cost workbooks and financial provisions and requirements.
4. Reviewing price components for high-risk, high-value, or other applicable procurements.
5. Assisting with price negotiation and the development of financial payment structures.

5.1.6 The Grants Team

The Grants Team supports individuals and organizations that improve the health, safety, and well-being of Texans by delivering strategic and collaborative grant services to the HHS System. Grants are used to advance a public purpose through the creation or support of an activity. Grants are strategic investments in the state and its future. Through careful design and planning, the proper solicitation of grant applications is key to transforming grants from a piece of financial assistance into a powerful tool that educates and drives public policy while improving outcomes for Texans.

In contrast to the procurement of goods or services, grants use the RFA method to solicit applications and must follow the federal Uniform Grant Guidance (UGG), state Texas Grant Management Standards (TxGMS) or its successor, published by the SPD, as applicable, as well as other applicable state and federal law.

The team's chief function is to serve as experts in facilitating the solicitation and selection of qualified applicants to implement grant-funded projects. This is done while navigating and correctly implementing the unique rules, regulations, and procedures associated with the use of state and federal grant funds.

5.1.7 Construction and Building Maintenance Team

The Construction and Building Maintenance team procures major construction projects for Health and Specialty Care System (HSCS) Maintenance and Construction, primarily using the Request for Proposal (RFP) method to procure services aimed at building new state hospitals, renovating old, outdated buildings, and addressing extensive deferred maintenance. These projects support State Hospitals (SHs) and State Supported Living Centers.

The team also procures building maintenance and repair services for SHs and SSLCs and Regional Administrative Services (RAS) offices, including electrical, plumbing, and HVAC work.

5.1.8 The Business Operations Team

The Business Operations Team helps PCS operate with transparency and accountability, providing the support needed to be successful. The team analyzes and reports data to support performance management, publishes policies, processes, and procedures; and provides staff with information, training, and other resources they need to do their jobs effectively. The Business Operations team includes training, both internally to PCS and agency-wide; procurement support, including CAPPS Financials and SCOR technical assistance; performance measures and internal reporting requests; process improvement; and business integrity. Additionally, the Business Operations team handles reporting HHS

contract information in accordance with the Texas Government Code and the General Appropriations Act (GAA), Article IX. This includes uploads into the Legislative Budget Board (LBB) Contracts Database and filing the monthly Texas Purchasing from People with Disabilities Exceptions Report with the CPA.

5.1.9 Procurement Support Services

Procurement Support Services are provided by the PCS Customer Service team and PCS Level 1 Support staff. These teams provide service to PCS staff, potential contractors, public, and agency programs. All inquiries received are reviewed and answered within three (3) business days.

5.1.9.1 PCS Customer Service

The Customer Service mailbox provides support for the following items:

1. Requests for requisition status.
2. Requests for buyers assigned to requisitions.
3. Vendor requests for demonstration meetings.
4. Inquiries on requisition entry/CAPPS Financials Wizard questions.
5. Questions related to searching items within Texas SmartBuy.
6. Guidance on National Institute of Governmental Purchasing (NIGP) class and items.
7. General procurement questions.
8. Requests to expedite the processing of a requisition(s).
9. Program inquiries for goods and services teams.

Contact PCS Customer Service at PCS_CST_HHSC@hhsc.state.tx.us.

5.1.9.2 PCS Level 1 Support

PCS Level 1 Support helps agency staff with CAPPS Financials and related support requests, including:

1. Helping staff submit enterprise portal requests or answer questions about CAPPS Financials access.
2. Administratively approving requisitions or CAPPS Financials contract approvals when requested by a program.
3. Releasing pre-encumbrances on requisitions or purchase orders.

4. Reassigning requisitions or contract approvals when requested by a program.
5. Updating the contract administrator on contracts.
6. Denying requisitions when needed.
7. Creating new origin codes.
8. Changing requester names on requisitions, such as when an employee leaves.
9. Providing guidance on entering requisitions in CAPPS Financials.
10. Helping cancel requisitions.
11. Processing approval mapping requests for CAPPS Financials, including PCS Form 300, Approval Mapping Change Form.

Contact PCS Level 1 Support at: PCS_Level_1_Support@hhsc.state.tx.us.

5.1.9.3 PCS Liaisons

PCS Liaisons are purchasers or managers who provide key guidance and communication during the procurement planning on specific procurements. They may provide assistance for the following items:

1. Determine the proper procurement method.
2. Identify the correct solicitation template and associated exhibits.
3. Provide guidance to ensure fully developed CAPPS Financials Wizard responses.
4. Provide general guidance with a specific procurement process.
5. Provide baseline procurement timelines based on the Procurement Action Lead Time Schedule (the actual timeline may not be established until the kickoff meeting).
6. Assist with identifying NIGP class/item codes.

All other requests for assistance should be sent to PCS Customer Service or PCS Level 1 Support.

5.1.9.4 Requesting PCS Liaison Assistance

To request PCS Liaison assistance, email PCS_liaison@hhsc.state.tx.us and provide the following required information:

1. Detailed description of services.
2. Agency and division.
3. Funding source (state, federal, or both).

4. Information concerning whether the procurement is new or a re-procurement.
5. Existing contract number.
6. Estimated dollar value.
7. Target contract award date.
8. Information concerning any required vendor transition times.

Within two business days of receiving the initial request, the assigned PCS Liaison will contact the requestor to determine any additional needs.

5.1.10 Veteran Heroes United in Business (VetHUB)

HHS is committed to implementing an effective and successful VetHUB Program. The VetHUB Program Office provides customer service to the agency's procurement and contracting staff, respondents, VetHUB businesses, and prime contractors. It develops and implements policies to ensure strict compliance with the state statutes and administrative rules that govern the program. Tasks include, but are not limited to, educating the agency's internal and external customers on VetHUB requirements; facilitating the inclusion of VetHUB contract requirements on solicitations valued at $100,000 or more through the entire lifecycle of a contract; marketing the agency's VetHUB Program and procurement opportunities to encourage VetHUB utilization; administrating the Mentor-Protégé Program; and tracking and preparing VetHUB data for reporting and analytical analysis.

The VetHUB Program Office can be contacted at HHSCVetHUB@hhs.texas.gov. In addition, the Veteran Heroes United in Business (VetHUB) Program webpage is a useful resource.

5.1.11 Major Procurement Support (MPS)

The MPS Team leads Major IT procurements and develops high quality contracts through established best practices and identified collaboration periods during the procurement process in support of Texas Health and Human Services (HHS) agency stakeholders (i.e., HHSC, DSHS, and DFPS). MPS works with stakeholders throughout the procurement process to ensure the resulting contract meets requirements and provides best value to the State.

Major Procurement support tasks include:

1. Market Research: Use internal databases, industry networks, and other sources to determine products and potential suppliers of those products.
2. Define requirements: Work with stakeholders to determine the procurements budget, timeline, and scope of work.

3. Negotiate contracts: Agree on terms and conditions, pricing, delivery dates, and other key aspects of the contract.

5.1.12 Contract Management Support Team

PCS created the Contract Management Support (CMS) Team in May 2020 as a result of Procurement and Contracting Improvement Plan (PCIP) project team recommendation 17PM: Standardize Contract Management and Monitoring Processes Across HHSC. This team provides contract management support assistance and oversight for HHS staff, leaders, and business units with contract management related responsibilities.

The CMS team is also responsible for reporting on contract management compliance to the Executive Commissioner. (See CMS Executive Reporting.)

PCS CMS focuses on strengthening contract management practices by developing policies and procedures, creating tools and templates, monitoring, and analyzing key success indicators and working to support program contract management areas when needed.

PCS CMS also provides insurance reviews and recommendations for RFx procurements or grant solicitations.

PCS CMS can be contacted at PCS_CMSupport@hhsc.state.tx.us.

5.1.13 Other

In addition to the teams listed in this section, there are other staff that report directly to PCS executive management who are tasked with overseeing communications; managing PCS policies, procedures, and forms; and performing additional support functions for the division.

5.2 PCS Stakeholder Partners

PCS, works closely with other departments and divisions independent from, and within PCS that perform certain functions to help support customer organizations in the procurement and contracting process. Compliance and Quality Control, System Contracting, and Procurement Financial Support each have a role in the procurement and contract management lifecycle. (*See Management Pillars of Operation)*.

5.2.1 Compliance and Quality Control (CQC)

CQC was created in April 2018 as an independent division that reported directly to the HHSC Chief Operating Officer (COO). CQC provides compliance and oversight review of PCS and other agency functions to ensure organizational resources and processes align with and satisfy all purchasing and contracting requirements. In March 2020, oversight of the CQC

division changed from the COO to the HHSC Chief Policy and Regulatory Officer (CPRO) to strengthen CQC's integrity as a procurement and contract management oversight body by establishing greater operational independence from PCS.

As part of its duties, the CQC solicitation review unit (SRU):

1. Reviews and approves all complex solicitations prior to submission for review by the Contract Advisory Team, prior to posting public notice of the solicitation, and prior to the posting of all addenda.
2. Reviews and validates the evaluation tool; facilitates the complex solicitation evaluation and scoring process in conjunction with PCS Purchasers.
3. May conduct audits concerning the procurement and contracting process including required documentation of procurement files and contract files.

In addition to the standard reviews required for complex solicitations, CQC may review, revise, or create, as directed, procurement-related policies, processes, procedures, and rules to ensure compliance with state law and the Comptroller's Guide.

5.2.2 System Contracting

System Contracting is a department in the Office of Chief Counsel (OCC). System Contracting provides legal assistance and guidance related to procurement and contracting activities. One of System Contracting's primary roles in procurement and contract management is working with PCS and program personnel on solicitations assigned to PCS's complex procurement and grants teams, and with contract managers for contract actions or amendments.

PCS and program personnel should work with their management and/or contract managers prior to seeking a System Contracting attorney assignment, as indicated below.

5.2.2.1 System Contracting Intake Request - Attorney Assignment:

1. When PCS is involved in a procurement, PCS personnel are responsible for requesting an assigned attorney.
2. When PCS is not involved, program personnel are responsible for requesting an assigned attorney.

To request a System Contracting attorney assignment, all required information must be provided, including drafts of documents for which review is requested. System Contracting attorney assignment requests should be submitted through the OCC System Contracting Intake Portal.

5.2.2.2 Program Policy Issues

For policy issues of a programmatic nature, such as applicable program law or requirements, Program should contact their designated policy attorney or, if they do not have one, the Policy Department in the Office of Chief Counsel at: HHSLegalPolicy@hhsc.state.tx.us.

The Policy Department provides general legal advice and support to all HHS agencies and programs in their daily operations, rulemaking efforts, and legislative matters. With significant day-to-day interaction with programs, the Policy Department can help connect programs to resources in other Office of Chief Counsel departments when there is a need for specialized support.

5.2.2.3 Data Governance

For assistance with Data Use Agreements (DUAs) and other matters of confidentiality, Program should contact the Data Governance section within the Office of Chief Counsel's Personnel Department at OCC_Data_Governance@hhsc.state.tx.us.

6. Overview of HHS Agency Roles and Responsibilities

HHS agency staff serve critical roles in different phases of the procurement and contract lifecycle and may assume more than one role during different lifecycle phases. Clearly delineated roles and responsibilities for agency staff reinforce accountability and awareness of decision-making authorities and responsibilities. Key roles with expected responsibilities are expressed in categories of Responsible, Accountable, Consulted, and Informed (RACI). See definitions for categories in the RACI Definitions table below.

The RACI matrices consist of key functions of the procurement and contracting system, which are generally listed in chronological order. The primary function of the matrices is not to show process or workflow, but rather to articulate expectations of various roles and responsibilities for key functions.

Table 1. RACI Matrix Role Definitions

Responsible	Accountable	Consulted	Informed
The role assigned to perform the function.	The single authority/owner to make decisions; accountable that the function is performed. The accountable role is the role that follows	The role that is consulted on the function and consulted on outputs of the function. Consultation is not	The role is informed due to a dependency on the function. Informing is not optional. * Not informing impacts

Responsible	Accountable	Consulted	Informed
	through on required consultation and informing to ensure that required stakeholders are consulted and/or informed.	optional. The accountable and responsible are expected to take input from the consultation into account, with the expectation of two-way communication.	the dependability of the system. Expectation of one-way communication.

* Unless otherwise specified.

6.1 Customer Organizations Roles

Customer organizations are the agencies, offices, divisions, departments, sections, and units that receive procurement and contracting information, guidance, and services from PCS, including departmental groups within PCS. These customer organizations are components of the following agencies or areas: HHSC, DSHS, DFPS, Office of the Inspector General (OIG), TCCO, and other governmental entities that PCS supports. Customer organizations who initiate a procurement will assign staff to serve in certain roles. These include:

1. **Customer Organization Program/Contract Management role**: a coordinating area within the customer organization pursuing a procurement or contract. Program staff will have subject matter expertise related to the goods or services sought, while contract managers will facilitate the procurement process on behalf of the program area. Program areas may also have financial, IT, and data-related subject matter experts (SMEs) that participate in a procurement at the program level. Many areas in the organization may have either a representative from the program area and/or a representative from the contract management area leading the procurement on behalf of the customer organization.
2. **Customer Organization Evaluators**: staff from the customer organization area assigned to score proposals/applications or participate in oral presentations.
3. **Customer Organization Contract Attorney** or other attorneys: the assigned contract attorney or other attorneys who support the corresponding customer organization program.
4. **Customer Organization Information Technology role**: the relevant information technology department within the customer organization that supports programs on information technology (IT) matters. When the departments within HHSC IT initiate a procurement, those departmental areas serve in a customer organization capacity.

5. Customer Organization Finance/Budget role: the relevant agency financial and budgetary departments within the customer organization that supports programs on financial and budgetary matters.

6.2 PCS Roles

PCS has key roles that support customer organizations in the procurement and contracting process. These are:

1. **PCS Purchaser**: a qualified purchaser with a CTCD certification that is assigned to process a procurement.
2. **PCS Liaison**: a liaison with a CTCD certification providing support to customer organizations on specific procurements, as requested.
3. **PCS Manager**: the manager of the PCS Purchaser responsible for overseeing the quality of work and adherence to procurement regulations.
4. **VetHUB Coordinator**: the VetHUB coordinator assigned to a procurement within PCS. DFPS has a VetHUB Coordinator that supports DFPS programs.
5. **PFS Financial Analyst**: a financial analyst that supports procurements on financial matters. May provide help developing cost workbooks, financial provisions, and requirements, evaluating respondents' financial capacity, reviewing price components for high-risk or high-value procurements, assist negotiating price, and/or with other financial matters associated with the procurements.

6.3 CQC Roles

Staff from the CQC SRU may serve in the following roles:

1. **CQC Financial Analyst**: a financial analyst assigned to a complex procurement or grant solicitation to review and validate the evaluation tool.
2. **CQC Solicitation Reviewer**: a contract administration manager assigned to review and approve a complex procurement or grant solicitation.

6.4 PCS Operating Model

The image below depicts the PCS Operating Model, including the HHS Procurement and Contract Management Lifecycle. The Procurement and Contract Management Lifecycle is a continuous process with common characteristics that exist between all public procurements.

Following each of the processes outlined below helps to ensure that the procurement is conducted in a transparent and efficient manner.

The Procurement and Contracting Management Lifecycle identifies the five phases performed for every procurement. While the Comptroller's Guide distinguishes grants as separate from the procurement of goods and services, the solicitation, evaluation, selection, and management of grants largely follows this same lifecycle. In addition, PCS has developed a detailed framework for the procurement end to end process located on the PCS SharePoint site.

- **Phase 1:** Procurement Planning - Define the business need and establish the procurement objectives.

- **Phase 2:** Procurement Method Determination - Identify the appropriate Procurement Method and, if applicable, issue a solicitation.
- **Phase 3:** Vendor Selection - Fairly and objectively select the vendor that provides best value to the state.
- **Phase 4:** Contract Formation and Award - Ensure that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives.
- **Phase 5:** Contract Management - Administer and enforce the terms of the contract, including termination and closeout.

6.5 Management Pillars of Operations

The PCS Operating Model is supported by the four management pillars of operations, illustrated in the image above as Quality Management, Risk Management, Communications, and Training. The pillars span the entire procurement and contract management lifecycle and apply to the staff stakeholders that support the process, including PCS, System Contracting, Procurement Financial Support, CQC and customer organization (*Reference PCS Stakeholder Partners Section*).

1. Quality Management: Ensures quality work products and services throughout the procurement and contracting processes, which translates, either directly or indirectly, to quality services for clients.
2. Risk Management: Management and monitoring of risks are critical aspects of procurement and contracting operations for proactive decision-making, ensuring compliance, and optimizing resources.
3. Communications: An effective and efficient procurement and contracting system requires timely, relevant, and clear communication between participants that supports the procurement and contracting system.
4. Training: Expands the knowledge base and skillset of employees, so they can perform their jobs well. For procurement and contracting functions, training provides benefits such as improved employee performance and satisfaction, consistency in services, and compliance with state statutes.

7. Planning and Development

Procurement planning is the process of deciding what to buy, when to buy, and from what source, based on an identified need. Identifying and defining a need begins the procurement and contract management lifecycle and provides the basis for the contract.

The Texas Comptroller of Public Accounts created the eXpendit website to serve as a resource for state agencies regarding allowable expenditures. The website instructs state agencies and institutions of higher education on how to properly conduct purchase transactions while complying with certain provisions of the constitution, statutes, and rules of Texas related to expenditures.

Planning activities, at a minimum, include developing a needs assessment, a cost estimate, and an acquisition plan. For relatively simple and routine procurements, like purchases using the set aside programs (State Use program and TCI program), Texas SmartBuy, or informal bidding, the planning may be as simple as development of an accurate requisition.

For complex procurements, the timeline for the planning and development phase could range from several months to a year or more, depending on the complexity of the requirements and the number of coordinating departmental areas involved in the procurement.

Factors to consider in planning for any procurement include:

1. Procurement lead times.
2. Needs assessment.
3. Specifications and requirements gathering.
4. Risk management.
5. Contract value or cost estimate.
6. Contractor or subrecipient determination.

7.1 Procurement Lead Times

Procurement lead time is the interval between a decision to purchase a product or service to when the contract is awarded.[35] Generally, the PCS Purchaser, in coordination with program area staff and contract manager, will develop a procurement timeline. The timeline should include all key milestones for completing the procurement within required deadlines. However, it is the program area's responsibility to conduct appropriate planning

[35] *Comptroller's Guide, Solicitation Process.*

and development activities, considering the overall procurement lead time, prior to being assigned a PCS Purchaser. PCS Liaisons are available to assist program areas in planning and development activities prior to a PCS Purchaser assignment *(Reference PCS Liaison Section regarding PCS Liaison)*. PCS has developed estimated procurement timelines for HHS customers to serve as a resource for procurement planning. The Procurement Action Lead Time Schedule (PALTS) contains estimated procurement timelines for the different methods of procurement.

Considerations when determining a procurement timeline include:

1. Complexity of the procurement.
2. Internal approvals.
3. External reviews.
4. Waiver and exemption requests, including those from TCI and WorkQuest, indicating that the product or service may be otherwise procured.
5. Exemption requests (Data Center Services and Cooperative Contracts) from the DIR indicating that the product or service may be otherwise procured.
6. Internal proprietary purchase justification approval.
7. Emergency purchases.
8. Internal budget approval.
9. Procurement specific delegation request to CPA for goods exceeding $50,000 via email open.market@cpa.texas.gov or for services with an estimated contract value of more than $100,000 via POD web portal found on the Texas SmartBuy website, as applicable.
10. Contract Advisory Team (CAT) review for procurements with a value of at least $5 million.[36]
11. Quality Assurance Team (QAT) review for major information resources projects (MIRP) with a value of at least $10 million. [37]
12. Finding of Fact from the Governor's Office for major consulting procurements.

[36] *TEX. GOV'T CODE § 2262.101(a).*
[37] *TEX. GOV'T CODE § 2054.160(a).*

13. Centers for Medicare & Medicaid Services (CMS) and Food & Nutrition Service (FNS) reviews: 120 days or more. See the Generally Accepted Control Activities Section, for more information.
14. DIR SOW review for purchases off cooperative contract.

7.2 Needs Assessment

The needs assessment must contain sufficient detail to identify the key business requirements. By clearly defining the need at the beginning of the procurement and contract management lifecycle during the procurement planning phase, the following outcomes should be achieved:

1. Identifies key stakeholders and decision makers with the knowledge and experience to contribute to the procurement project.
2. Facilitates effective prioritization of the required funding to make the purchase.
3. Establishes if the service can be provided by internal resources.
4. Determines how these proposed goods/services fit with existing programs, systems, etc.
5. Identifies the type and level of service required to meet the need.
6. Establishes the procurement objective.
7. Provides framework to develop the statement of work, solicitation, evaluation, and contract documents.
8. Establishes whether confidential information will be exchanged under the contract, identify the Information Owner and Designee, and assess the information security risk level.
9. Determines the level of insurance necessary to provide protection and mitigate risk to the HHS agency or the HHS System.
10. Provides necessary information to determine how performance and quality of goods or service delivery will be measured, documented, and tracked, as well as specific remedies, sanctions, and/or damages if requirements, specific performance measures, and/or milestones are not met.

7.2.1 Factors for Assessing Need

The following factors must be considered when assessing need for a procurement:

1. State or federal laws, rules, or regulations.
2. HHS agency or system-wide policy.
3. Executive Commissioner or another applicable official directive.
4. The costs and benefits of the proposed contract.
5. Potential ethical or conflict of interest issues that may arise.
6. Potential risks to the HHS agency or the HHS System that may result if the need is not met.
7. Level of priority or importance of the need.
8. Availability of funding, staff, expertise, and other resources to meet the need.
9. Cost-effectiveness of the goods and services.
10. Cost savings and efficiencies in use of contracted goods and services.
11. Availability of funds.
12. Any legal concerns or potential issues.
13. Availability of other sources, including internal resources, to meet the need.
14. Existing opportunities to reduce cost or resources.

PCS created online training modules to assist program staff and requesters with needs assessment, including a specific module on the CAPPS Financials Wizard. HHS staff can access CAPPS Financials training on the PCS Training Site.

7.3 Risk Management

Risk management is critical to procurement and contracting operations and should be carefully reviewed and monitored as a continuous process. HHSC is required to develop and comply with a purchasing accountability and risk analysis procedure, as stated in Texas Government Code § 2261.256(a).

Stakeholders must incorporate risk management practices at each procurement phase and strive to mitigate risks at the earliest possible moment by using risk assessment tools and implementing necessary controls.

One risk management tool is the Procurement Risk Assessment (PCS Form 148). Program staff must complete the form and attach it to the requisition.[38] For RFx (i.e., RFP, RFO, RFQ) procurements, the form is reviewed and approved with all attendees at the kick-off meeting. For other procurements, program staff and PCS Purchaser must discuss and approve the form. Once approved, PCS Purchaser must incorporate the form into the procurement file.

If the completed form results in a high-risk score, a risk-based review of the procurement must be conducted with the procurement team via teleconference or an in-person meeting to discuss risk mitigation and communication strategies for identified risk factors. Any changes to risk levels during the procurement process must be noted in the *Updates* section of the form.

7.4 Contract Duration and Value Estimate

During the procurement planning phase, Program must determine a cost estimate that will be used for the procurement. The Max Potential Contract Value[39] must be entered into CAPPS Financials Wizard. The cost estimate must be developed in good faith, as it will be used not only in the selection of the appropriate procurement method and determining appropriate approvals, but also for compliance with statutory requirements that may be applicable to the purchase, based on contract value, funding source, or expenditure restrictions and prohibitions,[40] as well as required internal agency approvals. The cost estimate should be documented and included in the procurement file.

In accordance with the Comptroller's Guide and CPA administrative rule,[41] for SPD reporting, review, and delegation requirements, contract value is defined as "the estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract." In other words, the contract value is the total maximum potential value of the contract since all potential renewals and extensions are included.

It is imperative that a reasonable estimate of the contract value is established at the beginning of the procurement process because it drives the approval path and determines applicable statutory requirements.

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[38] *Procurement Risk Assessment Instructions.*
[39] *The estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions, and renewals of the contract.*
[40] *Comptroller's Guide, Procurement Planning.*
[41] *34 TEX ADMIN CODE § 20.25(b)(13).*

Staff must not underestimate the contract value in order to circumvent required review submissions, such as to CAT.

The payment method and source of funds are not necessary to be considered in determining the maximum potential contract value. PCS procurement staff must be notified before any changes to the maximum potential contract value are approved.

A contract value estimate is typically developed by using one or more of the following methods:

1. Market research, which may include methods such as online research, review of industry periodicals and information obtained from professional organizations, attendance at trade shows, discussions with other customers, informal budget quote by contacting several vendors to obtain pricing information, using a vendor's advertised price list, and consultations with industry representatives.
2. Historical cost estimate is developed through a historical spend analysis of the agency's similar contracts and/or other agency purchasing data.
3. Estimate developed in collaboration with subject matter experts within the agency.
4. Issuing a Request for Information (RFI), which gathers information directly from the industry about a particular type of product or service.
5. Set amount driven by the funding source, such as a grant for a specified dollar amount.
6. Benchmarking, the comparison of a particular item, service, or process with other entities or an established industry standard.

7.5 Request for Information (RFI)

A Request for Information (RFI) is a formal research method used by an agency to gather information directly from the industry about a particular type of product or service. One of the benefits of the RFI process is that information pertinent to an agency's business need is obtained in real-time directly from the vendor community regarding applicable industry standards, best practices, potential performance measures, cost structures or pricing methodologies, and feedback on innovative items.

A common practice is to publish the RFI on the ESBD or submit the RFI to an appropriate professional or trade organization. This practice has the benefit of not only using a venue that optimizes access by the vendor community, but also serves to control vendor communications so that they only occur with designated agency contacts. By establishing a prescribed communication protocol at the beginning of the RFI process, the agency is

ensuring that a "level playing field" is maintained within the vendor community if there is a subsequent procurement initiative.

It is important to note that an RFI is not a procurement opportunity; a contract cannot be developed from a response to an RFI. Responses to an RFI are strictly voluntary, and there is no downside for vendors who choose not to participate. Consequently, an RFI cannot be used to establish a pre-qualified vendor list, as voluntary participation in the RFI process cannot disadvantage vendors that choose not to participate. Vendors may choose not to participate in RFIs for a variety of reasons. For instance, a vendor may have a company policy of not responding to RFIs. Vendors may also decide, on a case-by-case basis, not to respond to RFIs seeking information readily available on the internet. The number of responses to an RFI, therefore, should not be used to gauge industry interest in any subsequent procurement initiative.

An agency may choose to use information received from RFI responses to develop specifications for a solicitation. Responses to RFIs, therefore, are public information. Public procurement professionals must be mindful not to provide any information during the RFI process that would give a vendor an advantage in a later procurement or that could be construed as preliminary negotiations. If RFI respondents are requested to deliver oral presentations, the same agency staff should attend all presentations, and the respondents should be offered the same amount of time to conduct their presentations. It is best practice for RFI activities to conclude prior commencement of specifications drafting.

Steps for posting an RFI:

1. Draft the RFI using the same SMEs that will be involved in drafting your SOW. Make sure all relevant users and any program area attorneys that might have an interest in the outcome of the procurement get a chance to review the RFI.
2. Submit a requisition with the final RFI document attached and inform PCS of the closing date and if any groups should be notified regarding the posting.
3. PCS will post the RFI and return the responses to Program after closing. The RFI responses may be used to inform your SOW development.

7.6 Procurement Planning Results and Outputs

A sound procurement plan helps program areas define their procurement requirements and to decide where, when, and how to procure. Key results and outputs to the planning process include solicitation and evaluation documents, source selection criteria, the statement of work, specific insurance requirements, and the CAPPS Financials requisition.

7.7 Procurement Forecast and Action Plan (PFAP)

Reference PCS 363 Guide

The Procurement Forecast and Action Plan (PFAP) establishes additional procurement planning requirements for agencies/divisions to ensure timely contract execution. Each agency/division that the PCS procurement department supports must complete and submit a Procurement Forecast and Action Plan (PFAP) to PCS annually by November 1st and updated quarterly as outlined in PCS 363, Executive Reporting Guide.

The PFAP must include information for the following types of procurements:

1. Request for Proposals (RFP).
2. Request for Application (RFA).
3. Request for Qualifications (RFQ).
4. Information Technology Request for Offers (RFO).
5. Invitation for Bids (IFB) over $100,000.
6. DIR procurements that include a Statement of Work with a value of $50,000 or more.

Only past and/or planned procurements that include the above procurement types should be included in the agency/division PFAP. The PFAP should include past procurements with currently active contracts under the above procurement types regardless of plans to re-procure. Procurement Forecast and Action Plans are meant to serve as a benchmark for each agency/division to track and report on procurement goals, including reporting to executive leadership.

7.8 The Statement of Work (SOW)

The SOW is the detailed description of the scope of work, product, or service the agency is purchasing and what the contractor is required to provide to be considered for an award and to satisfactorily perform the work.

From a procurement process perspective, the SOW must be completed and attached to the requisition for complex procurements, IT services procurements, or informal and formal IFB for services in order for the procurement process to begin. It is important that the SOW:

1. Be clearly defined.
2. Be logically organized and tailored to the business need.
3. Be contractually sound.

4. Be unbiased and non-prejudiced toward respondents.
5. Encourage innovative solutions to the requirements described, if appropriate.
6. Allow for free and open competition to the maximum extent reasonably possible.

7.8.1 Types of SOW

A statement of work can be performance-based, a design specification, or a mixture of both.[42] Performance-based specifications focus on outcomes or results rather than processes and on the required goods and services rather than how the goods and services are provided. Design specifications outline exactly how the contractor must perform the service or how the goods perform.

7.8.2 SOW Specifications

All specifications should:

1. Permit competition between products of equal quality.
2. Include a statement regarding the qualitative nature of the purchase.
3. Identify the minimum essential characteristics and standards to which the purchase must conform if it is to satisfy the intended use.

7.8.3 SOW Development

Tips to keep in mind when writing a statement of work:

1. **Identify SMART objectives**: specific, measurable, achievable, realistic, and timely.
2. **Methodology:** Consider appropriate project development or design methodology. Waterfall methodology works well with projects that have assured predictability, like construction projects. Agile methodology is intended for projects that may benefit from incremental development and successes, like software development.
3. **Use simple descriptions:** Write so a person unfamiliar with the good or service can easily understand what the agency is buying.
4. **Avoid acronyms and definitions:** Avoid acronyms and references to definitions contained in other sections of the solicitation, including a glossary.
5. **State requirements once:** The statement of work should not duplicate terms and conditions or other provisions in the solicitation, contract, or terms and conditions.

[42] *Comptroller's Guide, Scope of Work.*

6. **Use non-proprietary terminology:** Requiring the use of proprietary goods or services limits competition and increases the risk of a bid challenge or allegation that the requirements are slanted to a particular contractor.
7. **Write with the evaluation criteria in mind:** The statement of work must include all the requirements that will be used to evaluate and choose a contractor. A well-written statement of work will allow the agency to differentiate between competing proposals.

7.8.4 SOW Best Practices

An SOW brings together work details, schedules, terms, and expected outcomes to define exactly what should be done on a project and how it should be procured, as well as to protect against scope creep, where features, additions, and nice-to-haves can balloon beyond what was initially planned.

A good SOW involves team collaboration to collectively build a solid business requirement document that describes how requirements will be executed, analyzed, and managed. Moreover, a contract manager should participate in the development of the statement of work and be part of the team early in the process.

7.8.4.1 Primary Sources for Developing an SOW

While a SOW is unique for each project, best practices in writing an SOW share basic elements that are generally consistent across projects. Primary sources for developing the SOW are:

1. Needs assessment.
2. Previous procurement for the service.
3. Any current or prior contracts for the service and how those contracts did or did not result in the desired outcomes.
4. Description of the service maintained by the agency (e.g., in the Texas Administrative Code or agency program handbook).

7.8.4.2 Key Elements of an SOW

When developing an SOW, the drafter should not only consider the elements of proper specification drafting, but also other elements such as key performance measures, which may include Service Level Agreements, deliverables (such as reports), Key Performance Indicators (KPIs), project milestones, and other aspects to ensure the outcome of the contractor's work meets the outcomes intended by the program area.

When PCS reviews an SOW submitted by a program area, they assess the following key elements:

1. **Sufficient detail**: The SOW must contain sufficiently detailed description of what is required of the contractor to satisfactorily perform the work. The program must ensure that all requested goods and/or services are clearly stated.
2. **Clear deliverables and deadlines**: The SOW should outline the deliverables and associated deadlines clearly and completely. It must also identify the responsible party for each deliverable. Clarity in responsible party for each task is imperative in holding the contractor accountable.
3. **Acceptance criteria**: Specify how the agency will determine if the product or service is acceptable.
4. **Contractor performance and financial capacity**: The SOW must clearly specify the contractor qualifications, experience, and financial capability being requested in the proposal.
5. **Dollar amount**: Program areas should consider the dollar amount when requesting evidence of financial capability. High estimated value of contracts may need more evidence from a respondent of financial viability. Examples of proof of financial viability include contacting bidder's current customers, written descriptions of size and scope of operations, prior contracting experience with the State, balance sheets, D&B reports, or an audited statement by a CPA.
6. **Eligible population**: Define and describe the population eligible to receive services under the resulting contract and ensure it is consistent with the eligibility information in existing program documentation, such as the program handbook, as applicable. Identify who will determine eligibility.
7. **Characteristics of the service population**: Define the characteristics of the individuals to be served under the resulting contract. The intent is to give the contractor information on the client population it will be serving. For example, will

individuals served be court-ordered into services, receiving services voluntarily, have open abuse and neglect cases.

8. **Service authorization and referral process**: Identify how individuals will be referred for services provided by the contractor (e.g., agency, self-referral, or contractor outreach) and describe the process, including any forms, through which individuals will be referred or approved for services.
9. **Location of work or service areas**: Describe where the work is to be performed (e.g., region, counties, cities, or zip codes) and where people will meet to do the work.
10. **Period of performance**: Specify the allowable dates for projects, such as start and finish time, number of hours that can be billed per week or month, and anything else that relates to scheduling.
11. **Deliverables schedule**: List and describe what is due and when, including any reports the contractor is required to submit.
12. **Minimum qualifications**: List the minimum acceptable qualifications for the service provider's staff and organization.
13. **Professional licenses and certifications**: Describe the applicable license and certification standards required for completing the work.
14. **Record keeping**: Describe in detail all records the contractor and service providers are required to keep, such as: referral records, individuals' records, case files, reports, notifications, performance measure supporting documentation, billing records, personnel records, subcontractor files and agreements, licenses, certifications, qualifications, background check results, health records, or investigation records. Specify the format for these records.
15. **Established standards**: Describe any regulatory, agency, or industry specific standards that need to be followed in fulfilling the contract.
16. **Type of contract and payment schedule**: Define the payment methodology, basis for payment, and invoicing process.
17. **Liquidated damages and other remedies :** Determine whether liquidated damages are appropriate (e.g., for failure to meet specific performance measures or milestones), as well as stating other remedies (such as corrective action plans, escalated monitoring or payment holds) that may be applied if contract requirements (e.g., specific performance measures and/or reporting requirements)

are not met. All remedies that may be used must be stated in the solicitation. Some remedies are included in HHS's Uniform Terms and Conditions (UTCs), a common example being contract termination. In drafting the SOW, care should be taken to ensure consistency regarding damages and remedies throughout the entire solicitation package.

18. **Monitoring activities**: Describe the strategy to be used to monitor and assess contractor performance.
19. **Transition and turnover planning**: Identify any transition activities the new contractor will be required to perform to be ready to effectively provide services on the contract-effective date. Identify any transition activities the new contractor will be required to perform at the end of their contract to effectively transition individuals and services to a subsequent contractor, as well as the anticipated time period for transition activities.

7.8.5 Contract Performance Standards and Key Measures

Including performance measures in the SOW sets the expectation of performance. Contracts must include specific performance measures that set clear expectations for the contractor and hold contractors accountable for those expectations. Examples of performance measures may include Service Level Agreements (SLAs), and Key Performance Indicators (KPIs) as described in the Performance Measures Guide found in the Contract Management Toolbox. Performance measures encourage routine improvement, effectiveness, and efficiency. Strong performance measures allow the HHS System to:

1. Establish performance measures with clearly defined indicators.
2. Develop processes for collecting performance data and information.
3. Develop processes for analyzing and reporting data and information.
4. Conduct quality improvement planning, implementation, and evaluation.
5. Ensures that contract goals, objectives, and strategies align with outcomes.
6. Operate efficiently and effectively.
7. Maximize resources.
8. Provide data to determine whether contractors are meeting their objectives.

Contracts must specify remedies for noncompliance (e.g., contract termination) and may include any incentives for exceeding standards.

Performance standards will vary based on the contract and additional standards may be necessary.

7.8.6 Characteristics of Good Key Performance Measures

The SOW must contain minimum objective performance standards that are clearly stated, so that a contractor's performance under any resulting contract can be monitored and measured. For services, PCS will look for program's method, procedure, or test condition to verify each stated performance standard. For commodity elements, PCS will look for means for program to verify quantity and whether specifications are met. The characteristics of good key performance measures include the following:

1. **Simple:** Can our stakeholders understand it?
2. **Relevant**: Does it matter to key stakeholders?
3. **Stable:** Is it usable during business cycles over time?
4. **Timely:** Is it taken when and where results appear?
5. **Accurate:** Does it consistently measure what it purports to?
6. **Used:** Does it change what the agency is doing?
7. **Informative:** Does it tell us about what we are doing or should be doing?
8. **Specific:** Does it allow for, or factor out, other measures?
9. **Unique:** Is it measuring something already measured?
10. **Cost-effective:** Is measuring worth it, and how good is good enough?
11. **Non-disruptive:** Does it create ethical, legal, or other types of conflicts?

Table 2. Key Performance Measures – Characteristics and Examples

Characteristics	Examples
Outcome and Effectiveness: Measurable indicator of effectiveness in serving customers and in reaching the mission, goals, and objectives.	• SLA for percentage of provider enrollment applications processed in 30 days. • Deliverable that requires a status report for minimum number of licensed providers inspected annually. • KPI for target percentage of providers with no violations.
Output: Measurable indicator of the number or volume of services. Used to assess workload and efforts to address those demands.	• KPI with target number of substance abuse beneficiaries in the program. • Deliverable for report with number of inspections conducted.

Characteristics	Examples
	• SLA for minimum percentage of provider applications processed each month.
Efficiency: Measurable indicator of productivity expressed in unit costs, units of time, or other ratio-based units. Used to assess the cost-efficiency, productivity, and timeliness of operations, outcomes, and outputs.	• KPI for reduction in average cost per case. • Deliverable for a report showing a reduction in average cost per inspection on a biannual basis. • SLA for compliant resolution within a certain number of days.
Explanatory/Input: Indicator of factors, agency resources, or requests received that can impact an agency's performance.	• KPI for percentage of medical school graduates entering a primary care residency. • A deliverable that includes documentation showing the number of business facilities registered each quarter. • Deliverable for number of cases received.

7.9 Contractor Compensation

The method of payment has a direct impact on how the SOW is written and how the contract is managed. HHS agencies must measure or verify that the work is complete and how much and how often the agency will pay the contractor, if more specific than stated in the Uniform Terms and Conditions. Program should be mindful of, and consistent with, applicable law (e.g., the Texas Prompt Payment Act)

Payments should be:

1. Consistent with the type of product or service delivered.
2. Structured to fairly compensate the contractor and encourage timely and complete performance of work.
3. Approximately equal to the value of the completed work.
4. The solicitation should specify the payment type (fees, costs, and price) that is consistent with the type and value of work performed and as defined in the solicitation.
5. Retainage may be considered under payment provisions as well.

7.9.1 Determination of Payment Type

Determination of the appropriate compensation method to make payment to the contractor helps ensure the State receives the best value.

7.9.2 Compensation Method/Primary Payment Type

HHS agency staff must determine the most effective compensation method or primary payment type during the procurement planning stages. The payment type selected will be one that best ensures:

1. Delivery of services.
2. Efficiencies and effectiveness of those services.
3. The best value to the program and individuals served.

7.9.3 Multiple Payment Types

In some cases, the best structure may include multiple payment types for different services within the same contract. Examples of payment types include:

1. Cost Plus Incentive.
2. Fee-for-Service.
3. Fixed Price.
4. Performance Based.
5. Rate Based.
6. Time and Material.

7.10 Selection Methodology: Evaluation Committee Selection & Scoring

7.10.1 Evaluation Committee

The evaluation committee is composed of subject matter experts and stakeholders. The committee should have diverse, relevant disciplinary expertise and knowledge of the product or service being procured. Because service on an evaluation committee involves a significant time commitment, care should be taken to ensure that each member selected as a scoring member is able to attend the committee meetings and secondary evaluations.

Evaluation committee selection should occur prior to receipt of the responses. It is common for the evaluation committee members to have been involved in the procurement planning activities.

The recommended size of an evaluation committee is three to five scoring members. To avoid potential individual bias, the committee should not have fewer than three scoring members. Depending on the procurement, the agency may determine that a larger

committee is necessary. There is no restriction as to how many individuals the agency may include on an evaluation committee; however, good judgment dictates that the number of individuals on the committee be limited to the minimum required to accomplish its purpose.

Each evaluation committee member will independently assess the content of each response using only the evaluation criteria and weights published in the solicitation. Accordingly, the evaluation committee members must fully understand the solicitation, be able to critically read and evaluate the responses, and document their decision in a clear and concise manner.

Each committee member will be expected to score each response on how it meets, exceeds, or fails to meet the standards established in the solicitation. If the agency plans to use individuals during the evaluation process (e.g., evaluation committee members, technical advisors) who are not agency employees, it is recommended that agency legal counsel be consulted to ensure that appropriate procedures are implemented to protect the interests of the State.

For procurements exceeding $20 million, the agency must include the reasons an evaluation committee member was selected and their relevant qualifications, as determined by the agency, in the procurement file, as required by Texas Government Code § 2262.051(i)(3).

7.10.2 Vendor Selection Method

The most common selection method is evaluation of the written proposals, where each evaluation team member independently assesses the content of each response using only the evaluation criteria and weights published in the solicitation.

The evaluation team members must be provided with the following documents, as applicable to the specific procurement:

1. The entire solicitation, including all issued addenda and Q&A documents.
2. A list of responses submitted.
3. A copy of each response determined to be responsive following the administrative screening review.

Each response must be evaluated independently against the evaluation criteria published in the solicitation and not compared to any other submitted response. The evaluation team members must not conduct independent research; each member's evaluation must be based solely on his or her personal review of the response and other information specifically authorized by PCS or assigned legal counsel that is consistent with the

solicitation (e.g., written clarifications received from the respondents, secondary evaluations material, and/or reference check information).

If assistance is requested from authorized technical advisors, the evaluation team's inquiry should be limited to areas related to the evaluation criteria. Evaluators and technical advisors must never attempt to communicate with or reply to a communication from a respondent during the evaluation process. To protect the integrity of the evaluation process, only the PCS Purchaser or an assigned attorney may communicate with respondents (e.g., request clarification of responses, schedule secondary evaluations).

Discussion of the responses must only occur at an evaluation team meeting with all scoring members present. Communication between two or more team members related to the evaluation of responses or the content of responses is not permitted outside the presence of the entire team. Team members must attend all scheduled evaluation meetings and participate as required by completing all team responsibilities in the time allotted. Absence from meetings or failing to meet deadlines to complete evaluations may result in the removal of a member from the evaluation committee or removal of the evaluator's scoring from consideration.

7.10.3 Clarification of Evaluation Responses

As part of the initial evaluation, the evaluation team may determine that clarification of a response is necessary prior to scoring. Accordingly, the agency may pose clarifying questions to a respondent to resolve conflicting information, apparent ambiguities, or minor clerical errors within the response. If the respondent's written response requires clarification, the PCS Purchaser will contact the applicable respondent and forward the written clarifications received by the respondent to the evaluation committee. A respondent's clarification must be in writing and signed by an authorized representative.

The evaluation team should be mindful that a respondent's clarifications may not be used to "cure" deficiencies in the response or to revise the response. The clarifications may only be used to understand the information provided in the response. It is important to note that a request for a respondent to clarify its response is not the same as negotiations of the specifications or terms and conditions if the request to clarify does not provide one respondent an advantage over another. Therefore, care must be taken not to inadvertently engage in negotiations.

7.10.4 Advancement Criteria and Competitive Range Determination

If expressly permitted by the solicitation, secondary evaluations may take place for those respondents that pass all initial and minimum qualifications screening and meet the advancement criteria specified in the solicitation after the evaluation of the written responses.

HHSC will limit advancement to secondary evaluation activities, and further award consideration, to respondents that meet the specified Advancement Criteria.

The Competitive Range will consist of the Solicitation Responses that receive the highest scores or most satisfactory ratings, based on the published evaluation criteria and procedures governing this procurement. Cutoff for the Competitive Range will be based on the "natural break" in scores and on reasoned judgment that Solicitation Responses below the cutoff cannot be made successful through clarification and negotiation.

7.10.5 Secondary Evaluations

Reference: PCS Operating Procedure 543

Secondary evaluations clarify written responses by addressing gaps in expectations and uncovering assumptions made by both agency/program and respondents. Solicitations for novel, or highly complex, services or products tend to be prone to these issues and can benefit from the use of secondary evaluations. When agency/program expectations significantly vary from market offerings, secondary evaluations can address these variations and verify a respondent's ability to meet agency/program needs, as specified by the solicitation. However, secondary evaluations are significantly more time and resource intensive than procurements that are evaluated based on the written responses alone.

If secondary evaluations are to be conducted, all associated advancement criteria must be explicitly stated in the solicitation for a respondent to advance to the next phase of evaluation.

PCS must review and approve the use of secondary evaluation methods. Alternatively, PCS may recommend the use of these methods if it is believed to be beneficial to the overall procurement.

A solicitation's selection methodology may include the following secondary evaluations, when applicable:

1. Interviews are usually optional and used to provide answers to questions the agency may have regarding the written responses. This secondary evaluation method is particularly useful when the written evaluation scores are too close to

differentiate responses and additional information that cannot be provided in writing is required to determine the best value.

2. Respondents attending interviews will be asked questions related to the evaluation criteria and asked to provide additional clarifications regarding the specific offerings in their solicitation response.
3. Following each respondent interview, the evaluation team will update the scores from the respondent's written Solicitation Response based on the clarifications provided by the respondent in the interview. Respondent scores and rankings may increase or decrease from the original written evaluation scores, based on the clarifications provided by the respondents during the interviews. The respondent's score prior to the interview will no longer be considered its Final Written Response Score; instead, the post-interview score will be considered the Final Written Response Score for purposes of determining whether a respondent meets the advancement criteria or for the purposes of award determination, if there are no further evaluation activities.
4. Of all the secondary evaluation methods, interviews tend to be the least resource intensive. However, they are still more time and resource intensive than procurements that are evaluated based on the written responses alone.
5. Oral presentations are used to provide an opportunity for respondents to highlight the strengths and unique aspects of their solicitation responses. They are suitable for use when the potential respondents are reasonably anticipated due to a niche market or historical knowledge. This secondary evaluation method is particularly useful under the following circumstances:
    a. More than one respondent is expected to meet the needs of a procurement based on agency/program area's historical or industry knowledge or
    b. Actual contractor performance is anticipated to be highly variable regardless of the submission of high-quality proposals.
6. In the first circumstance, the goal is to separate a pool of respondents expected to score closely by focusing scenarios that represent the agency/program's ultimate objective and allow the respondents to be innovative and exceed expectations. In the second circumstance, the goal is to speak with representatives of a company and explore actual scenarios to determine if their ability to quickly strategize and convey information in real time is in alignment with the submitted written response.

The first and second circumstances, and their associated goals, are not mutually exclusive.

7. Site visits are used to assess or evaluate a proposed site. Agency/program may wish to use this method as an opportunity to view the location, verify the surroundings, and analyze the site to ensure it meets the solicitation requirements. Site visits are usually evaluated on a pass/fail basis.
8. Demonstrations are most often used for the procurement of information technology or solution-based offerings, via the Request for Offers (RFOs). This method may also apply to Requests for Proposals (RFPs), where software is a smaller component of the overall procurement. Demonstrations allow agency/program to verify proposed product functionality and to ensure the product meets the agency/program needs. Demonstrations also may be used to confirm the functionality or configuration of highly customized scientific or medical equipment.

Despite the specific method used, any secondary evaluation must be fair to all respondents. All respondents must be allowed the same amount of time to prepare; review questions, scenarios or use cases; and present. See also, PCS Operating Procedure 543, Secondary Evaluations.

7.10.6 Selection Methodology Common Mistakes

The most common mistakes made when developing the selection methodology involving secondary evaluations are:

1. Not clearly identifying how respondents are selected for secondary evaluations.
2. Not including a justifiable scoring methodology for secondary evaluations.
3. Not detailing the process for selection from written evaluation to competitive range to secondary evaluations to final selection.

Clearly stating the methodology at each step, including secondary evaluations, will help avoid issues resulting from solicitation ambiguity, such as vendor protests or perceptions of impropriety. Additionally, ensuring that the evaluation team is knowledgeable enough to make justifiable judgment calls is equally important. Program area staff and PCS purchasers can use PCS Form 542, Evaluation Team Template to collect information on evaluators and determine if the selected team is appropriate for the procurement in question. For procurements valued at $20 million dollars or more, the PCS Form 542 is

required by statute[43] and the State of Texas Procurement and Contract Management Guide.[44] If the procurement is large-scale and technically complex in several areas, consensus scoring may improve overall outcomes. (Reference Respondent Evaluation Section, for more information on vendor selection and evaluation scoring).

7.10.7 When to Use Secondary Evaluation Methods

Procurements that are late or otherwise short on time should not include secondary evaluations. Secondary evaluations should only be used for highly complex, high-value procurements where written proposals are unlikely to sufficiently identify the respondent(s) providing best value and risk of project failure is high in the event of poor contractor selection.

If expressly permitted by the solicitation, secondary evaluations may take place for those respondents that pass all initial and minimum qualifications screening and meet the advancement criteria specified in the solicitation after the evaluation of the written responses. If secondary evaluations are to be conducted, all associated advancement criteria must be explicitly stated in the solicitation's selection methodology. Advancement criteria are the criteria for a respondent to advance to the next phase of evaluation if secondary evaluation methods are used.

Despite the specific method used, any secondary evaluation must be fair to all respondents. All respondents must be allowed the same amount of time to prepare; review questions, scenarios or use cases; and present. See also, PCS Operating Procedure 543, Secondary Evaluations.

7.10.8 Scoring Methods: Aggregate and Consensus Scoring

The most common scoring method is evaluation of proposals through individual aggregate scoring. The proposal is scored by individual evaluation team members, to come up with an average score for each respondent in each evaluation criteria. The evaluation criteria are then totaled according to advertised weights in the solicitation, and the highest scoring respondent is awarded the resulting contract.

However, other methods and variations exist, such as consensus scoring. In a consensus scoring approach, individual evaluators read the proposals prior to evaluation work sessions and note their observations of strengths, weaknesses, and questions regarding the respondent's proposal. There are specialized procedures to follow for consensus

[43] *TEX. GOV'T CODE § 2262.051(i)(3).*
[44] *Comptroller's Guide, Evaluation Committee.*

scoring and evaluators must undergo significantly more training to participate than evaluators participating in individual aggregate scoring. Once all proposals have been reviewed individually, the evaluation team will meet to develop consensus scores for each respondent. In either individual aggregate scoring or consensus scoring, secondary evaluations may be used to further separate the respondents. PCS must review and approve the use of consensus scoring and secondary evaluation methods. Alternatively, PCS may recommend the use of these methods if it is believed to be beneficial to the overall procurement.

7.10.9 Consensus Scoring

Reference: PCS Operating Procedure 544

In a consensus scoring approach, the evaluation team meets to develop consensus scores for each respondent. This process may take a few hours or a few days, depending on the number and length of proposals and the availability of the evaluation team members. Oral presentations, demonstrations, and site visits must be scored using consensus scoring, regardless of the scoring method used for the written responses. The same scoring method for written response evaluations, either aggregate or consensus, also applies to interviews. See PCS Operating Procedure 544, Consensus Scoring.

During consensus scoring sessions, the evaluation team facilitator directs the team's attention to each item in the evaluation criteria. The evaluation team considers one proposal at a time, comparing the respondent's proposed offering against the specifications in the underlying RFx. Consensus scoring sessions encourage open discussions and questions among members of the evaluation team. Evaluators discuss the relative strengths and weaknesses of a respondent's proposal in each area. Open debate about a respondent's statement or response is encouraged, to help ensure nothing proposed by a respondent in response to a requirement is overlooked. This discussion may provide additional insight into the respondent's offering and/or correct misperceptions held by individual evaluators.

For these reasons, a consensus rating arrived at by the evaluation team after consideration and discussion of all information provided by a respondent can represent a more accurate assessment of the respondent's offering than a mathematical averaging of individual evaluator’s scores. It is important to remember that, even with these benefits, it may not be a fit for all procurements. Some procurements that are smaller-scale and have plenty of individual subject matter experts may be better suited to individual evaluations with averaging, especially if there is difficulty blocking schedules and the evaluators are not experienced with participating in procurements. The consensus process can take days, or

even weeks, depending on the size of the proposals, complexity of the procurement, and availability of the evaluation team. The general process for conducting consensus scoring includes:

1. **Evaluation Team Formation:** The evaluation team must be selected in advance of the commencement of evaluation training, ideally in the early stages of solicitation drafting. The members must be subject matter experts in some or all the RFx's topic. (Reference Section regarding Evaluation Committee Selection & Scoring.)
2. **Minimum Qualifications Review**: Some RFPs may include minimum qualifications which, upon review, may disqualify a respondent. These items are not scored and represent requirements respondents must demonstrate to be considered for award. Many of these can be handled in PCS's initial screening of these responses. However, some may require the program to conduct a minimum qualification review due to the expertise required to screen, and these will be accounted for in the consensus meetings using the Consensus Scoring Rubric.

   Proposals that fail to meet any of the minimum qualifications in an RFP are to be rejected. Documentation supporting this decision should be placed on the Respondent's Consensus Scoring form in the "Minimum Qualifications" section. Copies of proposals rejected by PCS are not distributed to the evaluation team members for evaluation. Proposals that have remaining minimum qualification screening requirements that must be evaluated by program SMEs will be submitted to the evaluation team members (provided PCS's initial review does not result in a disqualification). Minimum qualification determinations will be made by the program area SMEs prior to commencement of the consensus scoring sessions.
3. **Individual Review (Not Scoring**): Prior to receiving proposals, evaluation team members should familiarize themselves with the released RFP and all issued amendments and addenda (this includes the Q&A addenda). After proposals have been received, and with ample time prior to the first meeting of the evaluation team, team members should be given one copy of each proposal to be reviewed. The evaluation members must read and review each proposal.

   Individual notes should highlight significant points in the proposals (for example, strengths/weaknesses) and note any questions they would like to discuss in the evaluation team meeting(s). The evaluators are not to score the proposals in their individual notes, as the scoring is done by consensus in the group setting.
4. **Team Evaluations**: The use of a consensus approach to evaluate the proposals means that evaluation team members will not assign any scores during their

individual reviews of the proposals. Instead, the entire evaluation team will arrive at a consensus as to assignment of points on each evaluation criterion of each proposal during the evaluation team meeting(s).

A facilitation team consisting of a facilitator, a scribe, and a CQC analyst will be assigned by PCS and CQC joint decision. A facilitator must assist the team in developing consensus. The facilitator must not exercise decision-making in the determination of the assignment of points to proposals.

Evaluation teams may decide to review proposals by alphabetical order, random selection, or another appropriate method. It is recommended, however, that the evaluation team review and assign points to only one proposal at a time. This approach works best when proposals are reviewed and scored by proceeding through each of the RFP's evaluation criteria in numerical order. After completing the review and assigning points to an entire proposal, the team then moves on to the next proposal, and so forth.

Proposals must be evaluated against the criteria of the RFP. The evaluation team must not evaluate or compare proposals to each other except when evaluating for cost. The scribe will keep the only document for recording the team consensus comments and assigned points for each proposal. The document to be used is the Consensus Scoring Rubric. The evaluation team must not assign points for the same factor in more than one evaluation criterion. For example, if the team believes that "quality assurance" should be taken into consideration and evaluated under the "Past Performance" criterion, they should not also evaluate "quality assurance" under the "Demonstrated Approach" criterion.

5. **Awarding Points:** In determining how well a proposal scored, all proposals start off with zero points and are awarded points based on how well they responded to the criteria of the RFP. Proposals that exceed the minimum requirements receive higher scores. This approach not only allows for a clear indication of which proposals met the minimum requirements, it also allows for a natural separation exceptional, acceptable, and unacceptable proposals.

7.10.10 Replacement Scoring Method for Interviews

The replacement method uses the interview consensus scores to replace the written evaluation consensus scores. Interview questions center around clarifying the respondent's written proposal, asking questions to ensure the score for each criterion is addressed. Each respondent must have the same opportunity to address questions related to the solicitation criteria as the other respondents, which means questions must be prepared in advance of the interviews. Following each interview, the evaluation team meets to adjust and finalize the *Consensus Scoring Rubric*. See also, PCS Operating Procedure 543, Secondary Evaluations and PCS Form 544-F, Secondary Evaluation Interview Template.

7.10.11 Combined Scoring Method for all other Secondary Evaluations

The combined scoring method adds points to the initial points held by a respondent from the written proposal or the revised interview scores. Secondary evaluation criteria must be developed and identified in the solicitation. Each respondent must have the same amount of time for secondary evaluations. Following each secondary evaluation, the evaluation team meets to score and finalize the *Consensus Scoring Rubric*. Secondary evaluations will be scored according to the criteria in the solicitation. Options for scoring secondary evaluations are found in PCS Form 550, RFP/RFO Template, PCS Operating Procedure 543, Secondary Evaluations and PCS Form 543-F, Secondary Evaluation Oral Presentation Site Visit & Demo Template.

7.10.12 Price Scoring

Scoring the cost proposal information should be in accordance with the Cost Evaluation Methodology as advertised in the solicitation. (Please refer to the sections from Cost Evaluation Methods through Hybrid Objective and Subjective Cost Evaluations for additional information on Cost Evaluation Methods)

7.10.13 Evaluation Criteria

Evaluation criteria are the factors the agency uses to determine which of several competing proposals submitted in response to a solicitation offers the best value for the state and would best meet the agency's needs. Effective evaluation criteria should:

1. Provide evaluators with a clear and concise method of identifying the competent offerors.
2. Allow the agency to rank the proposals and, ultimately, select the best value.

3. Offer all potential offerors a fair and equitable method of having their proposal reviewed and considered in a consistent and similar manner as their competitors.

7.10.14 Minimum Requirements Screening

While evaluation criteria must be published with the solicitation, it is recommended that program staff establish evaluation criteria that clearly identify factors relevant to the selection of a contractor *before* drafting the RFx. This ensures that the program is requesting and communicating the most important items – those that lead to vendor selection. The SOW must clearly identify evaluation criteria relevant to the selection of a contractor and must prioritize or weight the criteria according to importance. Evaluation tool criteria and sub-criteria should not contain "yes" or "no" questions. Yes/no questions are instead exclusively used for minimum requirement screening, which is conducted on a pass/fail basis. PCS screens minimum requirements prior to the evaluation, to determine the proposal's eligibility to advance to the evaluation stage. As needed, minimum requirements will also be reviewed by SMEs to determine the proposal's eligibility to advance to the evaluation stage; these requirements may include:

1. Financial capacity screening of respondents' latest financial statements, balance sheets, and/or Dunn and Bradstreet reports which is conducted by Procurement Financial Support.
2. Where specialized licenses, certifications, and/or experience are required and/or various accreditation alternatives are acceptable (e.g., if the minimum requirement states the respondent must be accredited by a CMS-approved accreditation program, the SME will determine whether the respondent's accreditation is by a CMS-approved program).
3. In IT procurements where a determination of type of solution or DIR's Texas Data Center Services (DCS) is needed prior to moving on to the written proposal evaluation (e.g., if the solicitation required a Software as a Service (SaaS) solution, SME(s) determines whether the respondent's proposed solution is indeed a SaaS or a custom solution).
4. Number of years of relevant experience must be reviewed by SMEs that possess knowledge of the specific profession, business, or industry that is required by any minimum qualifications. Purchasers must not conduct this review as they are not familiar with the myriad factors that may make the respondent-provided experience qualify or be acceptable to the program area.

7.10.15 Developing Evaluation Criteria

Developing the evaluation criteria should be an extension of the solicitation objective and should align directly with the end user's desired results and expectations. The weight assigned to each evaluation criterion must correlate to its importance. When developing the evaluation criteria, consider the overall objectives of the procurement and the expected results. Apply relative importance and weight to the criteria accordingly. Generally, cost weights should fall somewhere between 30-40%, and other criteria should not fall below 5% or exceed 30%.

The evaluation tool must measure items described in the solicitation, and the evaluation tool must include a column that contains a reference to the area in the solicitation from which each criterion and subcriterion comes.

Table 3. Effect of Weights on Numeric Scores

Line-Item Score using Scoring Guide		Line-Item Weight and Final Score												
		1%	2%	3%	4%	5%	10%	15%	20%	25%	30%	40%	60%	70%
Unacceptable	1	0.10	0.20	0.30	0.40	0.50	1.00	1.50	2.00	2.50	3.00	4.00	6.00	7.00
	2	0.20	0.40	0.60	0.80	1.00	2.00	3.00	4.00	5.00	6.00	8.00	12.00	14.00
	3	0.30	0.60	0.90	1.20	1.50	3.00	4.50	6.00	7.50	9.00	12.00	18.00	21.00
Marginal	4	0.40	0.80	1.20	1.60	2.00	4.00	6.00	8.00	10.00	12.00	16.00	24.00	28.00
	5	0.50	1.00	1.50	2.00	2.50	5.00	7.50	10.00	12.50	15.00	20.00	30.00	35.00
	6	0.60	1.20	1.80	2.40	3.00	6.00	9.00	12.00	15.00	18.00	24.00	36.00	42.00
Acceptable	7	0.70	1.40	2.10	2.80	3.50	7.00	10.50	14.00	17.50	21.00	28.00	42.00	49.00
	8	0.80	1.60	2.40	3.20	4.00	8.00	12.00	16.00	20.00	24.00	32.00	48.00	56.00
	9	0.90	1.80	2.70	3.60	4.50	9.00	13.50	18.00	22.50	27.00	36.00	54.00	63.00
Exceptional	10	1.00	2.00	3.00	4.00	5.00	10.00	15.00	20.00	25.00	30.00	40.00	60.00	70.00

Recommended. 10% - 25% (green columns) are the safer, recommended weights for all criteria and subcriteria, **except for Cost**.

Not Recommended. Below 5% or exceeding 30% (red columns) or use of multiple 5%-line items result in too small or too large score variances and are not recommended. These scores are harder to defend, pose a higher risk, and significantly increase the potential for unsuccessful protests.

Proceed with Caution. 5% and 30% (yellow columns) may be appropriate in certain circumstances with further consideration.

7.10.16 Characteristics of Effective Evaluation Criteria

PCS will return ineffective evaluation criteria to the program. For criteria to be effective, they should have the following characteristics:

1. **Clear:** not subject to multiple interpretations, not ambiguous.
2. **Relational:** all key elements of the project requirements must relate to the requirement definition and be covered by evaluation criteria.
3. **Discriminating:** separate best, average, and weaker proposals.
4. **Non-discriminatory:** fair and reasonable.
5. **Realistic:** given the nature or value of the contract. Measurable: must have distinguishing importance.
6. **Economical:** use of the criteria should not consume an unreasonable amount of time or resources.
7. **Justifiable:** makes sense and can be justified on common sense, technical, and legal basis; mandatory and heavily weighted criteria must be justified.

7.10.17 Evaluation Criteria

Purchase price and evidence that goods and services meet specifications are the principal considerations when goods and services are procured through a competitive process. It is common for there to be three to five evaluation criteria that broadly address the following:

1. Respondent's relevant qualifications, experience, and past performance (15%).
2. Proposed approach and work plan to meet solicitation requirements (30%).
3. Adequate staffing, organization structure, subs, and key personnel to meet solicitation requirements (15%).
4. Proposed Key Personnel's relevant qualifications, experience, and past performance (10%).
5. Cost/Price (30%).

Examples of additional and more detailed evaluation criteria may be found in the best value standards found in statute. Best value standards include, but are not limited to, the

following: Sections 2155.074, 2155.075, 2156.007, 2157.003, 2254.003, and 2254.027 of the Texas Government Code.

7.10.18 Adherence to Published Evaluation Criteria

Failure to adhere to the published evaluation criteria during the evaluation process may result in a protest. Evaluation criteria that were not included in the solicitation will **not** be used to rank or select responses. For example, if respondents are to receive additional points for possessing a national accreditation, this criterion must be stated in the solicitation so that all the respondents are notified there is an opportunity to achieve a higher score by submitting the appropriate documentation in its response. Likewise, if the national accreditation information was not requested in the solicitation, respondents who fail to demonstrate this accreditation cannot be penalized.

7.10.19 Cost Evaluation Methodology

The scoring method used for the cost criterion must be reviewed for each solicitation to ensure it is appropriate for the products and services to be procured. The method for evaluating cost must be determined prior to posting the solicitation, and it must provide respondents with a fair and equitable method of having their proposal reviewed and considered in a consistent and similar manner as their competitors.

Failure to adequately account for the method of evaluating cost prior to posting and failure to do so in a manner supported by law may result in the cancellation of a solicitation. For example, Texas Government Code Chapter 2254 requires that qualifications for certain professional services, not price, be considered in selecting a respondent for negotiations.

In general, an RFP and an RFO should have approximately 30-40% of its evaluation criteria devoted to cost. Limited exceptions may be made when funding is fixed and the goal is to spend the entirety of the allotted money at the highest possible benefit (e.g., services are procured to fulfill the terms of grant funding). Exceptions may also be made for indefinite delivery/indefinite quantity (ID/IQ) procurements where the solicitation will establish master agreements, and the specific scope is defined in subsequent work orders. For this type of solicitation, a lower weight (possibly 10-20%) is assigned to cost criteria for review of the general rates proposed in the solicitation and a higher (30-40%) weight to cost criteria when the work orders are reviewed.

7.10.20 Cost Evaluation Methods

Cost evaluation may be objective, subjective, or a combination of both. All types of cost evaluation are tied to an evaluation criterion that factors into the Respondent's overall score. It is not a pass/fail criterion but rather tied to a specific percentage of points.

The scoring method used to assess the cost criterion must be carefully considered. An objective cost evaluation relies on a quantifiable mathematical formula, rather than independent judgement, to calculate the score. In contrast, a subjective cost evaluation considers factors such as the appropriateness of the cost metric chosen by the respondent and the impact of any identified assumptions or constraints on the proposed cost.

7.10.21 Objective Cost Evaluations

Objective cost evaluations allocate the cost criterion points based on the respondent's total proposed cost. It does not involve an examination of the individual cost elements or components that collectively comprise the respondent's proposed total cost.

7.10.22 When to Use Objective Cost Evaluations

Objective cost evaluation methods must be used, without exception, when the solicitation does not require respondents to breakdown the individual costs elements or components that collectively comprise the proposed total cost. For example, when the solicitation only requires respondents provide:

1. Total cost(s) with no other breakdown.
2. All-inclusive unit prices (e.g., durable medical equipment (DME), certificate paper, and/or other commodities).
3. All-inclusive hourly rates (e.g., onsite maintenance or repair services).

7.10.23 Conducting Objective Cost Evaluations

Objective cost evaluations are conducted by the Financial Analysts in the CQC division using the then current CQC formula. The image below illustrates respondents' cost scores assuming 30 maximum available cost points and the following CQC formula: Quantitative Evaluation Score = [1 – ((Proposer Price – Lowest Price) / Highest Price)] x Maximum Available Cost Points:

Table 4. Example of Weighted Cost Score Calculations

Respondent	Respondent's Proposed Total Cost	Total Cost Scores (assuming 30 max. available cost points)	Notes
A	**$65 (lowest)**	= [1-($65-$65)/$100)]x30 = **30 points**	The respondent with the lowest proposed total cost receives the Maximum Total Cost Points available per the Solicitation.
B	$100 (highest)	= [1-($100-$65)/$100)]x30 = 19.5 points	The respondent with the highest total cost receives the lowest Total Cost score.
C	$75	= [1-($75-$65)/$100)]x30 = 27 points	Other respondents receive scores proportional to where their total cost falls between the lowest and highest proposals.

For solicitations requesting all-inclusive unit prices and/or all-inclusive hourly rates, use PCS Form 512-F, Unit Pricing Cost Proposal Template to calculate a total cost for each respondent to provide services using the agency's historical utilization quantities advertised in the solicitation and the respondent's proposed unit prices. Then, allocate available cost points using the calculated total cost for the initial and optional year extensions contract terms, and the applicable CQC formula.

7.10.24 Mitigating the Risk of Unreasonable Priced Proposals

In an open competitive procurement process, where total cost is one of the evaluation factors and several acceptable and qualified proposals are received, it can be safely assumed that the prices are reasonable as determined by the market conditions, but only if the discrepancy between the proposed prices is not statistically relevant, as explained below. In solicitations where there is no breakdown of cost elements that collectively comprise the respondent's proposed total cost, one of the most widely used statistical analysis tool for determining if a particular total cost deviates from other responses is to calculate the standard deviation of the respective series of costs.

For example, consider a solicitation requiring respondents to propose a total cost without providing a breakdown of the cost elements that collectively comprise their proposed total cost; six respondents offered the following prices:

Table 5. Sample Proposed Costs

Respondent	Proposed Total Cost	Notes
A	$18M	
B	$19M	Highest price
C	$17M	
D	$16M	
E	$15M	
F	$14M	Lowest price, but there are concerns regarding the reasonability of its proposed price (too low)

Without any other cost breakdown available, the following is how statistical methods can be used for price reasonableness analysis purposes using the proposed total cost: Calculate the mean (average) of the cost proposals. In this example, the average is $16.5 M. Then calculate the standard deviation from this value (using the STDEV function in MS Excel). In our example, the standard deviation is $1.87M. One method for determining reasonableness objectively provides that all values that fall below one standard deviation from the mean (i.e., $16.5M – $1.87M = $14.63M) can be considered as unreasonably low. Consequently, the proposed price of $14M should be further investigated to determine its reasonableness. Similarly, all values above one standard deviation from the mean (i.e., $16.5M + $1.87M = $18.37M) can be considered unreasonably high. If, for example, Respondent B had been considered for award, then its price of $19M should be further investigated.

Mathematical or statistical calculations alone should not be used as the sole basis for the rejection of a response, but rather as a starting point for further investigating the price reasonableness. If there are significant discrepancies between the prices of bids, proposals, offers or quotations, the agency should investigate potential causes of such discrepancies (e.g., ensure that the procurement's description was clear and not open to respondents' interpretation, and that there were no calculation errors, etc.). When most proposals are grouped within a close price range (e.g., within one standard deviation from the mean) and there are a few outliers (either significantly higher or lower price than one standard deviation), then the offered prices within the close price range may be assumed to be reasonable, and the outliers may be assumed to be unreasonable.

7.10.25 Subjective Cost Evaluations

Subjective cost evaluations are the element-by-element assessment of the respondent's cost proposal to allocate the cost point specified in the solicitation. Subjective cost

evaluations examine the individual cost elements and the proposed profit that comprise the respondent's total proposed cost. Depending on the procurement, these elements may vary but generally include labor rates, material costs, overhead or indirect rates, general and administrative expenses (G&A), and profit. For solicitations requesting detailed cost proposals, use PCS Form 513, PCS Form 514, Retrospective Cost Settlement or Prospective Price Determination Template, or customized spreadsheets showing various elements and the proposed profit that comprise the respondents total proposed cost with sufficient details to permit evaluation. The respondents must include all fixed price fees in their cost proposal. Total fees are required by the agency for evaluation and budget purposes, while additional details of rates and costs are required for agencies' understanding of the proposed price. Pricing must be based on the requirements of the solicitation and not the respondent's assumptions or exceptions to the solicitation. Assumptions that conflict with the requirements of the solicitation may result in the disqualification of the respondent's proposal.

7.10.26 When to Use Subjective Cost Evaluations

Subjective cost evaluation methods must be used, without exception, when the solicitation requires respondents to break down the individual cost elements or components that collectively comprise the proposed total cost. For example, when:

1. Funding is otherwise fixed, and the goal is to spend the entirety of the allotted money at the highest possible benefit (e.g., Services are procured to fulfill the terms of grant funding and IT projects.)
2. The agency requires respondents to submit a detailed budget rather than true cost points.
3. Procurement for professional engineering, architecture, or surveying services under Texas Government Code Chapter 2254, where no competing price proposals are submitted in the initial responses and a cost proposal is only solicited from the highest-ranking firm.
4. The agency must determine whether the proposed costs are appropriately aligned with the scope.
5. Research and development.
6. Sole-source procurements where no competing vendors responded to the request for proposals or offers.
7. One-of-a-kind items for which there is no basis of comparison.

8. When change orders are issued to contracts requiring the contractor to do work, the cost for which can only be evaluated by examining the various cost elements, such as labor, materials, travel.

The use of evaluation criteria, and in particular subjective cost evaluation criteria, must never be used to apply evaluator discretion in a way that unfairly alters final scores of respondents. If an evaluation is not providing for the program area needs because the solicitation was unclear or incomplete, the only option is to cancel and resolicit. Additionally, subjective cost criteria must not be used to provide discretion where the utilization of objective cost criteria is clearly the most appropriate approach. The use of subjective criteria may not be allowed, at PCS's discretion, based on the guidelines set forth in this section. PCS may require cancellation of the solicitation and will reject requests to "re-calculate" objective scoring to provide a different result. Evaluation criteria should provide respondents with a fair and equitable method of having their proposal reviewed and considered in a consistent and similar manner to their competitors.

7.10.27 Conducting Subjective Cost Evaluations

Subjective cost evaluations require the selection committee to review and evaluate separate cost elements and proposed profit. This includes Respondents' costs or pricing data as well as factors necessary to form an opinion as to the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

The committee reviews specific elements of cost, the necessity for certain costs, the reasonableness of the amounts estimated for the necessary costs, the reasonableness of allowances for contingencies, the basis used for allocation of indirect costs, the appropriateness of allocations of particular indirect costs to the proposed contract, and the reasonableness of the total cost or price. Items typically reviewed during the subjective cost evaluation include, but are not limited to:

1. **PO-General Evaluation**:

    c. To what extent do the respondent's proposed pricing schedules, narrative, and cost allocations are complete, accurate, thorough, meet all requirements outlined in the solicitation, and clearly map the proposed costs to the respondent's work plan and deliverables.

    d. Allowability, allocations, and reasonableness of the respondent's proposed costs.

e. Whether proposed costs are in line with what a reasonably economical and efficient performance should cost.

f. Restraints and requirements imposed by sound business practices, laws and regulations, and terms and conditions of the federal award if outside funding is included.

g. The basis and rationale for all respondent proposed costs should be provided as part of its proposal, so that the agency can place reliance on the information as current, accurate, and complete.

h. Market prices for comparable goods or services for the geographic area.

i. Whether the proposed costs deviate from established practices and policies regarding the incurrence of costs.

j. To what extent do the respondent's proposed pricing schedules, narrative, and cost allocations demonstrate understanding of federal and state financial requirements and clearly demonstrate how the respondent will comply with applicable requirements.

k. Identification of areas requiring further consideration in determining the best value for the State.

l. Formulas and math work check.

2. **Evaluating Labor:**

m. To what extent does the respondent’s cost proposal demonstrate adequate staffing, organization structure, and key personnel to meet the requirements of the solicitation.

n. A time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category.

o. The basis of proposed labor rates and classifications including any escalation factors.

p. Type of labor as well as the skill level of the workers (e.g., entry-level, mid-level, senior, etc.) are appropriate for and correspond with the work being accomplished.

q. Fringe benefits (e.g., FICA, TUCA, bonuses, retirement, and paid leave).

r. Differences in accounting for uncompensated overtime (e.g., competitive advantage enjoyed by companies that propose hourly rates based on uncompensated overtime).

3. **Evaluating Other Costs:**

s. Consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items.

t. The basis for materials pricing (e.g., vendor quotes, invoice prices, or competitive bids).

u. Breakout of all subcontracts and other costs. Complete, properly itemized and supported by sufficient substantiating data to permit evaluation.

v. Upfront and recurring costs are clearly defined and separate.

w. Is the respondent proposing the appropriate kind and quantities of materials, and if the materials are necessary and reasonable.

x. Identify any proposed direct cost that should be classified as an indirect cost.

y. Identify any proposed cost(s) that merit special attention because it is uniquely critical to contract performance, of high value, or other reasons.

z. Whether the respondent's proposed travel expenses follow instructions provided in the solicitation and are compliant with applicable state policies.

aa. To what extent is profit/fee reasonable and not redundant, whether respondent's proposed contingencies are allowable and reasonable, and respondent provided adequate supporting data.

bb. Initial costs and recurring fees (e.g., license fees and recurring maintenance fees). To what extent does the respondent's proposal include lower initial costs but higher recurring software maintenance fees, resulting in a higher total cost to the agency over the life of the system.

7.10.28 Hybrid Objective and Subjective Cost Evaluations

Exclusive reliance on objective cost criteria may not be suitable for highly complex procurements. Conversely, exclusive reliance on subjective criteria to allocate cost points can be difficult to defend. Subjective and objective cost weights should be equivalent or no more than 5 points higher for the objective cost. This mitigates the risk of respondents underestimating the proposed total cost shown in their response and trying to make it up in amendments during project implementation.

Table 6. Example of a Hybrid Objective and Subjective Cost Evaluation

Cost (30%)	Weight (%)	Comments
Total Proposed Cost	15	Objective Criteria Scored by CQC Financial Analyst using CQC formula
Comprehensiveness of Pricing Schedules. To what extent are the respondents' proposed pricing schedules, narrative, and cost allocations complete, accurate, thorough, and meet all requirements outlined in the solicitation. They also need to clearly map the proposed costs to the respondent's work plan and deliverables.	15	Subjective Criteria Scored by Evaluation Panel with input from Financial and Program SMEs

7.11 Direct Contract Award Method

Reference: PCS Operating Procedure 436

A direct award may be requested using PCS Form 436-F, Direct Award Determination when no responsive bids or proposals are received following the posting of a competitive solicitation and completion of initial screening of responses, or a direct award for the professional services of physicians, optometrists, and registered nurses (see also, PCS Operating Procedure 436, Direct Award Determination). This may occur under the following circumstances:

1. HHSC may negotiate with, and award a contract to, a qualified expert based on the contractor's agreement to set a fee (range or lumpsum) and the contractor's affirmation and the OIG's verification that the contractor has the necessary occupational licenses and experience.[45]
2. For SH/SSLC. Only if HHSC does not receive any responsive bids on a competitive solicitation for goods or services for a state hospital or State Supported Living Center, HHSC must make a determination that competition is not available and then may negotiate with and award a contract to any qualified vendor that meets the requirements of the original solicitation. The contract must be at current market value price, and the term may not exceed 5 years.[46]

[45] *TEX. GOV'T CODE § 531.102(m-1), (m-2).*
[46] *TEX. GOV'T CODE § 2155.144(o).*

3. Physicians, Optometrists, and Registered Nurses. For contracting with physicians, optometrists, and registered nurses, HHSC may do so without being subject to competitive advertising and proposal evaluation requirements. If the number of contracts is not otherwise limited, HHSC may award a contract to a provider based on the provider's agreement to set a fee (range or lumpsum), and the provider's affirmation and agency's verification that the provider has the necessary occupational licenses and experience.[47]
4. OIG and SH/SSLC direct awards require competitive solicitation to first be posted and documentation that no responsive bids were received before the direct award process may be used. Physicians, optometrists, and registered nurses' contracts may be directly awarded immediately without a competitive solicitation posting, following receipt of an approved PCS Form 436-F.

When requesting a direct award determination approval for physicians, optometrists, and registered nurses, the program area must specify the qualifications and requirements the contractor must meet in the PCS Form 436-F. The program area must also understand that contracts must be awarded to any interested party that meets these qualifications, including the ability to perform the described services for a set price established in any resulting contract.

The following template language is sometimes helpful for program areas when completing the PCS Form 436-F:

Must be a [licensed by x]. Must have [x] number of years of experience. Must be able to provide [description of services]. Contract(s) will be awarded to any interested party that meets these qualifications, including the ability to perform the described services for a set price established in any resulting contract.

If the italicized sentence above is not true for the program area, the procurement is not eligible for direct award.

7.12 VetHUB Determination

7.12.1 HHS VetHUB Goals

The intent of the VetHUB Program is to promote full and equal business opportunities for all certified VetHUBs to remedy disparity in state procurement and contracting. State agencies shall make a good faith effort to use VetHUBs in contracts for construction,

[47] *TEX. GOV'T CODE § 2254.008.*

services (including professional and consulting services), and commodity purchases. The VetHUB program is administered under the legal authority of Texas Government Code Chapter 2161 and Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter D, Division 1.

Each state agency shall make a good faith effort to assist VetHUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following HHS VetHUB Goals:

1. 11.2% for heavy construction other than building contracts.

15. 21.1% for all building construction, including general contractors and operative builder's contracts.

16. 32.9% for all special trade construction contracts.

17. 23.7% for professional services contracts.

18. 26.0% for all other services contracts.

19. 21.1% for commodities contracts.

HHS agencies shall make a good faith effort to meet or exceed these goals by contracting directly with VetHUBs or indirectly though subcontracting opportunities.

7.12.2 VetHUB Requirements—Solicitation Value of $100,000 or More

The agency shall evaluate the solicitation documents, including the SOW, before the agency solicits bids, proposals, offers, or other applicable expressions of interest of contracts with a value of $100,000 or more over the life of the contract, to comply with the agency's good faith effort requirements as stated, in Texas Government Code Chapter 2161, Subchapter F, of the regarding subcontracting, and CPA administrative rule (34 Texas Administrative Code § 20.284), which include:

1. Prepare and distribute information on procurement procedures in a manner that encourages participation in all state contracts by all businesses.
2. Divide proposed requisitions into reasonable lots keeping with industry standards and competitive bid requirements.
3. Where feasible, assess bond and insurance and design requirements that reasonably permit more than one business to perform the work.
4. Specify reasonable, realistic delivery schedules consistent with the agency's actual requirements.

5. Ensure that the specifications, terms, and conditions reflect a state agency's actual requirements, are clearly stated, and do not impose unreasonable or unnecessary contract requirements.
6. Provide potential bidders with a list of VetHUBs or instructions on how to effectively locate VetHUBs on the Centralized Master Bidders List (CMBL) for solicitations.

7.12.3 Determination of Subcontracting Opportunities

In addition, for contracting opportunities with a value of $100,000 or more, the agency shall determine whether subcontracting opportunities are probable under the contract. Uses the following criteria for determining probable subcontracting opportunities:

1. Examine the scope of work to be performed under the proposed contract and determine if it is probable.
2. Research the CMBL and other directories identified by the CPA to identify the availability of VetHUBs to participate in the contract.
3. Review the previous history of similar purchasing transactions within the agency, other state agencies, and institutions of higher education.

7.12.4 Subcontracting Plan Requirements

If the agency determines subcontracting is probable, the agency will state the probability in each agency's IFBs, RFPs, or other purchase solicitation document with an expected value of $100,000 or more and will require a completed Subcontracting Plan (SP).

To initiate this process, the PCS Purchaser obtains the required documentation from the program area and submits a copy of the SOW, a copy of the requisition, a copy of the request document, and a list of probable subcontracting opportunities to include the NIGP codes to the HHSCVetHUB@hhs.texas.gov mailbox.

This request will be assigned a VetHUB Coordinator to assist with the solicitation and ensure the agency complies with VetHUB requirements as well as the agency's initiatives. Upon review of the submitted documentation, the VetHUB Coordinator works with the Purchaser and program area to determine subcontracting probability and completes the PCS Form 406-F. The completed PCS Form 406-F and the correlating VetHUB solicitation language is provided to the Purchaser to incorporate into the solicitation documents. The Purchaser will review PCS Form 406-F to confirm and verify the NIGP codes for accuracy.

If the purchaser concurs, they will execute the PCS Form 406-F and save the document in the procurement file. If any changes are made to the solicitation documents that impact the VetHUB Program (i.e., scope of work, procurement timetable, etc.), the Purchaser will

notify the VetHUB Coordinator of the change for input or to revise the PCS Form 406-F. When the solicitation is posted on the ESBD, the Purchaser will notify the VetHUB Coordinator that it is posted, so that the VetHUB Program Office may facilitate additional marketing efforts to engage the VetHUB vendor community.

7.13 Determination of Subrecipient, Recipient, or Contractor Relationship

To determine appropriate solicitation method and compliance regulations, the determination of a subrecipient, recipient, or contractor relationship is generally made during the planning phase for an RFA, RFP, and RFQ. The determination process involves various stakeholders that may include program staff, legal, and PCS, with the final determination made by the PCS Grants Division. The final determination shall remain consistent throughout the procurement and contract lifecycle.

PCS Form 438-F, where applicable, must be completed in order to complete the determination process. PCS Policy 438, Contractor or Subrecipient Determination must be followed when requesting a determination.

7.14 The Requisition

The last step in the procurement planning phase involves the submission of the requisition to initiate a procurement in CAPPS Financials. At this stage, the customer organization has secured documentation of any program-specific external reviews and approvals and appropriate internal approvals. These program-specific reviews and approvals may be needed from the SAO, Office of Attorney General, DIR, Governor's Office, or other office. One example of a program-specific review is when HHSC is required to request participation for review of major health care procurements from the Office of Attorney General.[48] Because this activity is specific to the program and doesn't apply to all procurements, the responsibility to obtain and document the reviews and approvals is the responsibility of the customer organization.

Once Program has submitted the requisition to initiate the solicitation and has been assigned a PCS Purchaser, the customer organization must promptly provide any approval and review documentation to the PCS Purchaser, to ensure the Purchaser has the required documentation for a complete procurement file.

[48] *TEX. GOV'T CODE § 531.018.*

All HHS procurements are initiated through the submission of a requisition into CAPPS Financials.[49] Responses to Wizard[50] questions assist determination of the procurement method and requirements. Before PCS can start procurement processing, Program management must approve the request in CAPPS Financials and budget check the requisition.

At a minimum, all requisitions must include:

1. Complete contact information of the requester, including full name, email address, and phone number.
2. A clearly stated "need by date" in accordance with Section 7.1 regarding Procurement Lead Times.

Other requirements for common procurements are included in the following table. For assistance in submitting a requisition, please contact PCS Customer Service at PCS_CST_HHSC@hhsc.state.tx.us.

Important: Requisitions that fail to include completed documents as detailed in the table below are subject to denial by PCS. The procurement process will not begin, and timelines will not be developed without the completion of this documentation. PCS will notify the customer organization of rejections due to incomplete information or documents.

Table 7. Requisition Requirements by Procurement Type

Procurement Type	Key Requirements	Reference Documents
Goods	Line-item information, comments, vendor information	PCS Form 01, PCS Form 02
Temporary Staff Services	Staffing requirements, worksite information, supervisor contacts	
Moving Services	SOW, move details, locations	SOW
Printing Requisitions	Quotes, proofs, bid documentation	Print Shop Request Form
Conference/Meeting Room Space	Justification and facility availability documentation	Hotel Conference Space Requisition Wizard
IT Products	PFAP, DIR information, product details	DIR Cooperative Contracts/DCS Exemption
IT Services	PFAP, SOW, DIR review	DIR Cooperative Contract/DCS Exemptions

[49] *To access CAPPS Financials, security permissions for the user must be established through the IAMOnline CAPPS Financials Resources are available on the PCS Training SharePoint Page.*
[50] *Wizard document found on https://hhsconnection.hhs.texas.gov/procurement-contracting.*

Procurement Type	Key Requirements	Reference Documents
Complex Procurements	SOW, Request Document, PRA	PCS Forms 148 and 438-F
Constructions	M&C solicitation package	M&C SharePoint
Grans	SOW, PRA, subrecipient determination	PCS Forms 148 and 438-F

7.14.1 Goods

Each good must be entered as a separate line item in the requisition.

Line-Item Information

Provide the following for each line item:

- Item Description
- Quantity
- Unit of Measure (UOM)
- NIGP Class and Item Code
- Price

Header Comments

Include the following as applicable:

- Agency contact information for the lead contact, contract manager, and responsible party
- Preferred vendor information, including:
    - Vendor name
    - Vendor representative name
    - Email address
    - Phone number
    - Vendor Identification Number (VID), if known
- Bill-To and Ship-To shipping codes
- Program-specific information, such as:
    - End-user contact information
    - Special delivery instructions
    - Accounts Payable contact information

Expediated and Emergency Requisitions

Once the requisitions have received all required workflow approvals:

- Email: PCS_CST_HHSC@hhsc.state.tx.us
- Include the requisition number
- Justification statement in the email message
- Attach completed PCS Form 01 in submitted requisition signed by the authorized signature authority located on the internal PCS SharePoint Policies & Forms site.
- HHSC programs should attach the PCS Form 01 without required signatures, so PCS can review.

Important: Emergency requisitions should not be submitted to PCS until all required workflow approvals have been completed.

Proprietary and Sole-Source Procurements

- Complete PCS Form 02
- Attach completed PCS Form 02 in submitted requisition signed by the authorized signature authority located on the internal PCS SharePoint Policies & Forms site.
- HHSC programs should attach the PCS Form 02 without required signatures, so PCS can review.

Item Description Requirements

Item descriptions should include:

- Manufacturer Name
- Product Name
- Manufacturer Part Number
- Size
- Color
- Type
- Grade

Example

Avery 8160 Easy Peel White Address Labels with Sure Feed Technology for Inkjet Printers, 1 x 2.63, White, 30 labels per sheet, 25 sheets per pack, Item #574566.

7.14.2 Temporary Staff Services

State whether resumes and/or interview are required. If required, identify:

- The individual who should receive resumes.
- The contact responsible for coordinating interviews.

Position Information

Provide the following:

- Job Class Number
- Current or Previous Purchase Order Number (if applicable)
- Number of Contractors Requested
- District Number
- Job Title
- Rate Level (Entry, Experienced, or Expert)
- Job Description (if applicable)
- Knowledge, Skills, and Abilities (if applicable)

Work Schedule

Provide the following:

- Work Hours
- Workdays
- Work Hours per Week
- Start Date
- End Date

Worksite Information

Provide the following:

- Department
- Report to Worksite Address, including:
    - Street Address
    - Building/Room Number
    - City
    - State

- ZIP Code

Important: All worksite locations must be listed if services will be performed at more than one location.

Example

- 1400 Barton Ridge, City, TX 7XXXX (1 temporary staff member)
- 2801 Outlook Ave., Suite 148, City, TX 7XXXX (2 temporary staff members)

Also indicate: Whether parking is available (Yes or No)

Supervisor and Contact Information

Provide the following:

- Supervisor Information
- Name
- Phone Number
- Email Address

Supervisor responsibilities may include:

- Timecard approval
- Resume review
- Interview participation

Additional or Alternate Contact

- Name
- Phone Number
- Email Address

Timecard Approval Contact (if different from the supervisor)

- Name
- Phone Number
- Email Address

Contractor Information

If known, provide:

- Name(s) of Temporary Staff
- Accounts Payable Information

- Provide the following:
- Accounts Payable Contact Name
- Phone Number
- Email Address
- Invoice Address

7.14.3 Moving Services

The requisition must include:

- The estimated dollar amount of the move
- Statement of Work (SOW)

The SOW should include, at a minimum:

- Move dates
- Move locations
- Items to be moved
- Hours during which the move should occur
- Floorplans (if available)
- Site contact person(s)

7.14.4 Printing Requisitions

All Print Jobs

The following documentation must be attached to the requisition:

- Proof(s)
- Vendor quote

Print Jobs Exceeding $2,500

In addition to the requirements above, provide the following:

- Print Shop Job Request Form
- All bids received from State Print Shops, or documentation confirming no bids were received
- Bid Tabulation
- Email to TCI providing the opportunity to negotiate pricing if TCI is not the lowest bidder

- Email to stateprintshops@cpa.texas.gov showing award notification and bid tabulation
- Documentation demonstrating that an unsuccessful request was made to the State Print Shops

Important: Printing requisitions exceeding $2,500 require additional supporting documentation to demonstrate compliance with State Print Shop and TCI requirements.

7.14.5 Conference/Meeting Room Space

If state-owned or state-leased facilities do not meet the agency's needs, documentation must be submitted through the Hotel Conference Space Requisition Wizard in CAPPS Financials.

Justification Requirements

Provide documentation demonstrating at least one of the following:

- State-owned or state-leased facilities are not available when needed.
- State-owned or state-leased facilities are not adequate to accommodate the meeting, conference, or examination.
- State-owned or state-leased facilities are not the most economically favorable alternative.

Required Supporting Documentation

Attach:

- A copy of the TFC reservation portal calendar.

Important: Documentation supporting the use of non-state facilities must be submitted through the Hotel Conference Space Requisition Wizard in CAPPS Financials.

7.14.6 IT Products

The requisition must include the information and documentation necessary to facilitate the IT procurement review and approval process.

Procurement Forecast and Action Plan (PFAP)

Provide the PFAP table number and line number for all IT product purchases exceeding $50,000.

Product Information

Provide the following:

- Product part number
- Product description
- Screenshot of the product, if available

Budgetary Estimate

Include a budgetary estimate that references the applicable DIR contract number.

DIR Documentation

Provide the following, as applicable:

- DIR Cooperative Contract information
- DCS exemption documentation

This information is required to facilitate the IT procurement process.

Important: All IT product purchases exceeding $50,000 must include the applicable PFAP table number and line number.

7.14.7 IT Services

The requisition must include the information and documentation necessary to facilitate the IT procurement review and approval process.

Procurement Forecast and Action Plan (PFAP)

Provide the PFAP table number and line number for all IT service procurements exceeding $50,000.

Statement of Work (SOW)

Attach a completed Statement of Work (SOW).

Important: For IT services exceeding $50,000, DIR review is required.

Budgetary Estimate

Provide a budgetary estimate that references the applicable DIR contract number.

DIR Documentation

Provide the following, as applicable:

- DIR Cooperative Contract information
- DCS exemption documentation

Contract Manager Information

Clearly identify the contract manager in the requisition comments, including:

- Name
- Email address
- Phone number

Requisition Setup

The requisition should be created to match the manner in which the Purchase Order will be:

- Billed
- Received

7.14.8 Complex Procurements

Complex procurements require additional documentation and review before the requisition can be processed.

Statement of Work (SOW)

Submit a draft RFx using the current template with the SOW section completed.

Important: The requisition may be denied if the SOW does not contain all required components identified in the current RFx template.

Request Document

The CAPPS Financials Wizard Questions are used to automatically generate the Request Document that accompanies the requisition.

Important: Incomplete or inaccurate responses may result in the requisition being denied, corrected, and re-routed through the approval process.

Contract Value

The contract value must include:

- Initial contract term
- Renewal periods
- Extension periods

Example

A one-year contract valued at $100,000 with three one-year renewals has a total contract value of $400,000.

Important: If the contract value is not calculated correctly, the requisition may be denied, corrected, and re-routed through the approval process.

PCS Form 438-F

Complete PCS Form 438-F to determine whether the contract will operate under a contractor or subrecipient relationship.

Procurement Risk Assessment

Attach a completed PCS Form 148 Procurement Risk Assessment to the requisition.

7.14.9 Construction

Construction procurements require coordination with the Maintenance and Construction (M&C) program area and submission of the required solicitation documentation.

Solicitation Documents

Upload all construction solicitation documents to the M&C SharePoint site.

Required documents include:

- Solicitation template
- All required exhibits and attachments

Once the folder has been populated, the M&C Contract Specialist will email the SharePoint folder link to the PCS Construction and Building Maintenance Director for assignment.

Request Document

The CAPPS Financials Wizard Questions are used to automatically generate the Request Document that accompanies the requisition.

Important: Incomplete or inaccurate responses may result in the requisition being denied. The requisition must be corrected and re-routed through the approval process.

Contract Value

Contract value is the total estimated construction budget for the project.

The construction budget does not include professional services fees associated with the project.

Assignment

The PCS Construction and Building Maintenance Director will assign a PCS Purchaser to the project.

Development

The assigned PCS Purchaser will work with the assigned M&C Project Manager to develop the solicitation documents.

7.14.10 Grants

Grant requisitions require additional documentation and review before processing.

Statement of Work (SOW)

Submit a draft Request for Applications (RFA) using the current template with the SOW section completed.

Important: The requisition may be denied if the SOW does not contain all required components identified in the current RFx template.

Request Document

The CAPPS Financials Wizard Questions are used to automatically generate the Request Document that accompanies the requisition.

Important: Incomplete or inaccurate responses may result in the requisition being denied, corrected, and re-routed through the approval process.

Contract Value

The contract value must include:

- Initial contract term
- Renewal periods
- Extension periods

Example

A one-year grant valued at $100,000 with three one-year renewals has a total contract value of $400,000.

Important: An incorrectly calculated contract value may result in the requisition being denied, corrected, and re-routed through the approval process.

Procurement Risk Assessment

Attach a completed PCS Form 148 Procurement Risk Assessment to the requisition.

Important: The RFA request may be denied if the completed Procurement Risk Assessment is not attached.

PCS Form 438-F

Complete PCS Form 438-F and obtain PCS approval identifying the relationship as either:

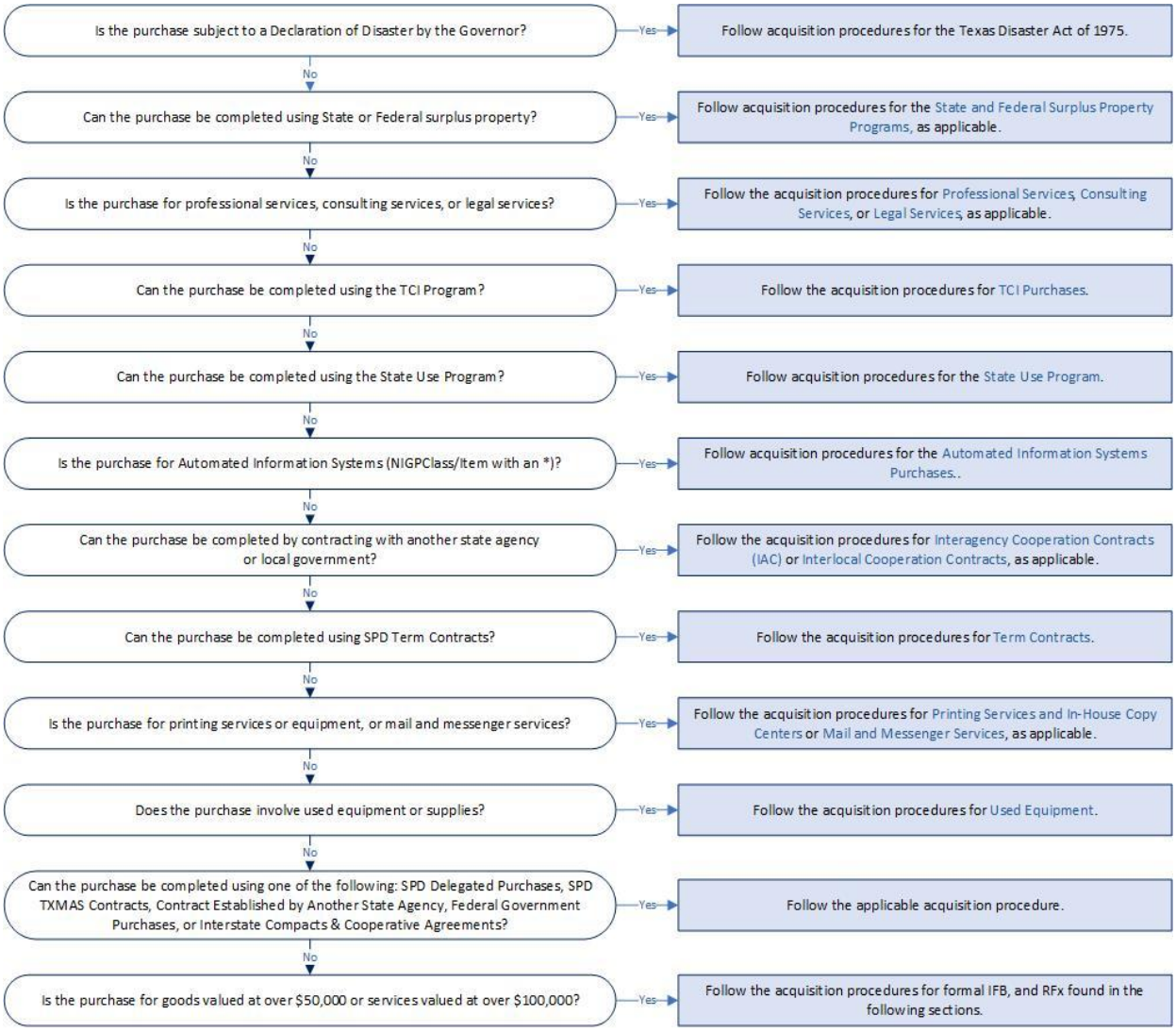
- Recipient; or
- Subrecipient.

Procurement Methods: Solicitations and Grants

8. Procurement Methods

Texas law requires that contract awards may only be made to responsive vendors providing best value to the state. The best value standard may vary depending on the procurement method;[51] therefore, public procurement personnel must ensure that the appropriate best value standard is used as the basis for contract award.[52]

Processes for selecting the appropriate procurement method are illustrated below.



[51] *Best value standards include, but are not limited to, the following: TEX. GOV'T CODE §§ 2155.074, 2156.007, 2157.003, 2254.003, and 2254.027.*

[52] *Comptroller's Guide, Procurement Method Determination. Full description of method selection on pp 17-18 of v.2.0 of guide.*

8.1 Texas Disaster Act of 1975

Under Texas Government Code Chapter 418, the Governor may, by executive order or proclamation, declare a state of disaster if the Governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent. The Governor may suspend the provisions of any regulatory statute[53] prescribing the procedures for conduct of state business or the orders or rules of an agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.[54] A purchase made under a disaster must clearly relate to the disaster, conform to the directives of the disaster declaration, and occur within the timeframe specified in the disaster declaration. The requisition must contain a copy of the disaster declaration.

8.2 State and Federal Surplus Property Program

The Texas Facilities Commission (TFC) is charged with administering the State and Federal Surplus Property Programs. There are two methods to acquire State Surplus Property: via transfer directly from the surplus agency or from public sales at the Austin storefront. Examples of items commonly available for transfer include office furniture and equipment, vehicles, heavy equipment, trailers, and computer equipment. For information on property available for direct agency transfer, visit the State Surplus Property website for property listings.

8.3 TCI Purchases

Reference: PCS Operating Procedure 410

TCI is a division of the Texas Department of Criminal Justice (TDCJ) that manufactures goods and services for the purchase by Texas governmental entities, including HHS agencies. Texas Government Code Chapter 497 requires that agencies purchase goods made by and services offered by TCI. TCI provides a variety of items, which can be viewed on their website.

Most goods offered by TCI are available for purchase through the SPD Texas SmartBuy online ordering system. PCS will process an internal Purchase Order and send directly to TCI for services and goods that are not available through the SPD online ordering system.

> ***Note:*** *Competitive bidding is not required for items purchased from TCI.*

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[53] *TEX. GOV'T CODE § 418.0155 (Suspension List).*
[54] *TEX. GOV'T CODE § 418.016 (Suspension of Certain Laws and Rules); see also, Comptroller's Guide, Procurement Method-Texas Disaster Act of 1975.*

8.3.1 Examples of TCI Goods and Services

- **Graphics:** Signs, awards, plastics, laser-engraved awards, custom printing, cardboard boxes, and folders.
- **Janitorial goods:** Soaps, detergents, mops, wax applicators, brooms, and brushes.
- **Garments and textiles:** Apparel, bedding, mattresses, linens, leather goods, bags, flags, embroidery, windscreens, and drapery.
- **Modular office systems and furniture.**
- **Metal goods:** Truck beds, trailers, dump truck and tarp accessories, park equipment, toilets, sinks, showers, and detention and security equipment, school equipment, kitchen and food service equipment, storage units, shelving, and fencing.
- **Services:** Auditorium seating, aluminum bleachers, braille transcribing, bus renovation, computer recovery, furniture refurbishing, tire retreading, and Geographic Information System (GIS) data conversion.

8.3.2 TCI Purchase Exceptions

An agency must procure goods and services from TCI unless:

1. TCI grants a waiver.
2. SPD determines that the good or service produced by TCI does not meet the requirements of the agency.
3. SPD certifies that the good or service can be purchased elsewhere at a lower price after the agency gives TCI final opportunity to negotiate on price.55

If TCI denies an agency's waiver request, the agency may send an appeal letter to SPD by emailing spd.policy@cpa.texas. To expedite processing, the agency must provide the waiver identification number from the TCI waiver denial letter as well as any supporting documentation. SPD will provide a written notice of the approval or denial of the agency's appeal.

8.4 State Use Program

The Texas Workforce Commission (TWC) oversees the Purchasing from People with Disabilities Program, commonly referred to as the State Use Program. TWC contracts with a central nonprofit agency, currently WorkQuest (formerly TIBH Industries), to administer the

[55] *See Comptroller's Guide, Texas Correctional Industries Purchases.*

day-to-day operations of the program. WorkQuest partners with Community Rehabilitation Programs (CRP), which employ disabled workers to develop products or provide services for the State Use Program. WorkQuest is the management link between the CRP work centers (e.g., Lighthouse for the Blind), agencies, and TWC. Only products and services approved by TWC qualify as a State Use Program purchase available for agencies to purchase on Texas SmartBuy.

In accordance with Human Resources Code, Section 122.008 (see also, Texas Government Code § 2155.138), agencies must purchase products and services offered through WorkQuest that meet the applicable specifications of the agency and that are available within the time specified.

Purchases of goods and services from WorkQuest do not require competitive bidding. Purchases of *goods* from WorkQuest must be purchased through Texas SmartBuy online ordering system. Purchases of *services* are made through internal Purchase Orders. Any time the quality of a WorkQuest product or service is deemed unacceptable or failed to meet agency specifications, this information should be reported to WorkQuest, and a vendor performance report must be filed with SPD.[56]

8.4.1 WorkQuest Commodities (Goods)

Agencies must purchase commodities (goods) offered by WorkQuest that meet the requirements and specifications of the agency and that are available within the time specified. The purchases for commodities (goods) are required to be entered through the CPA Texas SmartBuy online ordering system by PCS personnel. Purchases for commodities (goods) are not allowed to be processed through the online product catalog available on the WorkQuest website.

8.4.2 WorkQuest Services

Agencies must purchase services offered by WorkQuest that meet the requirements and specifications of the agency and that are available within the time specified. The categories of services offered are outdoor; indoor; freight and logistics; and office assistance.

8.4.3 WorkQuest Temporary Staffing Services

CPA has an established managed term contract with WorkQuest for purchasing temporary staffing services. WorkQuest contracts with Peak Performers and Goodwill (at the time of

[56] *See Comptroller's Guide, The State Use Program.*

initial publication of this Handbook) to provide multiple job classifications across the state with negotiated hourly rates.

WorkQuest provides Regional Representatives for assistance in obtaining temporary staff. The procedure for obtaining temporary staff is stated on the CPA Managed Contract No. 962-S3 which may be accessed at: http://www.txsmartbuy.com/contracts/view/225.

If no WorkQuest provider can fill the position, the request will be waived, and the positions must be processed through the appropriate solicitation method applicable to the estimated value.

8.4.4 Moving Service Purchases

Moving services are provided by WorkQuest. To procure moving services, the HHS agency/program requesting the moving services must submit a requisition for the estimated dollar amount of the move.

The assigned purchaser will reach out to WorkQuest to see if they are able to provide the services for this job and request a quote. A site visit may be requested by WorkQuest prior to providing a quote.

If WorkQuest is unable to provide services, they will email a waiver. With a waiver from WorkQuest, moving services may be purchased through an informal or formal procurement process and are also available through TXMAS.

8.5 CPA Statewide Contracts

8.5.1 Texas Multiple Award Schedule (TXMAS) Contracts

Pursuant to Government Code, Subchapter I, SPD has established Texas Multiple Award Schedule (TXMAS) contracts. The TXMAS Program adapts existing competitively awarded government contracts to service the procurement needs of state agencies and Texas SmartBuy members. Agencies are not required to use these contracts. Neither consulting services nor professional services (such as engineering and architecture) are offered as part of the TXMAS program in accordance with Texas Government Code Chapter 2254.[57] TXMAS contracts are available at http://www.txsmartbuy.com/.

Agencies may use TXMAS contracts without obtaining delegated authority from SPD to make purchases that exceed $50,000 for goods and $100,000 for services. Prior to purchasing from a TXMAS contract, however, the Purchaser must follow applicable procedures to purchase first from TCI, the State Use Program, and the SPD Statewide Term

[57] *TEX. GOV'T CODE §§ 2155.001(2), 2155.502(c)(4).*

Contracts. For purchases that exceed $25,000, the agency must post the award notice on the ESBD.[58]

8.5.2 Best Value Determination

Prior to using a TXMAS contract, the Purchaser must conduct a best value determination before issuing a Purchase Order (PO).

For purchases with a value of no more than $50,000, the agency may directly award a PO to an SPD TXMAS contractor without submitting a price request to other contractors in the same category.

SPD recommends that for contracts that exceed $50,000 the Purchaser submits a pricing request to at least three TXMAS vendors included in the TXMAS category to which the contract relates or all TXMAS vendors included in the applicable TXMAS category, if the category has fewer than three vendors.

8.5.3 TXMAS Negotiations

Purchasers may negotiate lower prices when purchasing from a TXMAS contract; however, the TXMAS vendor may not charge a price higher than the price published in the TXMAS contract. A TXMAS vendor may provide a lower price than the price listed in its Texas SmartBuy catalog. For orders above the TXMAS contract maximum PO dollar limit and for offers through a promotional program, the Purchaser may negotiate lower prices than those listed in the Texas SmartBuy catalog. Lower prices must be noted in the file by the agency, along with the vendor representative's name. The agency must document the description of the good(s) or service(s) for TXMAS purchases and include pricing documentation in the agency's procurement file.

8.5.3.1 Orders Entered on Texas SmartBuy

Reference: PCS Operating Procedure 410

Purchase orders for TXMAS contracts must be entered through the Texas SmartBuy online ordering system.

Only products or services listed in the underlying contract may be purchased from the TXMAS contract, with one exception: incidental, off-schedule items may be purchased as "best value, open market" items if they are necessary for product integration or product completeness.

[58] *See Comptroller's Guide, Procurement Method – SPD Texas Multiple Award Schedule (TXMAS) Contracts.*

The purchasing entity is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. Incidental items:

- Must be clearly labeled as "open market (OM), best value" items.
- May not exceed $5,000 or 50% of the Purchase Order total, whichever is less.

If the pending order includes incidental items that exceed the stated limits, a request may be submitted to SPD for review and consideration of an exception. Exception requests shall be submitted to txmasquote@cpa.texas.gov. The request must include a copy of the complete vendor quote listing all core items and a detailed incidental charge breakdown.[59]

8.5.4 SPD Statewide Term Contract Purchases

SPD establishes Term Contracts (TxSmartBuy Term and Managed), categorized by commodity/service codes (NIGP Class/Item codes), as a supply source for all state agencies. The term of each contract is determined by SPD.

Note: *Competitive bidding by state agencies is not required for items purchased from SPD Term Contracts.*

All agencies are encouraged to use Term Contracts whenever possible.[60] Contracts are based on historical estimated quantities, specified by SPD, and may be ordered as needed.

8.5.4.1 Required Use of Term Contracts

SPD term contracts are required unless any of the following applies:

1. The item available on contract does not meet the agency's needs.
2. The quantity to be purchased is less than the item or contract minimum order quantity.
3. The term contract does not represent best value.
4. The delivery time available through the term contract does not meet the delivery need or requirements.

8.5.4.2 Justification for Not Using a Term Contract

If an SPD contract is not used, the requesting agency must document why the item does not meet the need in the procurement file. Agencies are required to use term contracts unless one of the exceptions above applies.

[59] *Comptroller's Guide, Procurement Method – SPD Texas Multiple Award Schedule (TXMAS) Contracts.*
[60] *Comptroller's Guide, Term Contracts; 34 TEX ADMIN CODE § 20.220.*

8.5.4.3 PCS Purchaser Responsibilities

1. When a requisition is received, the PCS Purchaser is responsible for reviewing the specifications to determine if the item is available from an SPD Term Contract (Texas SmartBuy). If the Purchaser finds an item or items on contract that are similar to the items ordered and appear to meet the agency's need, they will ask the requester to consider the contract item(s).
2. If the item(s) meet the agency's needs, the Purchaser must use the CPA online purchasing system or Texas SmartBuy to complete the Purchase Order.
3. If the item(s) do not meet the agency's needs, the Purchaser must obtain a justification from the end-user and purchase the item(s) using another procurement method.

8.5.5 Managed Term Contracts

A "Managed" Term Contract requires manual processing of a Purchase Order (not entered into SmartBuy online ordering system), and they typically have different pricing structures or may require a quote that is based on a discount percentage due to the need for regular scheduled deliveries or flexible delivery dates. PCS will process an internal Purchase Order directly with the SPD Contractor.

8.6 Spot Purchases (Non-DIR)

Reference: PCS Operating Procedure 442

Procurements for goods and services must, whenever possible, be accomplished through competitive bidding. With the exception of printing services,[61] if the total value of the purchase is $10,000 or less, competitive bidding is not required. Dividing purchases to avoid the competitive bidding requirement is expressly prohibited.[62] The PCS Purchaser will review all purchasing methods to determine which is applicable to the procurement.

9. Competitive Procurement

A competitive bidding procurement method is used when the requirements are clearly defined and described by detailed specifications. For a purchase made through competitive bidding, the solicitation must include the factors other than price that will be considered in

[61] *Tex. Const. art. XVI, §21; purchases for printing must comply with the procedures set forth in the Comptroller's Guide, Printing Services, and In-House Copy Centers.*
[62] *TEX. GOV'T CODE § 2155.132(g).*

determining which bid offers the best value for the state. The purchase price and whether the goods or services meet all specifications are the most important best value considerations. With the exception of printing services, competitive bidding is not required if the total contract value is $10,000 or less.

Table 8. Competitive Procurement Methods

Method	Best Used When	Advantages	Disadvantages
Invitation for Bids (IFB)	• Products or services are standardized or uniform.	• Simple award process. • In determining best value, price and whether the goods or services meet specifications are the most important considerations.	• Defined specifications may be difficult to develop. • Does not encourage innovative solutions. • Negotiations are not allowed if there is more than one qualified bidder.[63]
Request for Proposals (RFP)/Request for Offers (RFO)	• Negotiations are preferred. • Vendor is expected to provide innovative ideas or solutions.	• Allows customized proposals to meet the same business need. • Allows for negotiations. • Considerations in addition to price are used to determine best value.	• Procurement lead time is much greater. • More complex evaluations.

[63] *TEX. GOV'T CODE § 2155.088; 34 TEX ADMIN CODE § 20.206(d)(5).*

Method	Best Used When	Advantages	Disadvantages
Request for Qualifications (RFQ)	• Vendor selection is dependent on the vendor's skills and qualifications. • Procuring a professional service in a non-competitive market, typically a medical professional. • Price is not a factor until after vendor is selected.	• Emphasizes the competency and experience of the vendors.	• Vendor selection occurs before price is negotiated. • Two-step process.

9.1 Informal Bidding (Non-DIR)

Reference: PCS Operating Procedure 444

Informal bidding is used when the value of a contract is over $10,000, but not more than $25,000, for the life of the contract (i.e., total value of the contract). The PCS Purchaser will provide bid opportunities to vendors active on the CMBL within the National Institute of Governmental Purchasing (NIGP) class/item designated in the solicitation. The PCS Purchaser must solicit bids from a minimum of three (3) active vendors on the CMBL, two (2) of which must be current as a Texas-certified VetHUB.

Purchasers will complete purchases using a consistent and standardized process that allows for the greatest possible competition without posting to the ESBD. VetHUB vendors will be used to the fullest extent possible and will be provided an opportunity to bid on all purchases. Purchases may not be divided into smaller transactions to avoid competition.

Negotiations are not permitted using this competitive bidding procurement method. However, if there is only one qualified bidder then the PCS Purchaser may negotiate with the sole bidder, including price, provided the negotiation does not result in a material

change to the advertised specifications.[64] Proprietary procurements must also follow all required procedures for proprietary purchases.[65]

9.2 Formal Bidding (Non-DIR)

Reference: PCS Operating Procedure 446

An Open Market IFB is a formal written competitive sealed bid method (>$25,000) used to obtain bids from all eligible and active vendors listed on the CMBL within the NIGP class/item for the service or good. If the total value of a solicitation is greater than $25,000, an IFB must be posted on the ESBD.

PCS Purchasers will complete purchases using a consistent and standardized process that allows for the greatest possible competition. Purchases may not be divided into smaller transactions to avoid competition.

Negotiations are not permitted using this competitive bidding procurement method. However, if there is only one qualified bidder, then the PCS Purchaser may negotiate with the sole bidder, including price, provided the negotiation does not result in a material change to the advertised specifications.

9.3 Work Order Process

Reference: PCS Operating Procedure 650

The work order procedure is used when an HHS or DFPS program has identified a need for a specialized service that may fall under awarded work order master contracts. In certain circumstances, work order master contracts may be established after a competitive procurement; these procurements are typically conducted as an RFP or RFQ. After the work order master contracts are established and a specific need has been identified that falls within the awarded master contract scope of work, the work order process will be followed to solicit an eligible contractor or a pool of eligible contractors who were awarded a master contract.

The HHS or DFPS program begins the process by completing a Work Order Request. The work order request describes the services to be provided, and the deliverables requested. Once it is finalized and approved, it is sent to the master contract eligible pool of contractors for a response. The responses received from the eligible pool of contractors are evaluated in accordance with PCS Operating Procedure 650. Responses can be

[64] *TEX. GOV'T CODE § 2155.088; 34 TEX ADMIN CODE § 20.206(d)(5).*
[65] *See Comptroller's Guide, Competitive Bidding (IFBs, Informal Bidding).*

negotiated (i.e., deliverables), except for pricing because the master contract has established the pricing related to the services requested.

Once all responses are evaluated, the HHS or DFPS program develops a work order agreement, completes the PCS Form 09, Work Order Selection Justification, and work order package then routes for approval in accordance with PCS OP 650. The HHS or DFPS program works with PCS to execute the work order agreement and enter a requisition for the funding of the work order Purchase Order.

For additional information related to the work order procedure and use of the master contracts, send an email to the PCS Services Team Management.

9.4 Information Technology Purchases

The Texas Department of Information Resources (DIR) is the state's Information Technology (IT) and telecommunications provider. DIR also oversees the Data Center Services (DCS) program. PCS Purchasers are required to use contracts established by DIR to obtain AIS unless the procurement is subject to an exclusion or exemption. AIS-type products and services are associated with computers (automation) or telecommunications systems. Classification codes with an AIS component are noted with an asterisk (*) on the NIGP Commodity Book.

Under DIR's statewide procurement authority, DIR establishes and manages master contracts for use by eligible customers.

9.4.1 DIR Statement of Work Review Process

Reference: PCS Operating Procedure 700-A

State agencies are required to submit SOWs to DIR for review before submitting them to a vendor for technology services. SOWs must meet threshold requirements for commodity purchases. DIR has established contracts that prequalify vendors to respond to SOWs across a variety of technology categories, including:

1. Deliverables-Based Information Technology Services (DBITS).
2. End-User IT Outsourcing Services.
3. IT Security Services.
4. Cloud Services.
5. Comprehensive Web Development.
6. Digital Imaging Services.

7. Complex services such as software or hardware customizations, integration, or overall project solutions.

9.4.1.1 DIR SOW Review Phases

The SOW review process has four phases: draft review, preliminary submission, final review, and executed.

Table 9. DIR SOW Review Phases

Participants	Phase Steps
Agency & DIR	**Draft Review** Agencies will submit draft SOWs to DIR for review before offering SOWs to vendor(s). DIR will review the SOWs and consult with the agency as necessary to ensure the scope of the SOW aligns with the master contract being solicited. Comments, findings, and determination (approval/rejection) will be by email for record purposes.
Agency	**Preliminary Submission** The agency will submit the approved draft SOW to appropriate DIR vendors (following procurement thresholds), evaluate responses, and negotiate the final version of the SOW. The agency and vendor will execute their portions of the final SOW. The agency will send the signed version of the SOW to DIR for review.
DIR	**Final Review** DIR will review the final negotiated SOW to ensure it is still within the original scope and, when so, will execute the SOW and return it to the agency.
Agency	**Executed** Once executed, the agency may issue a Purchase Order to the vendor. The agency must post the SOW on its website.

9.4.1.2 DIR SOW Templates

DIR offers SOW templates on the Statement of Work web page for the following:

1. End-User IT Sourcing SOW Template.
2. IT Staffing SOW Template.
3. Cloud Services SOW Template.
4. SOW Template for DBITS.

9.4.2 Cooperative Contracts

Cooperative Contracts DIR manages over 700 master IT goods and services contracts awarded based on state procurement rules using the request for offer method of procurement. Particular types of DIR cooperative contracts (DBITS, IT Staffing Services, Other Telecom Services, and Information Security) and purchasing requirements are set forth below. Agencies are required to purchase IT commodities using DIR's cooperative contracts or must request an exemption. Agencies may negotiate lower prices when purchasing from a DIR cooperative contract; however, the DIR vendor may not charge a price higher than the price published in the DIR contract. An agency may not enter into a contract to purchase a commodity item through the DIR Cooperative Contracts Program if the total value of the contract, including extensions and renewals, exceeds $10 million unless it is a DIR coordinated bulk purchase.

9.4.3 Bulk Purchasing Initiatives

DIR offers bulk purchase initiatives for IT hardware, software, and technology services.

In accordance with Texas Government Code § 2157.068, state agencies making purchases under DIR Bulk Purchase Agreements are not bound by competitive requirements or dollar thresholds otherwise required when making IT commodity purchases for hardware, software, and technology services.

9.4.4 Texas.gov Contracts

Texas.gov is the official website of the State of Texas. It provides portal and payment services for Texas state agencies and local governmental organizations. Services provided through Texas.gov enable citizens to conduct government business in a variety of easy, secure ways. Application services feature proactive reminders and alerts, customized dashboard, and stored transaction and payment history to the online convenience of renewing a driver license, vehicle registration, or professional license (along with 1,000+ other services). Texas.gov's payment services solution offers complete transaction management that specifically meets the unique needs of Texas. These services require an interagency or, as applicable, interlocal agreement signed with DIR.

9.4.5 Shared Technology Services Contracts (STS)

STS provides full-service access to diverse managed technology. STS uses a multi-sourcing service integrator (MSI) to provide a single point of contact for service delivery.

9.4.6 Telecommunication Services Contracts

DIR manages telecommunication contracts that facilitate the purchase of voice, data, wireless, video, or Internet services. Agencies are required to procure telecommunication services, including internet, through these contracts[66] or must request a telecommunication exemption through DIR. DIR's Telecom unit serves state agencies in three ways:

1. Capitol complex telephone system (CCTS): telephone service within the capitol complex.
2. Texas Agency Network (TEX-AN) contracts: a contract portfolio of voice and data services.
3. Other telecom services contracts (one category of DIR cooperative contracts): multiple contracts offering wireless, conferencing, and managed telecommunication services.

Telecommunication services are procured under Texas Government Code Chapter 2170. They are not subject to DIR threshold requirements, or DIR statement of work review process, *reference DIR Threshold Requirements and DIR Statement of Work Review Process sections of this handbook*.

9.4.7 IT Staff Augmentation Contract (ITSAC)

IT Staffing Services contracts are one category of DIR Cooperative Contracts that provide for temporary IT staffing augmentation services. Contracted staff render services and are paid on an hourly basis. The DIR ITSAC competitive process is managed through DIR's ITSAC portal. The ITSAC Portal solicits responses from all eligible ITSAC vendors for the selected labor category. This ensures that state agencies will have met all pricing request threshold requirements

The customer ITSAC Portal will be used to post solicitation requests, review details related to submitted solicitations, cancel/withdraw solicitations, review candidates submitted by vendors, award the solicitation, and mark which candidates were interviewed and/or hired. For more information visit DIR's IT Staffing web page.

State agencies are not required to obtain DIR's signature on a resulting Purchase Order when using an IT staffing services contract.

[66] *TEX ADMIN CODE 207.10*

9.4.8 Deliverables-Based IT Services Contracts (DBITS)

Deliverables-Based IT Services (DBITS) contracts are one category of DIR Cooperative Contracts that provide project-based IT services. These contracts are not used for hourly-rate services. DBITS requires acceptance of a Statement of Work (SOW) and authorization for payment of milestone tasks. Agencies must solicit DIR vendors whose contracts meet the required scope written and approved by DIR. For more information, visit Deliverables-Based IT Services (DBITS) | Texas Department of Information Resources.

DIR DBITS contract include the follow Technology Categories:

1. **Technology Category 1**: Application Development, Maintenance, and Support, Technology Upgrade, Migration, and Transformation; and Enterprise Resource Planning (ERP).
2. **Technology Category 2:** Business Intelligence (BI), Data Management, Analytics, and Automation, including Data Warehousing.
3. **Technology Category 3:** IT Assessments, Planning, Independent Verification and Validation (IV&V), and Market Research, Procurement Advisory, and Contract Implementation Services.
4. **Technology Category 4:** Project and Program Management.

9.4.9 DIR Threshold Requirements

State agencies are required through Texas Government Code Chapter 2157 to meet bid threshold requirements for IT commodity purchases for hardware, software, and technology services. Thresholds apply to all cooperative contracts including DBITS and ITSAC.

Table 10. DIR Thresholds

Procurement Value Total Contract Term	Number of DIR Vendors
$50,000 or less	May award directly to DIR Cooperative Contracts vendor(s) or reseller(s) of choice.
More than $50,000 but not more than $1 million	Three vendors or resellers included in the category to which the contract relates (or all vendors or resellers in a category with less than three vendors or resellers).
More than $1 million but not more than $5 million	Six vendors or resellers included in the category to which the contract relates (or all vendors or resellers in a category with less than six vendors or resellers).
More than $5 million but not more than $10 million	State agencies have the option to enter into a contract through the DIR Cooperative Contracts program. If using DIR contracts, state agencies must submit a

Procurement Value Total Contract Term	Number of DIR Vendors
	request for pricing to at least six DIR vendors or resellers (or all vendors in a category with less than six vendors or resellers).
Over $10 million	May not enter into a contract through the DIR Cooperative Contracts program to purchase a commodity item.

9.4.10 DIR Threshold Exemptions

DIR threshold requirements do not apply to:

1. Contracts procured through the Data Center Services program signed by the contracted vendors (e.g., Atos, Capgemini and Xerox Corporation).
2. Agency customer agreements with the Texas.gov program, pursuant to its enabling statute.
3. Contracts for telecommunications services, such as TEX-AN Services and Managed Services for Telecommunications.

All procurements through DIR Shared Technology Services for Data Center Services must comply with state procurement rules.

9.4.11 DIR Procurement Exemptions

If a government entity wants to procure an item through an avenue outside a DIR contract or service (i.e., any Cooperative Contracts, TEX-AN, CCTS, Other Telecom Services, or other program areas such as Texas.gov), the agency must first obtain an exemption from DIR.

For more information regarding DIR exemptions, see the DIR website. The site provides information regarding exemptions, including:

1. Cooperative Contracts – Blanket Exemptions.
2. Cooperative Contracts – One-Time Exemption.
3. Certification for Purchase through Local Cooperatives.
4. Data Center Services Exemption.
5. Telecom Exemption.
6. Texas.gov Exemption.

> ***Note:*** *The Cooperative Contracts, Telecom, and Shared Technology Services, including Data Center Services programs, are governed by separate government code and therefore have unique requirements. Agencies within the DCS program are required to have approved DCS*

exemptions in addition to any exemptions or Statements of Work (SOWs) approvals that may be needed or may have already been approved through the DIR Cooperative Contracts program.

9.4.12 Subcontracting Plans and DIR Cooperative Contracts

DIR facilitates the SP process for the plan and procurement phase of the VetHUB Contract Management Cycle. It is the responsibility of the procuring agency to comply with the contract formation and contract oversight of the contract cycle. The agency must determine whether the existing SP posted on the DIR website is sufficient for implementing the scope of work. To facilitate this process, upon issuing the Purchase Order, the Purchaser will notify the VetHUB Program Office via email at HHSCVetHUB@hhs.texas.gov mailbox and request a VetHUB Coordinator to be assigned. The email should contain a copy of the issued Purchase Order. The VetHUB Program Office will contact the DIR vendor and request a clarification to verify the subcontracting needs are being met by the contract's SP. Once the clarification response is received, if any changes need to occur, the VetHUB Program Office must facilitate the SP amendment request process through DIR and ensure the prime contractor maintains compliance throughout the life of the agency's Purchase Order/contract. The VetHUB Program Office will notify the Purchaser and program area once the SP has been established for the contract, so the DIR vendor may proceed with the contract.

Note: *The agency obtains 100% VetHUB credit for any VetHUB direct and subcontracting payments from these contracts.*

9.5 Printing Services

Agencies must use SPD approved State Print Shops to competitively procure print services for printing procurements estimated to be $2,500 or more. State Print Shops provide services through interagency contracts with SPD. Examples of what the State Print Shops can provide include design, digital and traditional offset printing, binding, fulfillment, mailing, and other print-related services to agencies.

9.5.1 HHS Print Shop

When an HHS program has identified a printing need, all print requests, including newsletters, forms, brochures, business cards, and letterhead, will be sent to the HHS Print Shop first, prior to entering a CAPPS Financials requisition, using the online print order form, Form D-8.

The HHS Print Shop will determine if the print job can be completed in-house; a requisition will not be required. HHS Printing Services functions on a cost-recovery basis, much like a

commercial print shop. When the print job is complete, costs are calculated, and a Cost Report is forwarded to the requester's agency fiscal department. A summary of charges is sent to the fiscal department each month with a request for payment using an Interagency Transaction Voucher (ITV). Payment is due within 30 days of the invoice date.

If the request cannot be completed by the HHS Print Shop, the HHS Print Shop will submit the request using the CPA SPD Print Shop Job Request Form, which sends the request to all contracted State Print Shops for printing jobs that exceed $2,500. The HHS Print Shop will enter a CAPPS Financials requisition on your behalf and will include the Print Shop Portal request, all responses, the bid tabulation and notification to CPA, and the print shops award to be included for the procurement file. PCS will process the requisition and submit the order to one of the State Print Shops. If one of the State Print Shops cannot fulfill the order. *(Reference Section regarding Print and Print-related Requests Not Available Through State Print Shop (Exceeding $2,500)).*

If the printing request is under $2,500, requests can be sourced directly from any of the contracted State Print Shops.

HHS Programs may submit the print request by completing the CPA SPD Print Shop Job Request Form, only if the HHS Print Shop is not able to provide in-house services. To submit specifications to the State Print Shops for bid, HHS personnel must complete the Print Shop Job Request Form. Once completed, click on the submit button on the bottom of the form and the form will be routed to the contacts at each of the State Print Shops. Once the Print Job Request is submitted, the agency must print or save a copy of the results page for the procurement file. The Print Shop Job Request Form provides the HHS personnel with an opportunity to enter the “Project Due Date,” the “Estimate Needed by,” and the “Time Needed by” fields for their job. State Print Shops that can perform the work and respond to the request will reply by the date and time provided on the form.

For print purchases, TCI must be given the final opportunity to meet or beat the lowest price. This process must be followed by whomever — either HHS Print Shop or HHS Program — submitted the portal request through CPA SPD Print Shop Job Request form. If TCI submitted a bid and TCI is not the lowest bid, the HHS personnel are required to request a final bid from TCI. Do not disclose the other bids to TCI during this stage of the competitive bid process. Upon award, the completed bid tabulation noting the successful bidder should be sent to all State Print Shops and SPD with the email subject line: “Print Bid Tabulation for Requisition No XXX.” This will notify all State Print Shops. It is a violation to intentionally divide job requests to avoid these procedures.

9.5.2 Print and Print-related Requests Not Available Through State Print Shop (Exceeding $2,500)

9.5.2.1 Specifications and Estimated Price

If the above process is completed and all State Print Shops submit a no bid or no response, HHS Print Shop will enter a requisition, or if HHS program entered the CPA SPD portal request, HHS program will enter a requisition and attach documentation to show that the State Print Shop request was made and was unsuccessful.

HHS program should determine their print job specifications and estimated purchase price for their print job.

The initiating HHS personnel should provide details of their needs, including:

1. Department name and department identification number.
2. Description of the printing needed, including quantities, type stock, special assembly instructions, and other relevant information.
3. Required delivery date.

9.5.2.2 Print Purchases Less Than $5,000

A quote will be obtained from commercial vendors, and a Purchase Order will be issued.

9.5.2.3 Print Purchases Over $10,000

A solicitation will be completed (traditionally an invitation for bid). Please allow time for processing according to dollar threshold and procurement method. ESBD posting requirements apply to printing services contracts that will exceed $25,000.

For more information, see State Print Services and HHS Templates.

9.6 Conference and Meeting Room Space

9.6.1 Prohibitions and Requirements

According to Texas Government Code § 2113.106, state agencies must use state-owned or state-occupied facilities for meetings, conferences, and administration of group examinations and may not use appropriated money to lease private facilities for these purposes unless state facilities are:

1. Not available when needed.
2. Not adequate to accommodate the meeting, conference, or examination.

3. Not an economically favorable alternative to other facilities.

9.6.2 Process for Obtaining Conference or Meeting Room Space

The HHS agency or program requesting the purchase of conference or meeting space determines space rental needs, general location, and the potential cost for the purchase.

If HHS agency staff contact vendors for estimated costs of their conference or meeting space needs, agency staff must clearly explain to all contacted vendors that the price estimate is sought for informational purposes only and that the agency's request for an estimate is not a formal solicitation. When obtaining price estimates from vendors, care must be taken to avoid giving any vendor any competitive advantage in a future procurement initiative.[67]

HHS agency staff must not reserve space or sign contracts with hotels or private facilities for conferences or meeting space. Only PCS staff are authorized to enter into space rental contracts or agreements that are obtained through the PCS procurement process.

HHS agency staff must check for availability of state-owned or state-leased space in the general location in which the meeting space is needed. HHS agency staff must use the Texas Facilities Commission Conference Room Reservation Portal to determine if state space is available that will meet the agency's need. If space and availability do not meet the agency's needs, a copy of the reservation portal calendar search must be saved and attached to the requisition.

Additionally, the requesting agency must document at least one of the criteria in Prohibition and Requirements section of this handbook when filling out the Hotel Conference Space requisition section of the CAPPS Financials Wizard of a CAPPS Financials requisition.

If competitive bidding is required, bids are obtained, and the requester is consulted to confirm the winning bid meets the requester's needs. If a formal procurement is required, the appropriate formal procurement process will be used.

If a hotel or conference facility requires an HHS agency to agree to certain terms or conditions or sign an agreement for use of their space and negotiations are permitted under the procurement method used, the conditions and the agreement will be reviewed and approved by System Contracting prior to signing or awarding.

If the conditions and/or agreement is approved, the program area will obtain signatures on the agreement and PCS will attach the approved terms and conditions to the Purchase

[67] *Comptroller's Guide, Informal Budget Quotes.*

Order. PCS will issue a Purchase Order and provide a copy to the hotel/facility and the requesting entity.

9.7 Emergency Procurements

Reference: PCS Operating Procedure 400

An emergency purchase occurs when the agency must make a procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. An emergency purchase is not a tool for avoiding proper procurement planning. The pending expiration of funds does not constitute an emergency. An emergency occurs as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the state. A written determination of the basis for the emergency and for the selection of a particular vendor must be included in the procurement file. Excerpt from the Comptroller's Guide:[68]

> ***Note:*** *Emergency purchases discussed in this section are different from agency purchases conducted under a Declaration of Disaster by the Governor. SPD authority does not extend to purchases made under the Texas Disaster Act of 1975. Refer to Procurement Method – Texas Disaster Act of 1975.*

For procurements under SPD's authority, SPD has delegated to all agencies the authority to make emergency purchases. Notwithstanding this delegation, emergency purchases are subject to SPD's rules and procedures. Upon request, SPD will assist in advising agencies on the proper procedures for emergency purchases, but SPD will not certify the existence of an emergency.

The decision to declare an emergency purchase is the sole responsibility of the agency. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file. For an emergency purchase of goods or services exceeding $25,000, an agency must send to SPD a full written explanation of the emergency along with other documentation required by SPD. The notification to SPD must be provided via email to spd.policy@cpa.texas.gov as soon as reasonably practical given the nature of the emergency.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. For situations where a solicitation is not posted to the ESBD, the agency should make a reasonable attempt to obtain at least three informal bids. Emergency purchases greater

[68] *Comptroller's Guide, Emergency Purchases.*

than $25,000 must be posted to the ESBD; however, the minimum time for posting of the solicitation does not apply to the extent necessary to address the emergency. In addition, emergency purchases are subject to CAT and QAT reviews; expedited reviews are available upon request to these oversight teams. Emergency purchases of goods or services should not exceed the scope or duration of the emergency.

9.7.1 Emergency Purchase Justification

If the purchase is over $10,000, the requesting agency must document and justify the emergency purchase by completing PCS Form 01, Justification for Emergency Purchases. Approval must be provided by either the requesting agency's commissioner or commissioner designee by signing PCS Form 01.

9.7.2 VetHUB Requirements for Emergency Procurements

In accordance with Texas Government Code § 2155.137(b), emergency procurements are required to contain all the same VetHUB requirements as all other procurements. It is important to have the VetHUB program involved as soon as the procurement is identified as an emergency, so that VetHUB can work with the program area and purchaser to ensure the agency complies with statute and rules in submission of the Subcontracting Plan, when subcontracting is probable. Generally, the respondent is required to provide VetHUBs and trade organizations or development centers seven working days to respond to the required subcontracting notice.[69] In emergency procurements, the agency has the flexibility to determine a different time period, as required by the circumstances. The procurement file must be documented, and the pre-determined reduced timeframe must be clearly stated in the solicitation documents.[70] Respondents may also use any of the other four available good faith effort methods to submit a responsive SP other than the solicitation method mentioned above.

9.8 Proprietary Purchases

Reference: PCS Operating Procedure 401

A proprietary purchase is one where the specifications or conditions of the proposed purchase are unique/proprietary to one vendor and do not permit an equivalent product or service to be supplied.[71]

[69] *34 TEX ADMIN CODE § 20.285(d).*
[70] *34 TEX ADMIN CODE § 20.206(d).*
[71] *TEX. GOV'T CODE § 2155.067(a).*

The term "proprietary" refers to a product or service that has a distinctive feature or characteristic that is not shared or provided by competing or similar products or services. Because Texas procurement law promotes the use of competitive bidding for purchases, proprietary purchases are subject to enhanced scrutiny.

9.8.1 Competitive or Sole Source

Proprietary purchases may be either sole source or competitive.

- **Sole Source:** The specified product or service is only available for purchase through a single vendor (e.g., manufacturer, publisher, service provider). Examples of sole source proprietary purchases include a back issue of a magazine available from only the publisher and an educational conference available from only the conference sponsor.
- **Competitive:** The specified product or service is available for purchase through more than one vendor (e.g., dealers, distributors, resellers, authorized service providers). Examples of competitive proprietary purchases include brand-specific replacement parts for equipment available through multiple OEM-authorized dealers and software that a software publisher makes available to the public through several resellers.[72]

9.8.2 Proprietary Purchase Justification

Proprietary purchases require a completed PCS Form 02, Proprietary Purchase Justification, in the procurement file. The Proprietary Purchase Justification form must include the following information to document best value to the state:

1. Describe the product or service the agency proposes to purchase and provide a statement regarding the agency's business need and planned use.
2. Explain why the agency specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the agency's goal for the procurement.
3. State the reason that no other competing products or services will satisfy the need of the agency and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected.
4. Specify whether the purchase is sole source or competitive.

[72] *Comptroller's Guide, Proprietary Purchases.*

The PCS Form 02 must be signed by the agency head or a person to whom such signature authority has been properly delegated in the Agency Procurement Plan.

9.8.3 General Procurement Requirements

Proprietary purchases, regardless of whether they are sole source or competitive, are subject to ESBD posting requirements, as well as requirements applicable to SPD delegation, CAT reviews, and QAT reviews.

9.8.4 VetHUB Requirements for Proprietary Procurements

State agencies are required to make a good faith effort to assist Veteran Heroes United in Business (VetHUB) to receive a portion of the total contract value that an agency expects to award in a fiscal year in accordance with statewide VetHUB goals. Proprietary purchases, administrative or client related, are not exempt from this requirement. Any procurement with an expected contract value of $100,000 or more must be reviewed by a VetHUB coordinator to determine whether there will be subcontracting opportunities under the contract. If the VetHUB coordinator determines there are subcontracting opportunities, a subcontracting plan (SP) is required. If a SP is required, the solicitation response must contain a plan to be considered responsive.

9.9 Consulting Services Contracts

Reference: PCS Operating Procedure 576

Agencies are permitted to contract for consulting services pursuant to Texas Government Code Chapter 2254, Subchapter B .

Consulting service means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.[73]

Major consulting services contract means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed $15,000, or $25,000 for an institution of higher education other than a public junior college.[74]

9.9.1 Major Consulting Services Special Procedural Requirements

Texas Government Code Chapter 2254, includes strict procedural requirements for major consulting contracts that if not followed will render such a contract void.[75] A major

[73] *TEX. GOV'T CODE § 2254.021(1).*
[74] *TEX. GOV'T CODE § 2254.021(2).*
[75] *TEX. GOV'T CODE § 2254.034.*

consulting services contract requires a finding of fact issued by the Governor that the services are necessary.[76] Unless an emergency waiver is obtained from the Governor,[77] a major consulting services contract requires a finding of fact issued by the Governor that the services are necessary and cannot be performed by the agency with its own staff. Additional procedural requirements include conflict of interest provisions and restrictions on contracting with former employees.

A state agency may contract with a consultant only if there is a substantial need for the consulting services; and the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.[78] In selecting a consultant, a state agency must base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services. If other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.[79]

9.9.2 Notice of Intent and Finding of Fact

Notice of Intent to enter into a major consulting services contract must be given by the agency to the LBB and the Governor's Budget and Planning Office before entering into such a contract. A contract may not be entered into prior to the issuance of a finding of fact by the Governor, or, in the event of an unforeseen emergency, a limited waiver has been issued by the Governor. An "unforeseen emergency" is a situation that suddenly and unexpectedly causes a state agency to need the services of a private consultant including the issuance of a court order, an actual or imminent natural disaster, and new state and federal regulations.

9.9.3 Solicitation Advertisement

Not later than the 30th day before the date it enters into a major consulting services contract, a state agency must post in the electronic state business daily (ESBD) under Texas Government Code Section 2155.083:

1. An invitation for consultants to provide offers of consulting services.
2. The name of the individual who should be contacted by a consultant that intends to make an offer.

[76] *TEX. GOV'T CODE § 2254.028(a)(3).*
[77] *TEX. GOV'T CODE § 2254.025.*
[78] *TEX. GOV'T CODE § 2254.026.*
[79] *TEX. GOV'T CODE § 2254.027.*

3. The closing date for the receipt of offers.
4. The procedure by which the state agency will award the contract.80

If the services relate to services previously provided by a consultant, the agency must disclose that fact in the invitation for offer. If an agency intends to award the contract to a consultant that previously provided the services, unless a better offer is received, the agency must disclose the intention in the invitation for offer. The invitation for offer will be procured using the RFP procurement method. [81]

9.9.4 Post-Award Requirements

Written notice of award shall be provided to the LBB on a form prescribed by the LBB.[82] no later than the 30th day after entering into a consulting services contract if the amount of the contract, including an amendment, modification, renewal, or extension, exceeds $50,000.

After the contract is awarded, a notification of award must be posted to the ESBD if the contract is expected to exceed $25,000.[83].

Copies of all documents, films, recordings, or reports compiled by the consultant shall be filed with the Texas State Library by the HHSC Records Management Division[84]. The contract manager must email documentation to the HHSC Records Management office at records@hhs.texas.gov.

After the agency's contract with a consultant has ended, the agency must comply with any request from the LBB and the Governor's Budget and Planning Office for copies of all documents, films, recordings, or reports compiled by the consultant under the contract.[85]

9.9.5 Renewal, Amendment, and Extension

A state agency that intends to renew, amend, or extend a major consulting services contract shall comply with Texas Government Code § 2254.028 (notice of intent and finding of fact) and 2254.029 of the (ESBD under Texas Government Code § 2155.083 of the), if the contract after the renewal, amendment, or extension is a major consulting services contract.[86]

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[80] *TEX. GOV'T CODE § 2254.029.*
[81] *TEX. GOV'T CODE § 2254.029.*
[82] *TEX. GOV'T CODE § 2254.0301.*
[83] *TEX. GOV'T CODE § 2155.083(k).*
[84] *TEX. GOV'T CODE § 2254.036(b)*
[85] *TEX. GOV'T CODE § 2254.036(a)*
[86] *TEX. GOV'T CODE § 2254.031.*

A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Texas Government Code § 2254.028 and 2254.029, if the original contract and the renewal contract have a reasonably foreseeable value totaling more than $15,000.[87]

A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Texas Government Code § 2254.028 and 2254.029, if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than $15,000.[88]

9.9.6 Emergency Waiver

The Governor, after receipt of a request complying with Texas Government Code § 2254.025, may grant a limited waiver of the provisions of Texas Government Code Chapter 2254, Subchapter B, for an agency that requires consulting services before compliance with Subchapter B can be completed because of an unforeseen emergency. As soon as possible after the Governor grants a limited waiver, a state agency shall comply with Subchapter B to the extent that the requirements are not superfluous or ineffective because of the waiver. The agency shall include a detailed description of the emergency on which the request for waiver was predicated along with information filed with the Secretary of State for publication in the Texas Register. In Texas Government Code § 2254.025, "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a consultant. The term includes the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is not unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency.

9.9.7 Mixed Contracts

Texas Government Code Chapter 2254, Subchapter B of the applies to a contract that involves both consulting and other types of services, if the primary objective of the contract is the acquisition of consulting services.[89]

[87] *TEX. GOV'T CODE § 2254.031.*
[88] *TEX. GOV'T CODE § 2254.031.*
[89] *TEX. GOV'T CODE § 2254.038.*

9.9.8 Distribution of Consultant Reports

A consulting services contract must include provisions that allow distribution of the consultant report or to post the report on the HHS website or the website of a standing committee of the legislature.

9.10 Request for Proposal (RFP)

Reference: PCS Operating Procedure 571

State agencies are required to purchase goods and services that provide the best value for the state. For a purchase made by RFP, the agency must specify in the solicitation the known factors other than price that the agency will consider in determining which proposal offers the best value for the state. The agency must award the contract to the respondent whose proposal offers the best value for the state, considering price, past vendor performance, vendor experience or demonstrated capability, and any other evaluation factors in the RFP.

PCS Purchasers and Managers are responsible for facilitating the procurement process for RFPs. In order to certify the procurement and award process, PCS Purchasers should function as the primary contact for each step of the process, from solicitation development through contract award.

All agencies, including HHSC and those agencies that HHSC supports regarding purchasing — DSHS, DFPS, and TCCO — must obtain delegation of purchasing authority from the CPA SPD, Procurement Oversight & Delegation (POD) team (for services) or the Open Market Review process (for goods), except for the following procurements:

1. Consulting services.
2. Professional services.
3. Health care services.
4. Information resources technology.
5. Goods or services acquired for the benefit of or on behalf of clients of programs operated by HHSC, DSHS, or DFPS.
6. Procurements specifically authorized or delegated to HHSC, DSHS, or DFPS by statute.
7. Contracting out agency purchasing functions or other administrative/program functions.

8. Goods and services related to construction projects for state hospitals and State Supported Living Centers.
9. Deferred maintenance projects for state hospitals and State Supported Living Centers.
10. Any other procurements for which the contracting agency has been granted procurement authority by statute.

9.11 RFP Construction

Reference: PCS Operating Procedure 571-C

RFPs for construction procurements made under the authority of Texas Government Code Chapter 2156 and Chapter 2269 use an independent RFP template developed specifically for construction procurements.

9.11.1 HHSC Maintenance and Construction (M&C) Division

Construction procurements support the HHSC M&C Division, and can be advertised under both Texas Government Code Chapter 2156 and Chapter 2269. Texas Government Code Chapter 2156 does not include the State of Texas Uniform General Conditions and is generally used for procurements under $100,000.00. Texas Government Code Chapter 2269 includes the State of Texas Uniform General Conditions and is generally for procurements over $100,000.00.

9.11.2 Types of Construction Projects

Construction procurements made under the authority of Texas Government Code Chapter 2156 and Chapter 2269 include:

1. New building and site construction.
2. Renovation of existing structures and site conditions.
3. Deferred maintenance.
4. Repairs to facilities and equipment.
5. Indefinite Delivery Indefinite Quantity (IDIQ) multiple award contracts in various disciplines.

9.12 Request for Qualifications (RFQ)

Reference: PCS Operating Procedure 570

PCS Purchasers and Managers are responsible for facilitating the procurement process for RFQs. To certify the procurement and award process, PCS Purchasers should function as the primary contact for each step of the process, from identification of the need(s) to contract award, and ensure the requested procurement meets the definition of professional services as set out in statute.

9.12.1 Professional Services

The RFQ is the commonly used procurement method to procure professional services. Professional services refer to services that are:

1. Within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing.
2. Provided in connection with the professional employment or practice of a person who is licensed or registered as one of the following: a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state-certified or state-licensed real estate appraiser, or a registered nurse.
3. Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter 1053 of the Occupations Code. [90]

The RFQ method may also be used to procure legal or consulting services, although RFP is far more common. *Reference Section regarding Consulting Services Contracts,* and contingent fee legal services.[91]

9.12.2 Audit Services (Requires SAO Delegation)

Texas Government Code § 321.020 specifies that a state agency, or corporation that is dedicated to the benefit of a state agency, may enter into a contract for audit services only if:

1. The agency or corporation is authorized to contract with a private auditor through a delegation of authority from SAO.
2. The scope of the proposed audit has been submitted to SAO for review and comment.

[90] *TEX. GOV'T CODE § 2254.002(2); see also, Comptroller's Guide, Procurement Method - Professional Services.*
[91] *TEX. GOV'T CODE ch. 2254, subch. C.*

3. The services of the private auditor are procured through a competitive selection process in a manner allowed by law.

The Compliance Division within the HHS Office of Audit and Compliance is the designated central point of contact with the SAO for obtaining authority to procure audit services. Program areas must coordinate with the Compliance Division to obtain a delegation of authority to procure audit services prior to contracting for the audit services.

The RFP method may also be used to procure audit services, although using an RFQ is the preferred method.

9.13 Drafting the Solicitation

A solicitation will be required for a competitive procurement. Drafting of the solicitation begins with program development of specifications or scope of work. The process involves collaboration between the program area, PCS, Budget, IT, System Contracting, CQC, and other key stakeholders. It is imperative the solicitation is written in a way that attracts responses that meet the program area's business need. Examples of solicitation templates are available in the CAPPS Financials Template Library.

9.14 Specification Drafting

Clear, concise, detailed specification drafting is very important for all solicitations. Lack of clarity can lead to non-responsive results as well as other issues.

All participants involved in the procurement process must ensure that specifications provide all potential respondents an equal and fair opportunity to submit a proposal for evaluation and are not intended to favor any respondent.

A specification is a description of a product or service the agency seeks to procure and is also what the vendor must offer to be considered for contract award. The most common types of specifications used in government procurements are:

1. Performance-based.
2. Design-based.
3. Mixed (i.e., a comingling of both performance- and design-based specifications).

9.14.1 Performance-based Specifications

Performance-based specifications focus on outcomes or results rather than the process by which the products and services are produced. Respondents bear the burden of choosing the approach that will be used to accomplish the agency requirement. Performance-based

specifications allow respondents to bring their own expertise, creativity, and resources to satisfy the agency requirement. Program staff must ensure that performance-based specifications are reasonable and measurable.

9.14.2 Design-based Specifications

Design-based specifications focus on how the vendor must perform the service or how the product is made rather than what the product or service does. Respondents have very little discretion as to the methods or detailed processes to be used. Program staff must ensure that processes are in place to properly inspect and test for compliance with the specifications.

9.14.3 Descriptive Specifications — Referenced Brand or Equivalent

Descriptive specifications (referenced brand or equivalent) for products must provide those principal physical, functional, or other characteristics that are essential to the minimum business needs while providing open and competitive bidding. The specifications should not include minimum or maximum restrictive dimensions, weights, materials, or other characteristics that are unique to one brand name or would eliminate competition for other products. As a best practice, a minimum of two known acceptable manufacturer/brand names and model numbers that are currently being manufactured should be referenced as “or equal.”

The solicitation should include a clause citing the purpose for the references as “or equal” and the submittal requirements for evaluation. For example, a solicitation clause for a referenced brand is as follows:

“Catalogs, brand names, or manufacturer’s references are descriptive only and indicate type and quality desired. Bids on brands of like nature and quality will be considered. If proposing other than the referenced brands/model number, Bidder must provide the manufacturer, brand, or trade name, product number, and a complete description of the product offered and include it with the bid.”

The evaluation of “or equal” offers shall be given full consideration and offers meeting the specification shall not be rejected for minor differences in design, construction, or features from the reference models that do not affect the suitability of the product for its intended use.

9.14.4 Restrictive Specifications

Restrictive specifications have the potential to limit competition. Program staff must be careful not to inadvertently customize a product or service when drafting specifications.

As an example, consider an agency purchase of 4-inch resealable bags when the agency's business need could be satisfied with the industry standard of a 5-inch resealable bag. In this scenario, the agency requirement of a non-standard bag size will reduce the eligible vendor pool to only those vendors capable of providing the customization, as well as result in increased cost to the state due to the customization.

Regardless of whether the specification is performance-based, design-based, or mixed, restrictive specifications that result in proprietary procurements are not permitted unless the procedures for Proprietary Purchases are followed. See PCS Operating Procedure 401.

Again, restrictive descriptive characteristics that are essential to the intended use may be included only if all the manufacturer/brands referenced in the solicitation can qualify.

9.15 Entering a Requisition for an RFx or IFB Procurement

To submit a requisition for an RFx or IFB procurement, the following documents must be attached to the requisition. Requisitions entered that fail to include completed documents as detailed below are subject to being denied by PCS and customer organization leadership being notified. The procurement process will not begin, and timelines will not be developed, without the completion of this documentation.

9.15.1 Completed Scope/Statement of Work

Program areas can fulfill this requirement by submitting a draft RFx or IFB in the current template with the SOW section completed. The requisition may be denied if the SOW does not contain all the required components as detailed in the applicable RFx or IFB template.

9.15.2 Accurate Request Document

Answers to the CAPPS Financials Request Document Wizard are used to automatically complete the request document, which accompanies the requisition. If answers are incorrect or incomplete, the requisition must be completely denied, and it must re-route through the approval process.

9.15.3 Contract Value

Contract value is the most common mistake on the request document and always requires re-routing for approvals because approvals vary at different contract values. Remember, the value of the contract is the value of the initial term plus all renewals. (Example: If the initial contract term is one-year at $100,000, plus three (3) one-year renewals, the contract value is $400,000.)

9.15.4 Determination for RFx

PCS Form 438-F, where applicable, must be completed to determine whether the resulting award will operate under a subrecipient or contractor relationship. This is required if you are one of the customer organizations designated by PCS that requests both procurements and grants. *Reference Section on Determination of Subrecipient, Recipient, or Contractor Relationship Process.*

9.15.5 Procurement Risk Assessment

The Procurement Risk Assessment (PCS Form 148) must be completed and attached to the requisition. For RFx (i.e., RFP, RFO, RFA and RFQ) procurements, the form is reviewed and approved with all attendees at the kick-off meeting. For IFBs, program staff and PCS Purchaser must discuss and approve the form. Once approved, the PCS Purchaser must incorporate the form into the procurement file.

10. Non-Competitive Contracts, Agreements, and Open Enrollments

10.1 Interagency Contracts—The Interagency Cooperation Act

The Interagency Cooperation Act, Texas Government Code Chapter 771 provides that a state agency may agree to contract with another state agency for the provision of necessary and authorized services and resources. An interagency contract (IAC) entered into pursuant to Chapter 771 must specify:

1. The kind and number of services or resources to be provided.
2. The basis for computing reimbursable costs.
3. The maximum cost during the term of the contract.

All IACs must be approved by the administrator of each agency that is a party to the contract.

HHS agencies contract with many other state agencies to carry out the duties of the HHS programs. In addition, HHSC itself relies on several other state agencies to procure services either as required by statute, such as telephone and certain information technology services, or because in many cases it results in significant cost savings. IACs are based on reimbursable costs and do not include additional costs or mark-ups for profit. IACs may include memorandums of agreement, memorandums of understanding, and letter agreements.

There are special prohibitions related to IACs with institutions of higher education. Pursuant to Section 51.955 of the Texas Education Code, a state agency that expends appropriated funds may not enter into a research contract with an institution of higher education if the contract includes a provision precluding public disclosure of any final data generated or produced in the course of executing the contract, unless the agency reasonably determines that the premature disclosure of such data would adversely affect public safety, the protection of intellectual property rights of the institution of higher education, publication rights in professional scientific publication, or valuable confidential information of the institution of higher education or a third party.

10.1.1 Interlocal Contracts — the Interlocal Cooperation Act

Interlocal cooperation contracts are agreements between a state agency and a local governmental entity or between two or more local governmental entities, such as cities or counties. Such contracts are authorized and regulated by the Interlocal Cooperation Act, Texas Government Code Chapter 791 and generally relate to the provision of governmental functions and services. The statute should always be consulted for specific authority and requirements. However, generally, an interlocal contract must:

1. Be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed $100,000 without requiring the approval of the governing body.
2. State the purpose, terms, rights, and duties of the contracting parties.
3. Specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

4. In addition, an interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.[92]

10.1.2 Memorandum of Agreement (MOA) and Memorandum of Understanding (MOU)

A written document that represents the agreement of the parties regarding the subject matter of the document; it does not usually involve the transfer of funds in exchange for services but may document the transfer of funds required by statute. MOUs and MOAs are sometimes directed by statute.

10.1.3 Processing a Non-Competitive Contract or Agreement

1. Once the program identifies a need using one of the non-competitive methods listed above, the contract manager will download the applicable contract template and Uniform Terms and Conditions from the CAPPS Financials Contract Template Library.
2. The contract manager will contact System Contracting for an attorney assignment.
3. The assigned attorney and the contract manager will work on the applicable contract/agreement.
4. The contract manager will create a procurement number in CAPPS Financials and create the contract record.
5. If the contract has funds associated, the contract manager will enter a CAPPS Financials requisition with the total contract value in the request document and the funds associated with the fiscal year on the requisition line:
6. If the contract does not have funds associated, no requisition is required.
7. The contract manager will create the contract packet that includes the signature page, any attachments (if applicable), the required terms and conditions and any supplemental or special conditions (if applicable), PCS Form 515, and the requisition and request document, if funds are associated.
8. The contract manager will enter the contract elements into the contract record and create a document:

[92] *TEX. GOV'T CODE § 791.011(d), (e).*

9. If the agreement has funds associated, the contract packet must be routed for CAPPS approvals. The contract manager will load the applicable approvers into the approval path in CAPPS Financials and submit.
10. If the agreement does not have funds associated, the document will auto approve.
11. Once the documents are approved or auto approved, the contract manager will send the contract packet to HHSC PCS Procurement QA to route in DocuSign for execution.
12. Once executed, the contract manager will finalize the contract record in CAPPS Financials, complete any necessary contract elements, put the contract in approved status, and save. (This process will automatically send the record to SCOR).
13. The contract manager will load the executed contract and any contract documents in SCOR.

10.2 Open Enrollment Contracts

Open enrollment is a non-competitive method used for the acquisition of services when the eligibility of potential providers includes a common set of qualifying criteria and fixed terms and conditions (including fixed compensation rates). Open enrollments are not procurements, so there are no restrictions on discussions with applicants prior or during the posting period. However, there must be consistency in responses provided. All eligible applicants — anyone who meets all the eligibility requirements and accepts all terms and conditions (including pricing/rates) — that can provide the required services in the requested locations will receive a contract.

10.2.1 How to Determine the Use of Open Enrollment Contracts

In determining whether to use open enrollment as a contracting method, the following conditions must exist:

1. Services are readily available and may be needed throughout the state or in a specified HHS region.
2. Services are those for which providers can be required to meet defined, accepted standards (including state licensure, accreditation, and/or certification) or specific eligibility criteria.
3. A standard payment rate will be established for all providers for the same services.

10.2.2 Developing the Enrollment Document/Scope of Work

The contract manager is responsible for taking the lead in developing the open enrollment document/scope of work and ensuring that the following criteria are included in the open enrollment document:

1. HHS agency/program is the sole point of contact for the open enrollment while it is posted. It also receives and screens all applications for completeness and ability to contract.
2. Provider/Entity Eligibility Requirements are criteria the applicant must meet to qualify to receive a contract. This will include vendor screening checks as well as applicable experience, license, accreditation, certification, and other key requirements to provide the service requested.
3. The fixed rates stated in the enrollment for the services provided can be statewide or by region. The rate can be linked to a program site or linked to Medicaid/Medicare rates.
4. A service location is where the applicant provides services throughout the state or a specific region. If an open enrollment seeks service providers at multiple locations, and applicants are permitted to select what locations they wish to service, and if an applicant applies to a specific location, that is the only location at which the applicant can provide services.
5. An allocation method for multiple contractors in one area. The enrollment must state how service determination will be made if an area has multiple providers.

10.2.3 Processing an Open Enrollment

The contract manager or HHS agency program contact will work with the System Contracting attorney when drafting the open enrollment documents, using the Open Enrollment template approved by System Contracting as well as System Contracting-approved contract templates. Once the open enrollment documents are approved by the assigned attorney and program, the contract manager will create an open enrollment procurement number in CAPPS Financials.

The contract manager will post the open enrollment to the HHS website, Open Enrollment Opportunities page, and may post the enrollment on their program website linking to the HHS Open Enrollment Opportunities website page, if necessary.

Amendments to the posted open enrollment, as determined by the contract manager or HHS agency program staff, must be submitted to System Contracting for attorney

assignment. Typically, amendments will require posting a new open enrollment. Depending on the circumstances, some amendments may be made to posted open enrollments. However, if there is an amendment, it must be incorporated into all existing contracts that were issued under the open enrollment that is being amended. The contract manager or HHS agency program staff must ensure that the same qualification, requirements, rates, terms, and conditions apply to all contractors. Individual consideration must be given to each amendment to determine the course of action to be taken (e.g., amending or reposting) and System Contracting must be consulted.

To post or modify an approved posting on the HHS Open Enrollment Opportunities website page, program personnel should complete the Web Services Request form. The contract manager will enter the required information including the program director who approved the posting. Web Services will need 2-3 business days to complete the posting request.

Enrollments for DFPS will be posted to the ESBD as well as the HHS Open Enrollment Opportunities website page by a purchaser. Requests for this action should be submitted to Services team management.

Once the enrollment is posted and applications are received by the contract manager or HHS agency program, submitted documentation will be reviewed for completeness by the contract manager or HHS agency program.

Applications will be screened and a determination of the applicant's capacity to perform will be made by the contract manager or HHS agency program. The screening of the document should include all forms, attachments, or documentation of eligibility requested as well as procurement checks as listed in the enrollment document.

If the application is missing the required documentation requested in the enrollment, the HHS agency program may contact the applicant to complete the application.

Once the enrollment contact has screened the application and determined the applicant is eligible, the contract will be drafted.

To receive a contract number and for the contract to be entered in CAPPS Financials, the program contract manager will:

1. Locate the procurement number entered in CAPPS Financials and click the create contract button.
2. Populate the contract data in the contract entry page and create a document.
3. Confirm that the document automatically approves.
4. The contract manager submits the contract packet. It includes the signature page, any attachments, if applicable, the term and conditions and any special conditions, if

applicable, PCS Form 515 to HHSC Procurement QA for routing in DocuSign, or the contract manager can submit it electronically to the applicant in accordance with the signature authority thresholds set out in C-046.

Once the contract is executed, the contract manager finalizes the contract record in CAPPS Financials, completes any necessary contract elements, puts the contract in approved status and saves. (This will automatically send the record to SCOR).

The loads the executed contract and any contract documents into SCOR.

11. Grants

In contrast to the procurement methods, a Request for Applications (RFA) is not a sanctioned method for procuring goods and services from a vendor. An agency issues an RFA when it, as the grantor, is responsible for awarding grant funds to other entities, such as other state agencies, local governments, nonprofit organizations, or private entities.[93]

There may be instances where state or federal grant funding can be used to fund multiple programs that provide different services for varying target populations or service areas. Although several programs can be supported via available grant funding, RFA documents are intended to solicit applications for singular programs. An RFA can encompass multiple eligible activities or costs under the same program that allow for variances in the applicant's project approach or methodology. Although multiple program RFAs may have the same funding source or authority, encouraging applicants to submit one application for each program under separate RFAs provides evaluators and final decision-makers alike the opportunity to review the merits and cost-effectiveness of that project alone against the program requirements. This eliminates potential confusion in determining an applicant's proposed cost and approach to multiple programs that could be contained within the same RFA.

***Note**: PCS will make the final determination as to whether applications for multiple programs may be solicited under a single RFA. Until such a determination has been requested and provided by the PCS Grants Director in writing, HHS program staff should operate under the assumption that RFAs will be used to solicit applications for singular programs when developing documents prior to PCS involvement.*

Grant solicitations and announcements are posted on the PCS Grants Request for Applications (RFA) Webpage and on the State of Texas Department of Information Resources' Texas.gov eGrants website.

[93] *Comptroller's Guide, Request for Applications.*

11.1 Request for Applications (RFA)

Reference: PCS Operating Procedure 572

RFAs are a type of solicitation method by which an HHS agency awards grant funds to other entities such as other state agencies, local governments, nonprofit organizations, or private entities. An RFA announces that grant funding is available and allows organizations to present applications.

11.1.1 Outline

An RFA must include the grant objective, guidelines, any limitations on spending or eligibility, performance measures, the evaluation criteria, and other information needed to apply. The RFA will typically also outline:

1. What type of applicants are eligible.
2. Requirements in accordance with the grant or notice of award.
3. What the expectations are.
4. How applications are submitted and reviewed.

PCS Form 562, RFA Development Tool, is intended for use as an optional planning tool to provide program areas with the prerequisite information needed to complete a draft RFA. Article numbers, section numbers, and titles correspond with the RFA template. PCS Form 562 only includes information program areas need to provide to PCS to begin RFA development. The RFA template also contains narrative prompts and may be developed without the use of PCS Form 562.

11.1.2 Remedies

Remedies may include:

1. Costs disallowance.
2. Increased monitoring.
3. Corrective action plans.
4. Placing special conditions on awards or precluding the recipient from obtaining future awards for a specified period.
5. Grant termination.

11.1.3 Uniform Grant Guidance (UGG) and Texas Grant Management Standards (TxGMS)

When issuing an RFA, Title 2, Part 200 of the Code of Federal Regulations (2 CFR Part 200), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, also known as the UGG and the Texas Comptroller of Public Accounts' Texas Grant Management Standards (TxGMS) must be considered to the extent applicable.

11.2 Determination of Subrecipient, Recipient, or Contractor Relationship Process

Reference: PCS Policy 438

The determination of a subrecipient, recipient, or contractor relationship is made during the planning phase for an RFA, RFP, or RFQ.

11.2.1 Stakeholders

The determination process involves various stakeholders that may include:

1. Customer organization contract staff.
2. Customer organization program staff.
3. OCC Legal Policy.
4. PCS, with the final determination made by the PCS Grants Division.

11.2.2 Compliance

HHS agencies must comply with UGG and TxGMS (or its successor), as applicable, when determining the correct solicitation method and implementation.

PCS Form 438-F must be completed to help stakeholders in their assessment of the standards, principles, and requirements that will govern the relationship. PCS Form 438-F serves as a tool to assist in the final determination of the relationship. For DFPS procurements, the DFPS 438 form will be used in place of PCS Form 438-F.

The approved PCS Form 438-F is uploaded into SCOR. Requests for 438 determinations should be sent to PCS_Grants@hhsc.state.tx.us.

Table 11. Relationship Characteristics

Contractor	Subrecipient or Recipient
Normally operates in a competitive environment	Determines who is eligible to receive program assistance

Contractor	Subrecipient or Recipient
Provides similar goods and services to many different purchasers	Has responsibility for programmatic decision making
Provides goods and services that are ancillary to the operation of the program	Federal or state funds are used to carry out the program for public purpose
Provides goods and services within the normal business operations	Performance is measured against federal or state program objectives
Is not subject to federal or state program compliance requirements	Is responsible for adhering to federal or state program compliance requirements

Table 12. Definitions

Federal: Definitions from the Uniform Grant Guidance (UGG)	State: Definitions from the Texas Grant Management Standards (TxGMS)
Contract: A legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract when the substance of the transaction meets the definition of a federal award or subaward (see § 200.92 Subaward). (2 CFR § 200.22)	**Contract:** The legal instrument used to enter into a procurement relationship with a contractor (e.g., private sector vendor, public sector entity) to acquire goods and services that are needed to carry out the project or program under a state grant. (TxGMS, Appendix 2, p. 52)
Contractor: An entity that receives a contract as defined in § 200.22 Contract. (2 CFR § 200.23)	**Contractor:** An entity that receives a contract [as defined in TxGMS]. (TxGMS, Appendix 2, p. 52)
Federal award: Has the meaning, depending on the context, in either paragraph (a) or (b) of this section: (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability. The instrument sets forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of § 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.	**Grant:** An expenditure of funds from the State Treasury to a person or entity that does not directly provide consideration or a benefit to the State in exchange for the funds. The term "grant" may also refer to a legally enforceable document tied to such an expenditure. (TxGMS, key concepts – State Agency Grants, p. 4)

Federal: Definitions from the Uniform Grant Guidance (UGG)	State: Definitions from the Texas Grant Management Standards (TxGMS)
Federal award does not include other contracts that a federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs). See also, definitions of Federal financial assistance, grant agreement, and cooperative agreement. (2 CFR § 200.38)	
Recipient: A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients. (2 CFR § 200.86)	**Grantee:** A non-state entity that receives an award directly from a state awarding agency to carry out an activity under a state program. The term grantee does not include subgrantees. See also Non-state Entity (TxGMS, Appendix 2, p. 54)
Subrecipient: A non-federal entity that receives a sub award from a pass-through entity to carry out part of a federal program. It does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. (2 CFR § 200.93)	**Subgrantee:** A non-state entity that receives a subaward from a pass-through entity to carry out part of a state program but does not include an individual that is a beneficiary of such a program. A sub-grantee may also be a grantee of other state awards directly from a state awarding agency. A sub-grantee may also be referred to as a subrecipient. (TxGMS, Appendix 2, p. 56)

Table 13. Subrecipient, Recipient, or Contractor Determination

Federal Award	State Award	Federal and State
Federal Award to HHS Agency TO EITHER Subrecipient OR Contractor Reference: UGG (principles)	State General Revenue Funds TO EITHER Recipient OR Contractor Reference: TxGMS (principles)	State General Revenue and Federal Award to HHS Agency TO EITHER Subrecipient OR Contractor Reference: UGG (principles)

11.2.3 Program Responsibilities

DSHS, DFPS, and HHSC's Grant-Making Areas DSHS, DFPS, and HHSC's program areas that issues grants are responsible for the following steps when determining the contractor, subrecipient or recipient relationship status:

1. Coordinate with stakeholders to determine the relationship between the state and entity.

2. Complete the PCS Form 438-F.
3. Submit the completed subrecipient/contractor determination packet via email to the PCS Grants inbox at PCS_grants@hhsc.state.tx.us. The packet contents must include:
4. PCS Form 438-F.
5. Statement of Work (SOW).
6. Funding information:
7. If the funding is federal or both state and federal, include the Federal Grant Application or Notice of Grant Award (NOGA).
8. If the funding is state, type the citation of funding such as Appropriations Act Rider or authorizing statute in the Comments field.
9. PCS Grants staff will coordinate with the requester to obtain additional clarifications or requests for more information to make a final determination if needed. PCS Grants has 10 business days to make a determination once receiving a complete determination packet.
10. After the PCS Grants team designates the final determination and returns the completed PCS Form 438-F to the program area, the Program contract manager uploads it into SCOR within 10 business days from the contract begin date.
11. If the program requests a re-determination, they may resubmit PCS Form 438-F with additional supporting documentation for reconsideration within five business days from the date of the decision. PCS will process the request for a re-evaluation within three business days and consult with PCS and OCC Legal policy, as necessary. The final determination shall remain consistent throughout the procurement and contract lifecycle.

11.3 Non-Competitive Direct Grant Award

Reference: PCS Operating Procedure 437

It is HHSC policy to maximize competition for grants to the greatest extent practicable. As such, HHS PCS promotes the use of the RFA process to solicit the widest eligible applicant pool possible to compete openly and fairly for available grant funding.

PCS Form 437-F, Non-Competitive Direct Grant Award Justification, must be completed by Program when requesting to award discretionary grant funding to an eligible grantee or subrecipient without using a competitive process. Program must demonstrate that at least one of the following criteria applies:

1. State agencies and units of local governments.
2. Legislative/regulatory directive.
3. Emergency award.
4. Sole provider.

As soon as practicable after determining a non-competitive direct grant award may be appropriate, HHSC Program staff shall complete the PCS Form 437-F and route to their respective Chief for signature; for DSHS and DFPS, the form must be signed by individuals identified as designees authorized to approve special purchases found in the HHS Special Purchases Authorized Designees document. Once signed by Program, the completed PCS Form 437-F will be reviewed by the PCS Associate Commissioner to determine whether a non-competitive direct grant award is authorized.

11.3.1 Grantee Single Audit Requirement

Grantees who spend $1,000,000 or more in federal awards or $1,000,000 or more in state awards during that entity's fiscal year must have a single audit performed by an independent, third-party auditor. A copy of the single audit report is submitted to the CQC Single Audit Unit (SAU) and uploaded into the SCOR Contractor module, Single Audit submodule.

As established in HHS Circular C-041, Grantee Contractors Guidelines to Re-procure Single Audit Services, grantees required to obtain a single audit must re-procure single audit services every six years. The contract manager must verify the recipient or subrecipient is compliant with this requirement through the use of a tracking system or attestation of compliance from the contractor.

A grantee not meeting the $1,000,000 threshold is not required to undergo a single audit but must provide financial statements to the SAU and abide by UGG on cost principles and administration.

11.3.2 Single Audit Desk Reviews

The SAU will conduct a desk review of the single audit report. Findings included in the single audit report that impact HHS programs should be addressed by the HHS division within the requested timeframe and should ensure the grantee takes appropriate and timely action on all single audit findings.

The SAU reviews the single audit report via a desk review and forwards the report to the PCS SCOR administrator for upload to the single audit submodule in SCOR.

If the single audit report does not contain any findings that impact HHS, SAU notifies the grantee in writing of the results of the desk review.

If the single audit report contains findings that impact HHS:

SAU forwards the Funding Agency Notification Letter and relevant information to the HHS program's point of contact and Fiscal Monitoring Unit(s) for review and approval of any corrective action plan included in the report.

HHS program management response should be provided to SAU within 15 business days from the date SAU provided the notification letter to program and will be uploaded into the single audit submodule in SCOR.

SAU reviews the management response provided by the program and notifies the grantee in writing of the results of the desk review and whether the corrective action plan included in the single audit report is accepted or is subject to further evaluation.

12. Solicitation Review

12.1 System Contracting

System Contracting attorneys are involved primarily, but not exclusively, in solicitations assigned to PCS's complex and IT Purchasing teams purchasing team. When an attorney is assigned to a solicitation, the attorney is involved throughout the solicitation and contract development processes. (*Reference Section regarding System Contracting).*

To request a System Contracting attorney assignment, all required information must be provided, including drafts of documents for which review is requested. System Contracting attorney assignment requests should be submitted through the OCC System Contracting Intake Portal.

12.2 Compliance and Quality Control Review (CQC)

All solicitations and addendums for RFPs, RFAs, RFOs, and RFQs must be submitted to HHS CQC for review and approval prior to submission to the CAT, if CAT review is applicable, and prior to posting.

Evaluation tool's scored criteria and subcriteria and score sheets will be reviewed for accuracy, relevance, reasonableness, as well as other factors that ensure an effective solicitation.

IFBs may be subject to review by HHS CQC prior to posting if specifically requested by the Deputy Executive Commissioner of PCS, Associate Commissioners of PCS, Deputy Executive Commissioner of CQC, or Associate Commissioner of CQC.

Bids are subject to spot checks prior to award at the discretion of the Deputy Executive Commissioner of PCS, Associate Commissioner of PCS, Deputy Associate Commissioner of CQC, or Associate Commissioner of CQC.

12.3 Contract Advisory Team (CAT) Review

CAT assists state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have an expected value of at least $5 million dollars during the full term of the contract, including renewal periods. RFPs, RFAs, RFOs, and RFQs must be reviewed and approved by CQC prior to submission to CAT. (*Reference Section regarding CQC Review of Solicitations and Evaluations).*

By statute, state agencies must comply with CAT recommendations or submit to CAT a written explanation why the recommendation is not applicable. *(Reference Texas Government Code § 2262.101; Comptroller's Guide, CAT – Review of Solicitations with a Value of $5 Million or More; and applicable CPA administrative rules.)*

Generally, grant agreements are not subject to a CAT review when the recipients eligible for award are governmental entities or nonprofit business entities. However, upon request, CAT will review grant agreements where the recipients eligible for award are for-profit business entities. Sole federally funded grants do not require review by CAT.

1. PCS is the point of contact for the CAT review process and will work with the HHS agency to consult with CAT.
2. PCS will work with the HHS agency to comply with CAT recommendations or provide CAT a written explanation as to why a recommendation is not applicable to the procurement under review. CQC and System Contracting review agency responses to CAT recommendations. Written explanations as to why a recommendation is not applicable to the procurement under review must be reviewed and approved by CQC prior to submission back to CAT.
3. If substantial changes are made to the initial solicitation documents submitted for CAT review, PCS must resubmit the solicitation documents for CAT review.
4. PCS will post the solicitation after receipt of CAT approval notification and all other necessary internal and external approvals.

5. PCS will maintain the HHS agency's responses to the CAT recommendations within the procurement file.

12.4 Quality Assurance Team (QAT) Review — Major Information Resources Projects (MIRP)

The Quality Assurance Team (QAT) is an interagency working group comprised of members from the LBB, DIR, and CPA, with SAO participating as an advisory member.

QAT is legislatively tasked with the review, approval, and oversight of MIRPs. All state agencies are subject to QAT oversight, except for institutions of higher education and self-directed, semi-independent state agencies.

Submission of required documents and notices to QAT are handled by the Federal and State Reporting Coordination department within the HHS Information Technology.

Program staff, contract managers, and purchasers should work closely with the Federal State Coordination team to ensure all requirements are met and appropriately documented in the contract and procurement file.

The Federal and State Reporting Coordination department may be contacted by email: IT_FederalStateCoordination@hhsc.state.tx.us.

12.4.1 Definition of a MIRP[94]

A MIRP is defined as:

Any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed $5 million and that:

1. Requires one year or longer to reach operations status.
2. Involves more than one state agency.
3. Substantially alters work methods of state agency personnel or the delivery of services to clients.
4. Any information resources technology project designated by the legislature in the GAA as a MIRP.

[94] *More information is available on the DIR Website.*

5. Any information resources technology project of a state agency designated for additional monitoring under Texas Government Code § 2261.258 (a)(1) if the development costs for the project exceed $5 million.[95]

12.4.2 General Requirements: MIRP

Procurements for MIRPs must be reviewed and approved by QAT at various stages of the procurement and contracting cycle. Some of the steps required to be followed for a MIRP include:

1. Texas Project Delivery Framework documents are required to be filed with QAT for each MIRP before the project can be initiated.[96]
2. A project plan must be developed and filed with QAT before HHS spends more than 10% of allocated funds for the project.[97]
3. An acquisition plan is required to be filed with QAT for MIRPs that involve a procurement with a value of at least $10 million.[98]
4. Before issuing a solicitation for a MIRP with a contract value of at least $10 million, HHS must develop a procurement plan consistent with any acquisition plan provided in the Comptroller's Guide, with anticipated service levels and performance standards for each contractor and a method to monitor changes to the scope of each contract.[99]
5. HHS is required to notify QAT when it advertises a procurement for a MIRP. The notification is required to include the requisition number of the solicitation.[100]
6. Prior to negotiating a MIRP contract with a value of at least $10 million, HHS must submit the draft contract containing proposed terms to QAT.[101]
7. After the final negotiated terms of a MIRP contract with a value of at least $10 million are developed, HHS must submit the final negotiated, unsigned contract to QAT. QAT will review and provide recommendations. HHS is required to comply with

[95] *TEX. GOV'T CODE § 2054.003(10).*
[96] *TEX. GOV'T CODE § 2054.158(b)(2), 2054.303.*
[97] *TEX. GOV'T CODE § 2054.304.*
[98] *TEX. GOV'T CODE § 2054.305.*
[99] *TEX. GOV'T CODE § 2054.305.*
[100] *GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.02(b)(2).*
[101] *TEX. GOV'T CODE § 2054.160(a)(1) (MIRP with value of at least $10 million); see also, GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.01(c) (MIRP with value exceeding $10 million).*

the recommendations or submit a written explanation to QAT why the recommendation is not applicable to the contract at issue.[102]

8. Within 10 business days of contract award of a MIRP with a value of at least $10 million, HHS must provide notice of the completed contract to QAT.[103]

12.4.3 Amending or Canceling MIRP Contracts

Additional notifications are required before amending a contract for MIRPs including notifications to the Governor, Lieutenant Governor, Speaker of the Texas House of Representatives, presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations, and the QAT if: (i) the total value of the amended contract exceeds or will exceed the initial contract value by 10% or more; or (ii) the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables. In addition, if such amendments are being made, HHS must provide a justification for the amendment to the QAT, as well as a copy of the final version of the amendment, including all appendices and attachments.[104] See also, QAT requirements related to canceled contracts and the issuance of new solicitations for identical or similar goods and/or services for the development of the same project.[105]

Before canceling or continuing an existing MIRP contract subject to QAT monitoring that is more than 50% over budget or over schedule, HHS must conduct a cost-benefit analysis to compare canceling or continuing the contract. The QAT must approve the cost-benefit analysis for the project to continue.[106]

The QAT may waive certain review requirements.[107] Any waiver received from the QAT should be saved in the contract file.

12.4.4 Assignment

Texas Government Code § 2262.056 prohibits vendors from assigning the vendor's rights under a services contract to a third party without approval by the HHS System Agency. In addition, a proposal to transfer by assignment contract responsibilities if the contract is an MIRP as defined under Texas Government Code § 2054.003, that exceeds $10 million for

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[102] *TEX. GOV'T CODE §§ 2054.158(b)(4), 2054.160(a)(2), (b) (MIRP with value of at least $10 million); see also, GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.01(c) (MIRP with value exceeding $10 million).*
[103] *GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.02(b)(3).*
[104] *TEX. GOV'T CODE §§ 2054.1181(j), 2054.160(c), (d) (MIRPs with value of at least $10 million); see also, GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.01(d)-(f).*
[105] *GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.01(h).*
[106] *GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 17.09(e).*
[107] *GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.01(h).*

services or involves storing, receiving, processing, transmitting, disposing of, or accessing sensitive personal information in a foreign country requires approval by the HHS Executive Commissioner or other similar agency administrator or designee. Assignment of such a contract is not valid and no appropriated funds can be used for contract payments, unless notice of the assignment has been provided to the LBB and QAT at least 14 days prior to the date of approval, including a contract signed by the assignor or proposed assignee but not signed by HHS.

12.5 CQC Review of Solicitations and Evaluations

It is the policy of PCS that all RFPs, RFAs, RFOs, and RFQs be submitted to CQC for review and approval prior to submission to the Contract Advisory Team (CAT) and prior to posting the solicitation or addenda related to the solicitation; that all solicitations with scored evaluations be submitted to CQC Financial Analysts for review and validation of the proposed scored criteria, evaluator score sheets, and final evaluation tool; and that the compilation and final scoring for solicitations with scored evaluations be completed by CQC Financial Analysts.

12.6 Solicitation Advertisement

PCS Operating Procedure 537

Solicitations for procurements with a contract that have a maximum potential contract value of more than $25,000 (including renewal periods) are posted to the ESBD for 14 calendar days or more, in accordance with Texas Government Code, Section 2155.083. A contract or procurement award made by a state agency that violates the applicable minimum time for posting required by Section 2155.083, Subsections (h) and (i) is void. Major consulting services contracts must also be posted to the ESBD.

RFAs are announced on Texas.gov's eGrants web page and posted to HHS's Grants RFA web page generally for no less than 30 calendar days and no more than 60 calendar days. TxGMS discourages the use of ESBD for announcing grant opportunities. Program may also submit PCS Form 127, Potential Applicant Notification List, to PCS identifying potential applicants to be notified of the RFA posting. Potential applicants may include current grantees, previous applicants, or other interested parties including associations and related programmatic mailing lists.

12.7 Vendor Conference

A vendor conference is a structured, face-to-face meeting with potential respondents to clarify what is being purchased, to further explain PCS's procurement process, and to

answer questions related to the requirements in the solicitation packet. The purpose of the conference is to provide respondents with additional information or clarifications that may be helpful in formulating their responses.

A vendor conference is strongly recommended if the solicitation requires a Subcontracting Plan, is high dollar, or complex. Otherwise, a vendor conference is optional and the decision to hold one is at the discretion of the program/division/contract manager and PCS Purchaser.

The timeframe to obtain the service should be a consideration when deciding whether to include a vendor conference in the procurement process. A vendor conference should be scheduled in the middle of the open solicitation period to allow respondents time to review the questions and answers posted on the ESBD and develop their proposal accordingly.

Vendor Selection

13. Vendor Selection

13.1 Bid Room

Reference: PCS Operating Procedure 210

PCS coordinates the handling of informal and formal solicitations. Upon receipt by PCS, sealed responses must be marked with a date and time stamp directly on the package. Responses remain sealed and kept in a secure place until the solicitation opening date. Responses received by email are treated as sealed response documents and kept secure until the response due date and time. Electronic submissions are submitted to the PCS Bid mailbox or the online bid room system. A copy of the email received with the response documents attached must reflect the date and time of receipt. All responses received are tracked by logging receipt information into the Response Log.

13.1.1 Bid Room Roles and Responsibilities

1. Bid Room Coordinator receives notification of posted event from purchaser, ensures responses are received on or before the due date and time designed in the solicitation, time stamps the packages, and indicates how many packages were received from the vendor. Electronic submissions are submitted to the PCS Bid mailbox or via the online bid room system. The network email server time stamp is the official timepiece that determines receipt of responses. Response information is entered in the Response Log. The coordinator keeps responses secured until the solicitation due date and time. At the due date and time, the coordinator provides original responses and a copy of the Response Log to the Purchaser.
2. PCS Purchaser, upon posting of solicitation, notifies Bid Room Coordinator of the bid opening. Notification includes an event number, due date, and time of event, as well as the specified format for responses. Purchasers may not have bids submitted to their own email address. The Purchaser receives responses provided by the Bid Room Coordinator, keeps a copy of the Response Log in the procurement file, and notifies the Bid Room Coordinator of any canceled solicitations.
3. Vendor submits responses via hand delivery, by mail/courier, PCS bid room mailbox, or the Online Bid Room System.

13.1.2 Online Bid Room System

The HHS Online Bid Room is a bid room database for vendors to submit responses to formal and informal solicitations. The HHS Online Bid Room can be used for formal IFB,

RFA, RFO, RFP, RFQIT, RFQ, and SOW solicitations. Visit the Online Bid Room website for more information.

13.2 Screening Responses: Bids, Proposals, and Applications

13.2.1 Administrative Review

Each response is examined to determine whether it is responsive to the solicitation. Only responses responsive to the solicitation may be evaluated.

13.2.2 Subcontracting Plan Evaluation

When a SP is required, all respondents (VetHUBs and Non-VetHUBs) must include a completed SP with their solicitation response. A SP is required regardless of whether the respondent intends to self-perform or subcontract for services, equipment, materials and/or supplies to fulfill the contract.

The PCS Purchaser will provide the VetHUB Coordinator with the SP and a copy of the proposal for review and approval prior to forwarding a response for further evaluation. Responses containing a nonresponsive SPs will be disqualified.

The respondent must use one of the following good faith effort (GFE) methods when preparing the initial SP for submission with its proposal or when amending an existing SP after contract award. The GFE methods are as follows:

1. **Solicitation Method:** The respondent must notify at least three currently Texas-certified VetHUBs per subcontracting opportunity and allow the certified VetHUB at least seven working days to respond. The date the notification is sent is day zero and does not count in the required seven working days (excluding the day the notice was sent, weekends, federal and state holidays, and any other day the executive director has closed the agency (i.e., cold weather days)). The notice must provide the scope of work for VetHUBs to determine if they are interested in pursuing, provide a location where the specifications are located (i.e., link to the posting on ESBD or a physical location, etc.), and information regarding insurance and bonding requirements (if applicable). In addition, the respondent must notify a minimum of two minority, women, trade organizations and/or business development centers providing the same information above as well as the same timeframe for response.
2. **Mentor-Protégé:** A mentor may use a protégé from a state agency-sponsored Mentor-Protégé (M-P) agreement for subcontracting that the protégé is able to

provide. The M-P relationship may be used in lieu of additional soliciting to VetHUBs.

3. **100% VetHUB Subcontracting:** The respondent indicates that all subcontracting will be done using VetHUB vendors.
4. **Meeting or Exceeding the Contract's VetHUB Goal:** The respondent will meet or exceed the contract VetHUB goal (whichever is the highest, statewide, or agency-specific) with VetHUB subcontractors. The respondent cannot use a VetHUB subcontractor used in a previous continuous contract for a period of five years or more.
5. **Self-Performing:** The respondent is required to document how they can provide all services, equipment, materials and/or supplies needed to perform the contract without subcontracting. The agency must review the proposal to ensure that this is a true statement and pay careful attention to the list of key personnel, ensuring that all personnel listed are employees. Statements within the proposal that include "partners," "affiliates," "team member," and/or "consultants" indicate subcontracting activities. When in doubt, ask the respondent for clarification. Sometimes, respondents don't think of these examples as subcontractors, but they are according to the state definition.
    a. Regardless of the above GFE method chosen, respondents are required to provide supporting documentation to substantiate compliance. The supporting documentation must be included in the procurement file.
    b. If the solicitation response does not contain a completed SP or contains a SP that the agency determines was not developed in good faith, the response shall be rejected as a material failure to comply with advertised specifications.
    c. The SP evaluation is performed by the agency's VetHUB program (PCS Form 415) and is on a pass or fail basis. Responses that do not contain a responsive SP cannot be considered for a contract award.

13.2.3 Respondent Evaluation

To select the respondent that provides best value to the state, HHS agency staff conduct an evaluation of the response in accordance with the evaluation procedure published in the solicitation. Evaluations of applications received under RFAs must also be performed to select an applicant that best meets the needs of the grant program objectives. Complex procurements may have a standard evaluation process (aggregate scoring method) that uses an evaluation tool or that may be conducted through a consensus scoring method

(Reference Section regarding Consensus Scoring Method). The standard evaluation process may be conducted in CAPPS Financials or outside CAPPS Financials. Most RFA evaluations are conducted outside CAPPS Financials due to complex factors that impact the use of the evaluation tool.

At a minimum, an RFx evaluation team should consist of three to five scoring members who represent different subject matter areas related to the final product or service. The program should ensure appropriate subject matter representation on the team, including program, contract management, finance, IT, and others as needed. The PCS Purchaser or Grant Specialist serves as the evaluation team facilitator and is a non-scoring member. Scoring and non-scoring members of the evaluation team must be noted in the procurement file. If the evaluation is to be conducted within CAPPS Financials, the evaluation team will be required to have employee IDs to log into the system and to request access to CAPPS Financials as an evaluation team member.

The PCS Purchaser or Grant Specialist will ensure all evaluation team members complete any required ethics, confidentiality, and nondisclosure forms prior to reviewing or discussing any proposals. For contract procurements with an expected value of $1 million or more, the SAO Nepotism Disclosure Statement for Purchasing Personnel is required. The evaluation team cannot commence any discussions until each member has signed a nondisclosure statement and a preliminary assessment regarding actual or potential conflicts of interest have been conducted.

Each member of the evaluation team is provided:

1. The entire solicitation including any addendums and Q&A documents.
2. A list of responses submitted.
3. A copy of each response determined to be responsive to the solicitation following the Administrative Review.

Each response is evaluated independently against the evaluation criteria published in the solicitation. Evaluators will record their scores for each response on the evaluation tool's scoring matrix provided to them by the Purchaser or Grant Specialist if the evaluation is being conducted outside of CAPPS Financials, or by logging into CAPPS Financials and recording the scores in the CAPPS Financials evaluation tool. Unless prohibited by statute or agency policy, evaluators should review and score the entire response to facilitate a comprehensive evaluation of the response. In limited circumstances at PCS and CQC discretion, program areas may have dedicated evaluators for certain criteria to best align evaluator knowledge and skillset to the review process. In these scenarios, program areas must identify the specific criteria evaluators are assigned with a clear breakdown of what

each group will be assigned to score specific to their area of expertise. The use of technical advisors may be permissible during the evaluation phase if approved and as directed by PCS and CQC. The evaluation team only reviews the price component if the team is evaluating the price. The price component may be evaluated by SMEs, evaluation team, or if solely objective the CQC-FA.

Evaluators must not communicate with a respondent. All questions related to the response, or the evaluation process must be directed to the PCS Purchaser or Grant Specialist facilitating the evaluation. The PCS Purchaser or Grant Specialist may follow up with the respondent to obtain clarification or seek assistance from a technical advisor.

13.2.3.1 Oral Presentations

After the response evaluation phase, if permitted by the solicitation, the HHS agency may provide respondents the opportunity to provide an oral presentation. Oral presentations and demonstrations must be fair to all respondents. To ensure the integrity of the oral presentation process, evaluator information and informational documents for the respondents must be kept separate and secure. HHSC PCS uses a red and blue folder system for oral presentations. Both folders are clearly labeled: one folder for evaluator materials and one folder for respondent materials.

13.2.3.2 Best and Final Offer (BAFO)

After oral presentations or demonstrations are completed, HHS agencies may work with PCS to request a BAFO from the respondents. BAFOs may be requested prior to negotiation and may be used to narrow the field of competition. BAFOs are only used in the evaluation of RFx procurements.

13.2.3.3 Preferences

Preferences are established by statute.[108] A vendor must claim the applicable preference(s) in its response by marking the appropriate preference on the preference form included in the solicitation. If the appropriate box is not marked on the preference form, a preference will not be granted unless other documents included in the response sufficiently demonstrate that the vendor may receive the preference and is requesting the preference. Upon the agency's request, the vendor must provide adequate documentation to support the claimed preference below.[109]

[108] *TEX. GOV'T CODE ch. 2155, subchapter. H; 34 TEX ADMIN CODE § 20.306.*
[109] *Texas Procurement and Contract Management Guide, Preferences*

1. Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.
2. Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran.
3. Agricultural products grown in Texas.
4. Agricultural products offered by a Texas bidder.
5. Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.
6. Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran.
7. Texas Vegetation Native to the Region.
8. USA-produced supplies, materials, or equipment.
9. Products of persons with mental or physical disabilities.
10. Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel.
11. Energy efficient products.
12. Rubberized asphalt paving material.
13. Recycled motor oil and lubricants.
14. Products produced at facilities located on formerly contaminated property.
15. Products and services from economically depressed or blighted areas.
16. Vendors that meet or exceed air quality standards.
17. Recycled or reused computer equipment of other manufacturers.
18. Foods of higher nutritional value.
19. Commercial production company or advertising agency located in Texas.

13.2.3.4 Tie Bids

Reference: PCS Operating Procedure 755

A tie bid occurs when two or more bids or responses to a competitive solicitation receive the same score. If after final evaluation scores are calculated the winning bidder or

respondent cannot be determined because two or more bids or responses received the same score, the tie will be resolved in accordance with PCS Operating Procedure 755.

13.2.3.5 Certification of Vendor Assessment Process

PCS Form 08 is used to document certification of the vendor assessment process. PCS Form 08-G is used for RFAs. Pursuant to Texas Government Code § 2261.0525, before a state agency may award a contract to a vendor, the agency's procurement director must review the process and all documents used by the agency to assess each vendor who responded to the solicitation. The Procurement Director or designee (a person whose position in the agency's procurement office is at least equal to the position of contract manager) must certify in writing that each response to the solicitation was assessed using the written criteria in the solicitation or, if applicable, the written evaluation criteria established by the agency, and that the final calculation of scoring responses was accurate. Any scoring changes following initial assessment and scoring of responses must be justified in writing. The written justification must be reviewed by the agency's Procurement Director, and the Procurement Director must certify in writing that the change in scoring was appropriate.

Pursuant to Texas Government Code § 2261.054, if a state agency awards a contract to a vendor who did not receive the highest score in an assessment process certified under Texas Government Code § 2261.0525, the agency must state in writing, in the contract file, the reasons for making the award. PCS Form 08 is used to document the required justification and certification. PCS Form 08-G is used to document the required justification and certification for RFAs.

See also, Section regarding Other Certifications.

The completed PCS Form 08 or PCS Form 08-G must be included with supporting documentation attached to PCS Form 515 used for contract review, approval, and execution. The approved PCS Form 08 or PCS Form 08-G must be maintained in the procurement file and uploaded into the SCOR, Procurement module.

13.2.3.6 Documentation

Once the procurement is complete and the first contract awarded and executed through CAPPS Financials, the event will be available in SCOR for PCS to upload the procurement file documentation. PCS will upload the solicitation package as one file within 10 days and the rest of the procurement file within 30 days.

13.3 Litigation History Review

If required, the Purchaser will submit a request to the attorney assigned to the solicitation. If respondents are required to provide litigation histories, the assigned System Contracting attorney will coordinate with:

1. Policy to check if there are any statutory or regulatory prohibitions by program against the agency's contracting with potential vendors that have been subject to administrative enforcement and/or disciplinary action.
2. Litigation to check if the respondent has any active lawsuits pending against the state.

The information may be considered as an indicator of probable vendor performance under the contract, such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements.

13.4 Financial Capacity Review

Procurement Financial Services may provide financial risk assessment of proposed procurements and assistance identifying the need for a review of financial capacity of any respondents; SMEs to evaluate financial capacity submitted with responses; assistance developing cost workbooks and financial provisions and requirements; SMEs to review price component for high-risk, high-value, or other applicable procurements, and assistance negotiating pricing and developing financial payment structure.

13.5 Reference Checks

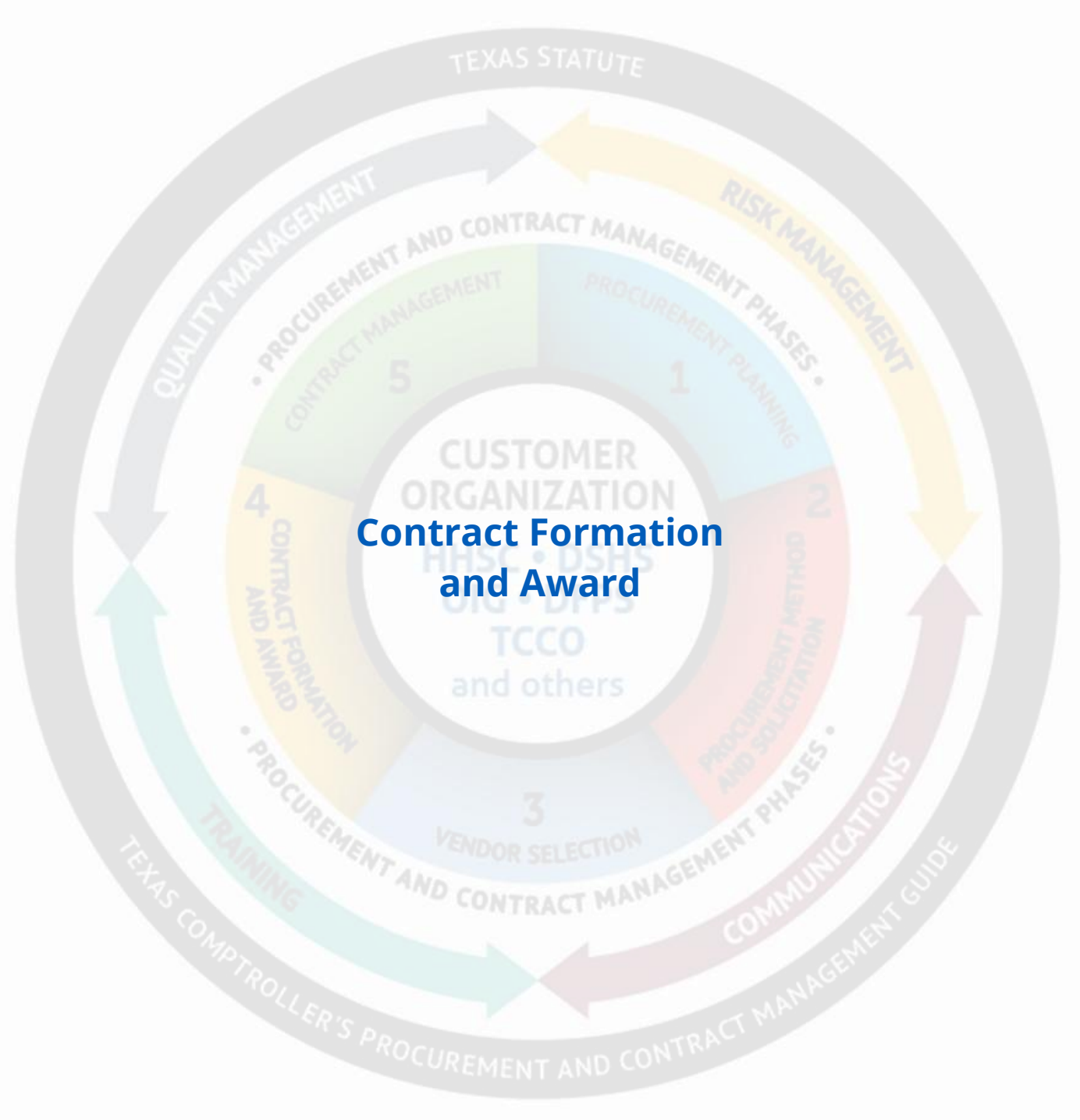
If applicable, purchasers may check vendor references by completing PCS Form 145, Vendor Reference Survey Form.

13.6 Notice of Disqualification and Intent to Award (aka Tentative Award Procedure)

Reference: PCS Operating Procedure 538

In order to provide respondents with timely notice and information, and to ensure transparency and public confidence in HHSC procurement processes, it is the policy of PCS that a respondent should be notified as soon as reasonably practicable following the determination that the respondent's solicitation response is nonresponsive or has been disqualified from further review, including disqualification for failure to submit a compliant

Subcontracting Plan. In addition, unless it is determined to be contrary to the best interests of the agency, it is the intention of PCS to provide notice to all respondents of the intent to award at the time the agency has successfully negotiated a contract.



Contract Formation and Award

14. Contract Formation and Award

14.1 Contract Negotiations

Negotiations may not begin until program staff have informed the Purchaser of their selection to proceed to negotiations. Program staff must do this by initiating and sending the partially completed PCS Form 08, Vendor Selection Justification and Procurement Certification, or PCS Form 08-G, Applicant Selection Justification and Solicitation Certification Form for RFAs, signed by the program, to the Purchaser. For RFAs, Section 1 of PCS Form 08-G is completed and signed by the program under Program Approval to Proceed. As the PCS Form 08 or PCS Form 08-G must also include the outcome of the negotiations, the final PCS Form 08 or PCS Form 08-G cannot be delivered to the Purchaser until after negotiations. Once the Purchaser informs the program in writing that they may begin negotiations, the program staff may begin scheduling the negotiation meetings. PCS is not required to be involved in negotiations. However, program staff must have their assigned attorney present during negotiations and included on all related correspondence. If program areas need guidance on conducting negotiations or need assistance scheduling the negotiations, PCS will be available to assist.

The outcome of contract negotiation will depend on the procurement method and the items being negotiated but will always be guided by obtaining the best value for the state. Negotiation is permitted for RFPs (including consulting), RFOs, RFAs, and RFQs for professional services. However, negotiations must not materially alter the requirements, scope of services, or specifications of the published solicitation.

Negotiations are not permitted under an IFB. However, if there is only one qualified bidder, then the contract developer may negotiate with the sole bidder, including price, provided the negotiation does not result in a material change to the advertised specifications.

Negotiations may include obtaining clarifications and discussing any ambiguities or deficiencies in the business proposal, the cost proposal, service delivery strategies, and any other items. Appropriate HHS agency staff involved in negotiations may include program staff, System Contracting, contract managers, and Purchaser, if requested. There are a few ground rules for negotiating state contracts:

1. All changes or revisions to the offer must be documented in writing. Negotiations must not materially alter requirements of the published solicitation. Care must be taken by the agency to avoid inadvertently changing the advertised procurement objectives.

2. Any information related to a negotiation must be provided to all potential contractors who are being considered; however, clarifications may be unique. No contractor being considered for an award should receive information that would give them a competitive edge over others. Information about an offer is not shared with any other potential contractors.
3. HHS agencies must comply with the Texas Public Information Act (Texas Government Code Chapter 552). HHS agencies do not have authority to agree that public information will not be subject to disclosure. Rather, disclosure is governed by the Texas Public Information Act and by rulings of the Office of the Texas Attorney General. Also, HHS agencies must follow public posting requirements for state contracts under Texas Government Code § 2261.253. Questions about the Texas Public Information Act or Section 2261.253 of the Texas Government Code should be referred to the Office of Chief Counsel. If a contractor claims a contract contains confidential or proprietary information, the individual receiving the claim should contact OCC Open Records and notify the contract manager.
4. Before HHS awards a contract for goods or services, the Director of Procurement or designee must certify that the procurement file and procurement checklist are consistent with the model procurement file checklist created by the CPA. The certified checklist must be uploaded into the SCOR procurement module with the procurement file.

Program staff should begin the negotiation process by developing a prioritized list of issues, including the agency's requirements on risk mitigation items, such as insurance, limitation of liability, indemnification, liquidated damages, data use agreements (including protections for breach of confidential data), escalation vehicles, corrective action plans, etc. It is crucial that program staff enter negotiations knowing what is most important and having a list of items to draw from during the give-and-take process of negotiations.

If using liquidated damages prior to negotiations, program staff should also develop a liquidated damages schedule that protects what is most important, keeps the contractor on track, and reflects as justifiably as possible the value of deliverables for which a value is difficult or impossible to assess. In addition, almost every contract negotiation will cover the following negotiation topics: order of precedence, limitations of liability, indemnification, and data security and ownership.

14.2 Contracts and Purchase Orders

When the solicitation is closed, evaluations are finalized, and contract negotiations are complete, if applicable, the terms and conditions of the agreement are documented to prevent misunderstanding or conflict and to create a legal, binding, and enforceable obligation.

Contracts are documents processed by HHS agencies to purchase goods or services. The main difference between Transactional Purchase Orders (TPOs) and other types of contracts is the duration. TPOs represent single, short-term transactions, while other types of contracts may have a longer duration, include more complex terms and conditions, and allow for renewals.

All contracts require documented contract management and monitoring, although the level and complexity is dependent on the contract, and documentation of contract management activities must be uploaded in SCOR, per established HHS requirements.

PCS Operating Procedure 758, Contract Determination, outlines the requirements for determining the appropriate type of contract that will be used for the purchase of goods and/or services. Additional guidance is provided below to help distinguish the characteristics associated with the following HHS contract documents:

14.2.1 Contracts

A contract is a legally enforceable agreement between two or more parties. A contract may be a Bilateral Contract, Contract Purchase Order, or Transactional Purchase Order.

Bilateral Contract

A binding agreement between two parties that is signed by the contractor and the agency signature authority. The agreement between the agency and the contractor is the executed bilateral contract and any executed amendment.

Grant Agreement

A type of bilateral contract that provides money, property, or both to an eligible entity to carry out an approved project or activity.

Contract Purchase Order (CPO)

A type of unilateral contract (also known as a “tracking contract”) created to track allowable renewals in a procurement. The agency sends the agreement (in the form of a Purchase Order) to the contractor annually.

Transactional Purchase Order (TPO)

A legally enforceable agreement to purchase a good or service, established for a single procurement term not to exceed 12 months or one fiscal year. A TPO has no stated renewals and may cross fiscal years if a capital service or good or if the total expenditure is completed during the fiscal year, but services last longer than one fiscal year (i.e., software maintenance).

Typically, a TPO is a point-in-time purchase (not attached to an existing contract) that begins and ends with the delivery or completion of the purchased good or service within one fiscal year.

Once accepted by the contractor, a TPO is a legally binding contract and includes contract monitoring/management activity.

14.2.2 Purchase Order Price Modification Prior to Dispatching

Purchase orders are issued out of CAPPS Financials and when a Purchase Order with a price increase or decrease will bypass the approval workflow. If the overall requisition price is equal to or less than $4,500 and no line on a Purchase Order has more than a $200 or fifteen percent (lesser of the two) increase compared to its corresponding requisition line, the PO will bypass the approval workflow. Conversely, if the PO does not meet all these conditions, CAPPS Financials will not allow the PO to bypass the approval workflow.

14.2.3 Funding Purchase Order

A Funding Purchase Order, when issued against a contract, is an encumbering mechanism for payment purposes.

14.2.4 Contract Formation Requirements

Any contract should contain at a minimum the following:

1. Agency name and address.
2. Agency contract or PO number.
3. Date of the order.
4. Term of contract (delivery period after receipt of order or beginning and ending dates of service).
5. Contractor's name, payee/vendor identification number, and address, including Zip Code.
6. NIGP Class/Item code for each item.

7. Purchase Category Code.
8. List of contract documents and their order of precedence.
9. The "four-corner" contract or PO with listing of awarded items.
10. The original solicitation documents, as modified by addendums.
11. The proposal submitted by the contractor as modified by any best and final offer, if applicable.
12. The assumptions and exceptions as agreed upon by the agency and the contractor, if applicable.
13. Listing of awarded items with quantity, unit of measure, and unit price with extended totals.
14. Signature of authorized representative for bilateral contracts, and for Purchase Orders, signature of certified purchasing representative.

14.3 Procurement Card (State-Issued Credit Card)

The state-issued credit card, also referred to as a procurement card (ProCard), is used for purchases within HHS programs. The goal of the program is to increase efficiencies within programs by providing a cost-effective method of purchasing and paying for goods and services while maintaining strict compliance with state and federal laws, regulations, and HHS policies relating to purchasing, accounting, and asset management functions. Compliance with the PCS 610, ProCard Manual is MANDATORY.

The ProCard is only a method of payment (not a procurement method) and does not exempt the cardholder from following state purchasing laws, CPA procurement rules and regulations, or HHS purchasing policies.

PCS Purchasers are exempt from HHS ProCard policy restrictions and may use the ProCard for agency CAPPS Financials requisitioned goods or services following state and federal laws, rules, regulations, and HHS policies relating to purchasing, accounting, and asset management functions.

14.4 Contract Terms

14.4.1 Essential Elements (See Comptroller's Guide, Legal Elements of a Contract)

As set out in the Comptroller's Guide, the essential elements necessary to form a binding contract are usually described as follows:

1. Offer.
2. Acceptance.
3. Legal purpose.
4. Consideration.
5. Certainty of subject matter.
6. Competent parties.

14.4.2 Essential Provisions (See Comptroller's Guide, Contract Terms)

Essential provisions that must be included in every contract are:

1. Terms Necessary for the Formation of a Legally Binding Contract. The necessary elements of a contract are offer, acceptance, legal purpose, consideration, certainty of subject matter, and competent parties. Accordingly, each contract must include terms that address the following:
2. Scope of work.
    a. Financial provisions (e.g., price and payment terms).
    b. Contract term and termination provisions.
    c. Identification of the contracting parties.
3. By their nature, these terms are transaction-specific; therefore, the text may vary for each contract.
4. Texas Required Contract Clauses. The most common statutorily required contract clauses are compiled on the list of Texas Required Contract Clauses located in the Comptroller's Guide. The Texas Required Contract Clauses are required to be included in both solicitations and contracts unless an exception is noted.
5. Recommended contract clauses are included in the Comptroller's Guide and are typically included in most contracts. Recommended clauses include, but are not limited to the following:
    d. Administrative provisions.
    e. Provisions that allocate risk and specify remedies.
    f. Provisions relating to the identification and safeguarding of confidential information.

g. Provisions relating to rights and ownership of work product and intellectual property.

14.4.3 Minimum Required Terms and Conditions

At a minimum, an HHS contract must contain the following terms and conditions:

1. Begin and end date.
2. Description of the goods and services to be provided.
3. Specific requirements such as performance measures, and/or milestones, specific remedies, and any liquidated damages.
4. Data Use Agreement and Security and Privacy requirements, as applicable.
5. Payment and invoicing information.
6. Renewal periods, if any, available to the HHS agency including extension language: "Following the base term and any allowable extensions, System Agency may extend any resulting Contract for not more than one additional option period to address immediate operational or service delivery needs. If the resulting Contract does not include a defined option period, the extension is limited to one year." This does not apply to a TPO. Best practice for TPO is to define the extension period in the contract.
7. Any service level standards or agreements.
8. Points of contacts and notice provisions.
9. The process to change or amend the contract.
10. All required and applicable affirmations and terms and conditions, both in the Comptroller's Guide and in other governing authority.
11. As applicable, specific insurance requirements.
12. Termination provisions.
13. Clause that states continuation is contingent on the availability of state or federal funding.

In addition, contracts subject to Texas Government Code Chapter 2261 must include a remedies schedule, a graduated sanctions schedule, or both, for breach of the contract or

substandard performance under the contract.[110] When feasible, they should include provisions that require the contractor to carry director or officer liability insurance coverage in an amount not less than the value of the contract that is sufficient to protect the interests of the state in the event an actionable act or omission by a director or officer of the contractor damages the state's interests.[111]

System Contracting develops affirmation and uniform terms and conditions documents for use in contracts.

14.4.4 Contract File Documentation Note Regarding Texas Government Code 2261.204

Contracts, including grants as set forth in the statute, that are subject to Texas Government Code § 2261.204, are subject to specific contract file requirements: "(a) Each state agency shall include in the contract file for each of its contracts for goods or services subject to Chapter 2261 of the Texas Government Code a written explanation of the agency's decision to include or not include in the contract a provision for liquidated damages or another form of liability for damages caused by the contractor. (b) A contract file must also include, if applicable, a written justification for any provision in the contract that limits the liability of a contractor for damages. (c) If an extension of a state agency's contract described in Subsection (a) modifies a provision for liquidated damages or another provision relating to a contractor's liability for damages, the agency must amend the written explanation or justification required by this section to include a justification for the modification.

14.4.5 Cybersecurity Training and Required Verification of Completion

For contracts where the contractor will require access to a HHS computer system or database, the contractor shall comply with the requirements of Section 2054.5191 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program. Section 2054.5191 requires all applicable contractors to complete a DIR-certified cybersecurity training program during the contract term and any renewal period.

Contractors may elect to complete the *HHS Information Security/Cybersecurity Training* program, which is a DIR-certified cybersecurity training program. *HHS Information*

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[110] *TEX. GOV'T CODE § 2261.101; State agencies shall design fair and feasible standards that will hold contractors accountable for breach of contract or substandard performance under a contract without diminishing the number of able providers who are willing to contract with the state.*

[111] *TEX. GOV'T CODE § 2261.102.*

Security/Cybersecurity Training, provided as a PDF, is a duplicate of the training slide deck approved by the DIR for HHS staff. As such, reference is made to a quiz required to be completed at the end of the presentation to receive credit for the course. Contractors who elect to direct staff to complete the *HHS Information Security/Cybersecurity Training* should inform staff to disregard reference to the quiz, which is only applicable and accessible to HHS staff. The *HHS Information Security/Cybersecurity Training* program is posted on the Vendor Resources web page (See Information Security Resources).

Except for state agencies and local governments, contractors verify completion of the requisite training by submitting Form 3834, *Contractor Written Acknowledgement of Completion of Cybersecurity Training Program* to the HHS contract manager for upload into SCOR (see link above). State agencies and local governments submit verification of completion of the training program to the Department of Information Resources (DIR).

14.5 Insurance

When applicable, contractors should carry insurance in the types and amounts set forth in the contract or procurement document. No contractor should commence work until it has obtained the required insurance and until evidence of such insurance has been reviewed and approved by the contract manager.

Insurance should be evidenced by delivery of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates, and compliance with all applicable required provisions. The delivery timing and location should be in accordance with the procurement or contract. Additionally, it is recommended to specify in the insurance requirements of the procurement or the contract that, upon request, the contractor is required to provide, without expense, copies of the policies and all endorsements.

Insurance should be written by a company licensed to do business in the State of Texas at the time the policy is issued and should be written by a company with an A.M. Best rating of A- or better.

Contractors should be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention should be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date should coincide with the date of the contract, and the certificate of

insurance should state that the coverage is claims made and include the retroactive date.[112]

Insurance coverage should be maintained for the period set forth in the contract. Coverage, including any renewals, should have the same retroactive date as the original policy applicable to a project. Contractors should be required — on at least an annual basis, upon any policy expiration/renewal, or upon any substantive change — to provide the contract manager with a certificate of insurance as evidence of insurance coverage. Insurance is the responsibility of the program area. Upon receipt of each updated certificate provided by a contractor, the certificate should be reviewed and uploaded to the official contract file in SCOR.

For assistance with determining when insurance requirements are applicable as well as recommended policy limits, agency/program may submit questions and or requests via the Help Request Form button on the CMS SharePoint page. Supporting documentation for insurance review requests must be submitted to the CMS Insurance Specialist via email.

14.6 Bonds

Pursuant to contract purchasing procedures under Texas Government Code § 2156.011, a performance bond may be required in the amount reasonable and necessary to protect the state's interest before executing the contract. Recoveries under the bond may continue until the bond is exhausted.

Upon receipt, the contract manager or appropriate program staff should verify the total contract amount and the effective date of the contract to ensure that the bond is for the same amount and date. If there are any discrepancies in the value or date of a bond, it will require a revision.

A review of the bond documents should include verification of the following:

1. Upper left corner shows the proper county.
2. Principal and insurance fields are completed.
3. Contract amount is completed.
4. Course of work, project number, etc. are completed.
5. Bond is dated and signed by the principal and surety.

[112] *Certain contracts may have projects or work orders that continue past the contract end date. Program should work closely with their contract attorney to include requirements concerning insurance coverage after termination of the base contract as needed for the specific contract and work at issue.*

6. Bond has the corporate embossed seal (per carrier indicated).
7. Bond has a current power of attorney and has the corporate embossed seal (per carrier indicated).
8. Bond has the claim notice (per carrier indicated).
9. Eligibility and bonding capacity of surety companies:
    a. Verify certification with the U.S. Department of Treasury (DOT):
        i. http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm.
        ii. Verify that the company is listed on the DOT's list of certified surety companies and that the company is permitted to do business in Texas.
        iii. Print the bonding company's information for the official contract file.
    b. Verify eligibility with National Association Insurance Commissioners.
    c. Enter the first surety company's name into the search field.
    d. Verify that the surety company is licensed in the State of Texas. If it is, the company will be marked as "Active" or "Eligible."
    e. Click on the company's name. This will take you to a detailed information page that includes contact information, financial status, complaint history, etc.
    f. Print all pages and attach to the official contract file.
    g. Verify the underwriting limitation does not exceed the bonding capacity by the "Required 10%"
10. The total dollar amount on the bonds must be less than the "Required 10%." If not, then the bonds and insurance are rejected and shall be escalated to the CMS Insurance Analyst with supporting documentation, including the contract.
11. Once reviewed and verified, the original bond package, due diligence paperwork, and any correspondence should be placed in the official contract file.

14.6.1 Bid Bonds

A bid bond is a form of security deposit that is held by the agency until the awarded vendor provides the minimum required insurance and executes the contract. A bid or security bond is the financial guarantee by the respondent that:

1. The response is financially sound.
2. The response was submitted in good faith.

3. The respondent accepts the solicitation requirements and is prepared to accept the contract award.

The amount of the bid bond is typically 5% of the total bid/proposal amount. Technically, bid bonds submitted by unsuccessful respondents expire upon award of the project to a successful respondent.

Bid bonds that are submitted by respondents that are in the form of a surety or blanket bond do not require return to respondents. Bid bonds that are submitted by respondents that are in the form of a cashier's, or certified check or irrevocable letter of credit do require return via certified mail with required receipt of acceptance.

14.6.1.1 Acceptable Bid Bond Submission

Acceptable methods for submitting a bid bond are:

1. Cashier's check.
2. Certified check or irrevocable letter of credit from a financial institution subject to the laws of Texas.
3. Surety or blanket bond issued by a surety company chartered or authorized to do business in the State of Texas and acceptable to the agency.

14.6.1.2 Bid Bond Forfeiture

Forfeiture of bid bonds is a policy decision and should never occur without Deputy Executive Commissioner approval. Forfeiture of bid bonds occur when the successful/awarded respondent either:

1. Refuses to execute the contract as presented in the solicitation.
2. Withdraws for no reason other than for personal benefit. This does not include unsuccessful negotiation or value engineering outcomes, or allowance by the purchaser for a respondent's request for withdrawal.

14.6.2 Construction Performance and Payment Bonds

Texas Government Code Chapter 2253 of the governs performance and payment bonds in public works projects. Texas Government Code § 2253.001(4) defines a "public work contract" to mean "a contract for constructing, altering, or repairing a public building or carrying out or completing any public work." Texas Government Code § 2253.002 expressly exempts from the requirements of this chapter the following public works contracts: those associated with actions relating to (i) cleanup of certain hazardous waste facilities, Health and Safety Code Chapter 361, Subchapter F; (ii) enforcement of orders under the Solid

Waste Disposal Act, Health and Safety Code Chapter 361, Subchapter I; and (iii) underground and aboveground storage tanks, Water Code Chapter 26, Subchapter I.

14.6.2.1 General Requirements

Texas Government Code § 2253.021(a), mandates that a governmental entity, including a state agency, that enters into a public works contract with a prime contractor must require execution of a performance bond when the contract exceeds $100,000.00, and of a payment bond when the contract exceeds $25,000.00. This requirement must be satisfied prior to commencement of work under the contract. Texas Government Code § 2253.021(b)-(c) expressly delineates the purpose and terms of performance and payment bonds, respectively. Performance bonds are exclusively for the protection of the state agency that awards the public work contract and are conditioned upon good-faith performance of the work according to project plans, specifications, and contract documents. In contrast, payment bonds protect and may be used by entities that have a "direct contractual relationship with the prime contractor or a subcontractor" to supply labor or material for a public works project, Texas Government Code § 2253.021(c)(1). Both types of bonds must be written to provide coverage for the full amount of the contract, Texas Government Code § 2253.021(b)(2), (c)(2).

14.6.2.2 Additional Requirements

Texas Government Code § 2253.021 of the requires bonds to be executed by a corporate surety in accordance with Chapter 3503, Subchapter A of the Texas Insurance Code, made payable to the state, and written on a form that the Attorney General has approved, Texas Government Code § 2253.021(d),(e).[113]. Texas Government Code § 2253.021 also specifies the contents that must be displayed on the face of the bond or in an attachment, such as: "(1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number," Texas Government Code § 2253.021(f). Finally, Texas Government Code § 2253.021(g) prohibits a governmental entity

[113] *Article 7.19–1, Vernon's Texas Insurance Code was repealed in 2005 and codified as Subchapter A of Chapter 3503, Texas Insurance Code. Acts 2005, 79th Leg., Ch. 727, § 3 (adding Ch. 3503), 18(a)(5) (repealed), 2005 Tex. Gen. Laws 1752, 2156–57, 2187.*

from requiring that a contractor obtain the required surety bond from a particular insurance or surety company, agent, or broker.

Moreover, Texas Government Code § 2253.022 extends these bond requirements to an insurance company that is fulfilling its obligation by arranging for loss replacement, rather than by a cash payment directly to the governmental entity; these requirements, however, do not extend to a surety company who is complying with an obligation under a bond that had been issued for the benefit of the governmental entity. In the event a state agency does not obtain a payment bond as required by the chapter, the agency essentially takes on the liability of a surety. Texas Government Code § 2253.027(a)(1) of the expressly provides that the state agency assumes the same liability that a surety would have if the payment bond had been issued and presented to the entity. Also, Texas Government Code § 2253.027(a)(2) permits a payment bond beneficiary to assert a lien on money due to the prime contractor in the same manner and to the same extent as liens asserted under Chapter 53 of the Texas Property Code governing mechanic's, contractor's, or materialman's lien.

14.6.2.3 Third Party Right to Copy of Payment Bond and Contract

Texas Government Code Chapter 2253 also addresses a contract party's right to bond information and creates a corresponding obligation on the governmental entity to furnish such information, Texas Government Code § 2253.026. Subchapter C establishes various notice requirements among the contracting parties, and Subchapter D provides for claims against the required performance and payment bonds. In particular, Texas Government Code § 2253.071 authorizes withholding final payment to a contractor until final completion, if the contractor abandons the contract or the contractor's default results in termination of the contract. According to Texas Government Code § 2253.072, the state has no liability for costs or expenses of litigation arising from a payment bond. Texas Government Code § 2253.073 permits suits on payment bonds by a beneficiary seeking the unpaid balance due. Texas Government Code § 2253.073 and 2253.074 provide a basis for the recovery of attorney's fees. Subchapter D further addresses assignment of claims against a payment bond, restricts the maximum recovery to the amount of the subcontract, and establishes venue as any county in which work was located. Texas Government Code § 2253.078 imposes a 1-year statute of limitations for suits on a payment bond from the date notice for a claim is mailed in accordance with Chapter 2253, and a 1-year statute of limitations for suits on a performance bond from the date of final completion, abandonment, or termination of the public work contract. Finally, Texas Government Code § 2253.079 makes it a criminal offense to file a false and fraudulent claim against a bond required under Chapter 2253.

14.7 Prevailing Wage Rates

Texas Government Code Chapter 2258, construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. The chapter does not apply to work done directly by a public utility under an order of a public authority. Subchapter B of Chapter 2258 addresses the payment of prevailing wage rates, including workers' rights, determinations of prevailing wage rates depending on the geographic location of the work site, payment of prevailing wage rates by subcontractors, and recordkeeping. An agency contracting for the construction of a public work — including a building, highway, road, excavation, and repair work or other project development or improvement paid for in whole or in part from public funds — must determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract (including the prevailing rate for legal holiday and overtime work). An agency may make its prevailing wage rate determination by conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed, or by using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.) and its subsequent amendments. Chapter 2258 includes specific requirements for determining prevailing wage rates for a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. Any solicitation related to a contract for construction of a public work project and the contract itself must include the appropriate wage rate determination for the project. The bidder to whom the contract is awarded, and all its subcontractors are required to pay wages of at least the rates contained within the wage rate determination for the project.

Subchapter C of Chapter 2258 provides enforcement, civil and criminal penalties related to wage rate complaints: "(a) On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023 by a contractor or subcontractor, a public body shall make an initial determination as to whether good cause exists to believe that the violation occurred; (b) A public body must make its determination under subsection (a) before the 31st day after the date the public body receives the information; (c) A public body shall notify in writing the contractor or subcontractor and any affected worker of its initial determination; (d) A public body shall retain any amount due under the contract pending a final determination of the violation." Subchapter C also includes arbitration, payment, and withholding provisions.

14.8 Uniform General Conditions for Construction

The State of Texas Uniform General Conditions for Construction Contracts (UGC) is a document adopted by the Texas Facilities Commission that, with certain exceptions, is to be incorporated into all building construction contracts made by the state. The UGCs may currently be accessed on the TFC web page.

14.8.1 Texas Facilities Commission

The UGC is published by the Texas Facilities Commission (TFC) pursuant to Texas Government Code § 2166.302. TFC is required to review the UGCs at least once every five (5) years. As defined by Article 16, Miscellaneous, par. 16.1 Supplementary General and Special Conditions, in between official review of the UGC by TFC, the agency may issue supplementary general conditions to the UGC and special conditions to address specific and provisionary conditions pertaining to the site and/or project. The review of the UGCs by TFC includes participation of a committee appointed by TFC.

14.8.2 HHSC Construction Documents

For HHSC construction projects solicited under the authority of Texas Government Code Chapter 2269, HHSC incorporates the UGC into a contract document titled "Texas Uniform Conditions for Construction Projects with HHSC Supplementary Conditions." This contract document not only incorporates the State of Texas UGCs, but also includes a required section for specifying liquidated damages and/or any other agency-required or agency-specific supplementary conditions.

14.9 Grant Awards

A grant is a financial award provided by the state or federal government to an eligible grantee (subrecipient or recipient).

When HHS has applied for and/or received federal funds, it awards those funds as a pass-through entity to subrecipients. In some instances, the Texas Legislature appropriates state general revenue to an agency to award in grants. In those instances, the organization receiving grant funds from HHS as the awarding agency is the recipient.

It is the policy of HHS that the HHSC Federal Funds Manager review and approve all federal funding plans for HHS services in Texas. HHSC is responsible for establishing business processes to coordinate and monitor the use of federal funds received by HHS agencies. This includes ensuring that HHS agencies have access to federal funds information for their programs.

Recipient and subrecipient grantees are responsible for the administration and financial management of all funds and resources received from HHS. Grantees are to comply with and follow all applicable federal and state laws, rules, and regulations in the administration of grant awards from federal or state sources.

Grantees must also comply with HHS rules, policies, and procedures, including any specified terms in the grant agreement. The executed grant agreement between HHS and a grantee, including all attachments, exhibits, and resources referenced in the contract, governs the relationship between the parties.

14.9.1 Required Information

Pursuant to UGG, grant awards that award federal funds are required to include the following information in the executed grant agreement. Grant agreements awarding state funds should generally include the same information, with the exception of non-applicable federal information.

1. Grantee Data Universal Numbering System (DUNS) Number or Unique Entity Identifier (UEI).
2. Federal Award Identification Number (FAIN).
3. Federal Award Date.
4. State award period of performance start and end date.
5. State award budget period start and end date.
6. Amount of federal funds obligated to subrecipient by HHS.
7. Total amount of the federal award committed to the subrecipient by HHS.
8. Federal award project description.
9. Name of Federal Awarding Agency.
10. State Awarding Official Contact Information.
11. Assistance Listing Number and Program Title (list all that apply).
12. Identification of whether the award is for research and development.
13. Indirect Cost Rate Details.
14. Requirements of the federal award passed down by HHS to subrecipient in order for HHS to meet its responsibility to federal awarding agency.
15. Terms and conditions related to closeout of the state award.

14.9.2 Federal Uniform Grant Guidance (UGG)

In December 2013, the Office of Management and Budget (OMB) published Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200. This Uniform Grant Guidance (UGG) consolidated grant-related guidance and implemented efficiency and effective grant reforms. The reforms are the result of several executive orders to reduce administrative burdens and increase flexibility, while targeting improper payments and improving program performance.

Effective December 2014, UGG applies to HHS federal grants as grant terms expire and new grants are issued. The UGG has implications for all aspects of HHS agency operations including accounting, budgeting, information technology, and grant monitoring and oversight. The UGG covers administrative requirements, cost principles, and audit requirements, among others.

Key elements of UGG include:

1. Integrating and streamlining eight OMB circulars into one set.
2. Providing a set of uniform definitions for federal assistance.
3. Creating exceptions for innovative programs.
4. Replacing "vendor" with “contractor."
5. Requiring pre-award consideration of merit and risk.
6. Providing consistency on negotiated indirect cost rates.
7. Streamlining and clarifying guidance on subrecipient monitoring.
8. Strengthening internal controls while providing administrative flexibility.
9. Using a risk-based approach towards single audits and raising audit threshold to $750K.
10. Strengthening audit follow-up by requiring greater accountability.
11. Simplifying reporting requirements while strengthening internal controls.

14.9.3 State Uniform Grant Management Standards

State funded grants must be administered according to the State's Uniform Grant Management Standards (TxGMS) or its successor published by CPA. TxGMS was established to promote efficient use of public funds through a standardized set of financial management procedures and definitions. The CPA develops and maintains TxGMS.

14.10 Coordination and Preparation of Contract Documents

The contract manager is responsible for the coordination and preparation of the appropriate contract agreement and related documents. HHS staff must not adopt terms and conditions from another contract, even a boilerplate, without a thorough and independent review of how those terms and conditions relate to the specific procurement and contract at issue.

14.10.1 Contract Manager Responsibilities

Reference: PCS Operating Procedure 211

The contract manager will:

1. Coordinate with System Contracting to ensure the mandatory terms and conditions are incorporated into the contract, coordinating as necessary with agency SMEs and appropriate OCC attorneys.
2. Coordinate with the OCC Data Governance Legal to determine whether the contractor will access confidential information if uncertain and ensure the Data Use Agreement (DUA) or OCC Data Governance attorney approved language has been incorporated into the contract.
3. Coordinate with PCS to ensure:
    a. Necessary procurement documents like responses, negotiations, SOW, performance measures, and any other pertinent documents are included in the contract.
    b. For major information technology projects with a maximum potential contract value of at least $10 million, that the proposed terms of the contract before starting negotiations and the final negotiated unsigned contract are provided to QAT for review.
    c. OAG review for contracts equal to or greater than $250 million (see PCS Operating Procedure 211, Request for Office of the Attorney General "880" Review).
4. Upon award of the contract (applicable to contracts that mandated the inclusion of a Subcontracting Plan (SP) with the solicitation response), the VetHUB Program Office will contact the contract manager to accomplish the following prior to the contract manager initiating or providing the Notice-to-Proceed to the contractor:

a. Schedule a VetHUB-Post-Contract-Award Meeting with the contractor within 10 days of the contract award notification.

b. Provide a copy of the 34 Texas Administrative Code § 20.285 outlining VetHUB compliance requirements throughout the duration of the contract and require the contractor to implement the SP in good faith.

c. Ensure the contractor notifies all of the SP subcontractors (both VetHUB and Non-VetHUB) within 10 days of the contract award and provides supporting documentation of the notifications for the contract file.

d. Ensure any needed updates to the SP are done in accordance with 34 Texas Administrative Code § 20.285 and are reflected on the PCS Form 510.

e. Provide guidance to the contractor for any future changes to the SP that requires compliance with the good faith effort requirements and must obtain prior approval from the agency (VetHUB Program and program area) prior to engaging a new subcontractor.

Note: *engaging a contractor without prior approval may be considered a breach of contract.*

f. Provide guidance to the contractor on the submission of the Progress Assessment Report (PAR) with the invoice as required as condition of payment. This includes submitting a copy to the VetHUB PAR mailbox for tracking and reporting.

g. Solidify the SP Contract Provision on the PCS Form 510, VetHUB Post Contract Award Form and require the contractor's signature. Obtain HHS signatures: The VetHUB Coordinator signs the PCS Form 510 and submits to the contract manager for signature.

h. Upload the documents in SCOR: The VetHUB Coordinator forwards all the VetHUB Post Contract Award documents to the contract manager to upload in SCOR under the "Subcontracting Plan" document type.

5. Upload all the contract documents as an attachment for the contract. If the file sizes are large, compress the documents into a zip file. Then upload the requisition, request document, and PCS Form 515 as separate files. Within the zip folder, the files should still adhere to the file naming convention. The file order in CAPPS Financials should be as follows:

   a. Contract Signature Document.

   b. Contract attachments.

c. Completed PCS Form 515.

d. Request Document.

e. Requisition.

f. Other supporting documentation (such as legal approval email.)

6. Ensure the contract addresses concerns or issues raised during review.

14.10.2 Review of Draft Contract

The contract manager must review the draft contract for content and accuracy to include:

1. **Contractor Name:** The contractor's name on the contract and all required forms is the complete and correct legal name of the entity.
2. **Signature Authority:** The individual designated to sign the contract on behalf of the contractor and the HHS agency are authorized to bind the party in contracting decisions.
3. **Contract Attachments and Forms:** All required attachments/forms are included with the contract, as applicable:
   a. The appropriate affirmations and contract terms and conditions.
   b. The solicitation documents.
   c. The contractor's response.
   d. Any negotiated changes.
   e. Required budget documents.
   f. A Data Use Agreement (DUA) and complete Security and Privacy Inquiry.
   g. Other required forms (e.g., the Certification Regarding Lobbying form required for contracts, grants, loans, and cooperative agreements that use federal funds.)
   h. Contractor Written Acknowledgement of Completion of Cybersecurity Training Program, Form 3834.
4. **Payment and invoicing information:** If there is a total dollar amount, it must be correct, and budgets must be calculated accurately and include invoicing information approved by the HHSC Accounts Payable.
5. **Effective dates:** The effective begin and end dates are specified and correct.

14.10.3 Centers for Medicare and Medicaid Services (CMS)/Food & Nutrition Services (FNS) Reviews

In determining the procurement timeline, special consideration must be given to CMS/FNS reviews as they could add 120 days or more to the procurement process.

CMS/FNS reviews are a series of a two-part federal review and approval process that is required for certain procurements when they receive federal funding. The program area works directly with their respective Federal/State coordinators to develop an Advanced Planning Document (APD). The APD goes through several layers of internal approvals prior to being sent to CMS/FNS.

The first initial 60-day review must occur prior to posting. This review contains a draft of the RFO with an estimate of costs and gives CMS an overview of what is being procured and the mechanism used to do so. If approved, CMS/FNS will issue an approval letter to Program that must be received prior to the solicitation being posted on the ESBD. The initial review can occur simultaneously with CAT review and other PALTS milestones.

The second and final 60-day review is after vendor selection and prior to award. CMS must review and approve the final contract prior to it being routed through DocuSign for signature. Please note this review cannot run simultaneously with other PALTS milestones. Occasionally, CMS may issue a Request for Additional Information (RAI) if they feel there are items missing from the APD, or if they need additional clarification. RAIs restart the 60-day review period once the program area provides the information to CMS.

It is the program area's responsibility to initiate the review and approval process and to notify PCS of this requirement during the kick-off meeting. *Reference Procurement Lead Times section* for more information.

14.11 Certification Regarding Lobbying

The Certification Regarding Lobbying Form is required for contracts, grants, loans, and cooperative agreements that use federal funds (available in the CAPPS Financials Template Library). The Certification Regarding Lobbying is required once during the life of the contract.

If any federal lobbying reporting becomes necessary, a Disclosure of Lobbying Activities Form (SF-LLL) should be provided by the contractor. Any forms received should be uploaded into SCOR.

14.12 Required Screening for Potential Contractors

14.12.1 Vendor Checks

HHS agencies must demonstrate due diligence to ensure vendors and grantees (including both subrecipient and recipient relationships) are eligible to do business with the State of Texas before contract award. Accordingly, vendor check activities must be documented at the time they are performed, with records maintained in SCOR. This policy applies to all contracts except governmental entities and governmental institutions of higher education, unless vendor checks are expressly required for governmental entities and governmental institutions of higher education by applicable law, program policy, program rule, contract requirement, or other governing authority. Consult with assigned attorney or System Contracting if further clarification is needed regarding applicability of vendor checks.

When a PCS Purchaser is involved in the procurement, the assigned PCS Purchaser performs all required vendor checks, **except** for program-specific vendor checks, and maintains supporting documentation. If for any reason vendor checks are delegated to another individual to conduct, then the Purchaser or contract manager, as applicable, must ensure the checks have been completed and the required documentation uploaded.

Vendor checks are completed before any contract award, extension, renewal, and in conjunction with contractor organizational changes*, Organizational Change for reference, when the Texas Identification Number (TIN) changes.* Program areas may elect to establish policies to conduct checks at other key contract activities, such as monitoring. Procedural information is available on the Vendor Checks Job Aid.

The Vendor Checks Job Aid, which includes a checklist, provides the necessary steps for staff to perform each vendor check. The Vendor Checks Job Aid was developed to aid divisions that procure and manage contracts in complying with general HHS vendor check and documentation requirements. However, the Vendor Checks Job Aid does not address program, solicitation, or contract specific vendor checks that may be required pursuant to applicable law or other governing source, and programs must ensure all checks are properly and timely completed and documented. Divisions that procure and manage contracts must use the Vendor Checks Job Aid and checklist tools or, if using different tools, must ensure alignment with the established requirements (steps and applicability) compiled and outlined in the Vendor Checks Job Aid and checklist. Also, the contract manager must complete and document any additional vendor checks not included on this tool/job aid but required pursuant to HHS or program policy, program rule or other applicable law, or contract requirement.

Before contract execution, the Purchaser or program area, as applicable, must access and search various databases to screen a vendor's eligibility to conduct business with the State of Texas:

1. Texas Identification Number (TIN) – Texas Comptroller of Public Accounts.
2. Warrant/Payment Hold – Texas Comptroller of Public Accounts.
3. Franchise Tax Account Status – Texas Comptroller of Public Accounts.
4. Texas Debarred Vendor List – Texas Comptroller of Public Accounts.
5. System for Award Management (SAM) – Federal Exclusions.
6. Federal HHS OIG List of Excluded Individuals and Entities – Federal Exclusions.
7. Texas Office of Inspector General Exclusions Database – Texas Exclusions.
8. Texas Legislative Prohibitions: Divestment Statute Lists – Texas Comptroller of Public Accounts.
9. Vendor Performance Tracking System (VPTS).

The warrant/payment hold check, and the System for Award Management (SAM) Check (Federal Exclusions Search) must be performed not earlier than the 7th day before the date of contract or Purchase Order execution and not later than the date of contract or Purchase Order execution.

> ***Note*** *For competitive procurements processed by PCS, an initial warrant hold and SAM checks are conducted by PCS Purchaser prior to contract negotiations. An additional warrant hold and SAM check must be performed within seven (7) days prior to award. If contract execution takes longer than seven (7) days, an additional warrant hold and SAM check must be performed.*

If an issue is identified, staff may refer to the Vendor Checks Job Aid and Section regarding Escalation of Contract Issues to determine the appropriate course of action. HHS staff must maintain documentation to support the outcome of all vendor checks and any escalation communication in SCOR.

See also, Section regarding Additional Vendor Checks, Section regarding Contractor and Grantee Screening Post-Award Checks, Section regarding Organizational Change, and Section regarding Escalation of Contract Issues.

14.12.2 Additional Vendor Checks

Staff are required to complete vendor checks in accordance with federal, state, and agency requirements. Any additional vendor checks required by applicable law, program policy,

program rule, contract requirement, or other governing authority must be completed and documented.

The following are some examples of additional vendor checks that may be required, although this may not be an all-inclusive list. Consult with program management and, if necessary, OCC Legal Policy for questions on required additional checks or OCC System Contracting for issues with the potential vendor's eligibility.

1. **Criminal History Check:** If applicable, verify the owners and related parties associated with a legal entity do not have a criminal conviction that would prohibit the HHS agency from contracting with the legal entity.
7. **Employability Status Check:** If licensed by HHSC Regulatory Services, verify each owner or partner/board member/managing employee/controlling person is not identified in the Nurse Aide Registry as revoked or in the Employee Misconduct Registry. The check may be conducted through the Search Engine for Multi-Agency Reportable Conduct (SEMARC), which is accessible through Texas Unified Licensure Information Portal (TULIP)
2. **Licensure/Certification:** If the legal entity is required to be licensed or certified, verify the license/facility identification number, and license/certification expiration date.
3. **OFAC Sanctions Lists:** including the SDN List - Federal Exclusions.

14.13 Disclosure of Interested Parties

In accordance with Texas Government Code § 2252.908, disclosure of interested parties applies to a contract with a value of $1 million or more, a contract that requires an action or vote by the governing body, or a contract that is for services that would require a person to register as a lobbyist under Texas Government Code Chapter 305.[114]

Exemptions to the requirement are:

1. A sponsored research contract of an institution of higher education.
2. An interagency contract of a state agency or an institution of higher education.
3. A contract related to health and human services if:

[114] *TEX. GOV'T CODE Section 2252.908(b) was amended during the 86th Legislative Session to apply disclosure of interested parties to a contract for services that would require a person to register as a lobbyist under Chapter 305 of the Texas Government Code. The amendment was effective June 14, 2019. (The section was amended by both House Bill 1495 and Senate Bill 65. House Bill 1495 was effective June 14, 2019, and Senate Bill 65 was effective September 1, 2019.)*

a. The value of the contract cannot be determined at the time the contract is executed; and

b. Any qualified vendor is eligible for the contract.

4. Contracts with a publicly traded business entity, including a wholly-owned subsidiary of the business entity.

5. Contracts with electric utility or gas utility, as those terms are defined in the statute.

The Texas Ethics Commission (TEC) is the state agency with the administrative duty over this requirement. TEC rules governing this requirement are located in Title 1, Chapter 46 of the Texas Administrative Code. Additional information, Form 1295, Certificate of Interested Parties and an online filing application, Form 1295 Electronic Filing Application are located on the TEC's website. If vendors are required to complete Form 1295, Certificate of Interested Parties, it must be filed with the TEC and acknowledged by the contracting agency before the agency may sign the contract. The contract can be voided for failure to provide Form 1295 only if: 1) The agency notifies the vendor in writing of the failure, and 2) The vendor then fails to submit Form 1295 on or before the 10th business day after receipt of the notification.

The information reported by a contracting entity on the Certificate of Interested Parties form submitted in support of an HHS contract may require revision during the term of the HHS contract. If a change to the disclosure of interested parties should occur, or if an amendment or extension of a contract would require disclosure, the contractor must complete Form 1295, Certificate of Interested Parties to reflect the updated information. The new Form 1295 is submitted to the HHS contract manager, who must acknowledge receipt of the form using the TEC online acknowledgement within 30 calendar days from HHS receipt of the filed 1295 and upload it into SCOR.

TEC posts the completed Form 1295 to its website within seven (7) business days after receiving the HHS agency's acknowledgement and sends confirmation to PCS. Additional information may be found on the TEC website.

14.14 Contract Award

14.14.1 Notification of Contract Award

In the following cases, HHS must provide notice of contract awards (each notice is in addition to other applicable notices listed):

1. **ESBD:** If the maximum potential contract value exceeds $25,000.00, the notice of award is posted to the ESBD. Proof of the ESBD posting is maintained in the procurement file.
2. **QAT:** If an award of a major information resources project, notice is provided to the QAT within 10 business days of award.
3. **LBB[115]:** Contracts that meet a certain threshold, unless exempt, are reported through the LBB Contracts Database, subject to specific timelines:
    a. Maximum potential contract value greater than $50,000.00 for construction, professional services, or consulting services contracts.
    b. Maximum potential contract value greater than $50,000.00 for all other contract types.
    c. Maximum potential contract value greater than $100,000.00 for major information systems.
    d. Maximum potential contract value greater than $1 million for non-competitive/sole source or emergency procurements.
    e. Maximum potential contract value greater than $10 million for all other contract types.
4. **HHS Website:** The following award notices must be posted on the HHS website:
    a. For grants executed from an RFA, a notice of award is posted to the HHS RFA Grants web page.
    b. For contracts not posted to the LBB contracts database, HHS System Agencies must post each DIR SOW116 entered into by HHS and contracts for the purchase of goods or services from a private vendor with a maximum potential contract value greater than $50,000.
    c. State law requires Texas state agencies to publish the purpose of each grant exceeding $25,000 awarded from state appropriations on their websites. The CPA's office must post a list of links to the grant information displayed on the agencies' websites.
5. **Respondents:** HHS may choose to send written notice of non-selection.

[115] *Additional information is available on the LBB Website.*
[116] *TEX. GOV'T CODE § 2157.0685; 1 TEX ADMIN CODE § 212.41(c).*

Note: *Different oversight agencies may not use the same standard for determining contract value. For example, the contract value for SPD reporting, review, and delegation requirements (Reference Section on Contract Value Estimate) is defined differently than for LBB reporting purposes, or IT commodity purchases under DIR contracts.*

14.14.2 LBB Notification: Attestation Letters

HHS is required to provide notification to the LBB pursuant to Article IX, Section 7.11 of the GAA (87th Legislature) by submission of an attestation letter and contract documents for certain contracts in the format required by the LBB. For purposes of Section 7.11 of the GAA, a contract is defined as, "a contract, grant or agreement, including a revenue generating contract, an interagency or interlocal grant or agreement, Purchase Order or other written expression of terms of agreement or an amendment, modification, renewal, or extension of such for the purchase or sale of goods or services that was entered into or paid for, either in whole or in part, by a state agency or institution of higher education.[117]

14.14.2.1 LBB Contracts Database

An attestation letter and contract documents must be provided to the LBB for a contract if the expected amount of the contract exceeds, or may reasonably be expected to exceed, either of the following thresholds:

1. $10 million.
2. $1 million in the case of a contract awarded:

1. As a result of an emergency or following an emergency procedure allowed by statute; or
2. Without issuing a request for proposal, request for bid, or other similar process common to participation in the competitive bidding processes required by statute, rule, or ordinary and commonly recognized state policies and procedures. Enrollments under $10 million are excluded from the attestation requirement.

Contract documents include the solicitation, contract, amendments, and a finding of fact memo from the Governor's Office for major consulting contracts *(Reference section regarding Notice of Intent and Finding of Fact)*. Notification is provided by uploading all the required information into the LBB Contracts Database.

[117] *GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 7.11(a).*

14.14.2.2 LBB Attestation Letter Procedure

Reference: PCS Operating Procedure 805-P

As applicable, HHS program staff must complete PCS Form 805, PCS Form 806, PCS Form 807, PCS Form 808, PCS Form 811, or PCS Form 812 (LBB Attestation Letter), as appropriate, and initiate routing of the attestation letter form when the contract or amendment is routed for signature. A new contract may not move forward to execution if the LBB Attestation Letter form routing has not been initiated.

PCS Form 805, PCS Form 806, PCS Form 811, PCS Form 807, PCS Form 808, and PCS Form 812 are Powerforms accessed and routed from the HHS Connection intranet site. Each provides:

1. A description of the contract.
2. Certification concerning the process used to award the contract.
3. Certification concerning management controls.

When a contract has no competitive procurement activity a single certification is made by provision of the Deputy Executive Commissioner (DEC). When a contract has competition activity the certification is made by the Procurement and Contracting Services (PCS) DEC and the DEC of the division for that contract.

14.14.3 LBB Notification - Bridge Extension Contracts[118]

An extension to an existing contract beyond the period of performance (including any renewals or optional extensions provided in the contract) to address immediate operational or service delivery needs caused by a delay in awarding a new contract must be reported to the LBB at least 30 days prior to the execution of the bridge extension contract. Notice is provided by uploading the approved PCS 753 summary action memo and the same documentation required for an attestation letter in the LBB Contracts Database. Some bridge extensions may not have an attestation letter. (Reference Section regarding LBB Contracts Database, and Section regarding Bridge Extensions). See *PCS Operating Procedure 754*, Bridge Extensions.

[118] *GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 17.09(e)(2), (3).*

14.14.4 Contract Award Certification

14.14.4.1 PCS Procurement Process

The DEC for PCS will review the procurement process used to award the contract and, if appropriate, certify that the process used was consistent with:

1. The Comptroller's Guide.
2. All applicable statutes, rules, policies, and procedures related to procurement and contracting of goods and services, including compliance with conflict-of-interest disclosure requirements.

14.14.4.2 Non-PCS Procurement

If PCS did not manage the procurement, the DEC for the program area responsible for the procurement shall complete the attestation for contract award. Contract award activity for which program area is regularly responsible includes:

1. Provider enrollments.
2. Affiliation agreements.
3. Interagency agreements.
4. MOAs/MOUs.

14.14.5 Contract Management Certification

The DEC for the program area or DSHS or DFPS Commissioner or their designee for the area responsible for contract monitoring, management, and oversight will certify the program has an effective process and adequate management controls to:

1. Verify vendor performance and deliverables for the contract.
2. Only pay for goods and services that are within the scope of the contract or procurement.
3. Calculate and collect any liquidated damages associated with vendor performance.

If the responsible DEC or Commissioner is unable to make certification, they must work with System Contracting to determine if the requirements of Article IX, Section 7.11 of the GAA are inapplicable or if a legal justification exists for the alternative process. If a legal justification is identified, the DEC will certify the alternative process used, identify the individual(s) directing the use of that alternative process, and document this in the attachment to the attestation letter.

The DEC for PCS and the program area or agency commissioner responsible for the contract will work together to provide any other information requested by the LBB.

It is the responsibility of PCS to upload the solicitation, contract, and the required attestation letter (Reference Section regarding LBB Notification—Attestation Letters) into the LBB Portal within 15 days of the contract being awarded. For an emergency procurement, the solicitation, contract, and PCS Form 805 for HHSC or PCS Form 807 for DSHS must be uploaded within five days of the award.

At least 30 calendar days prior to extending an existing contract beyond the base term and optional extensions provided for in the contract, PCS provides notice of the extension by uploading the PCS 753 and documents specified in Article IX, Section 7.11(d) of the GAA to the LBB contracts database, regardless of whether the documents are otherwise required to be uploaded to that database.

Failure to satisfy the notification requirements of Article IX, Section 7.11 of the GAA could result in enhanced monitoring by the LBB, auditing by the State Auditor's Office, required agency consultation with the QAT and/or CAT, or contract cancellation.

14.14.6 Other Certifications

PCS Form 08, or PCS Form 08-G for grants, is used to document certification of the following by the procurement director or designee:

1. **Contracts with a Value Exceeding $5 Million:** Pursuant to Texas Government Code § 2261.255(1), the solicitation and purchasing methods and contractor selection process complied with state law and agency policy.
2. **Verification of Use of Best Value Standard:** The agency complied with Texas Government Code § 2155.0755, agency policy, and the Comptroller's Guide in the purchase.

See also, Section regarding Certification of Vendor Assessment Process.

The completed PCS Form 08, or PCS Form 08-G for grants, must be included with supporting documentation attached to PCS Form 515 used for contract review, approval, and execution. The approved PCS Form 08, or PCS Form 08-G, must be maintained in the procurement file and uploaded into the SCOR, Procurement module.

14.14.7 Delegated Signature Authority

Pursuant to Texas Government Code Chapter 531, and Texas Health and Safety Code Chapter 1001, the HHSC Executive Commissioner is responsible for all HHS agencies' purchasing and contracting. Both Chapters 531 of the Texas Government Code and 1001 of

the Texas Health and Safety Code authorize the Executive Commissioner to delegate specific powers and duties relating to contracts in order to facilitate HHS agency operations.

This policy applies to all HHS agencies' binding and non-binding commitments reduced to writing, including but not limited to:

1. Contracts, including when the HHS agency is the performing agency or recipient of funds (revenue generating).
2. MOUs.
3. MOAs.
4. IACs.
5. Grants and grant applications.
6. Amendments (e.g., renewals, extensions, budget adjustments, etc.).
7. POs not associated with a signed contract.
8. Binding and non-binding commitments that require the execution of an agreement, contract, or amendment.

HHS Circular C-046, *Approval and Signature Authority for HHS Agency Contracts*, defines and clarifies delegation of approval and signature authority and threshold limits for HHS agency contracts.

PCS maintains a copy of the HHS agency delegated signature authority and related approval documentation and posts the HHS agency delegated signature authority matrices on the HHS Procurement and Contracting page of the HHS Connection.

14.14.8 Changes to Signature Authority

It is important to always maintain a current list of names of people with signature authority. When a staff change occurs in a specific job position that has signature authority, the management authority over the vacated position must email a notice of the change to PCS Level 1.

Notice of the change is sent as soon as possible, preferably at least 5 business days before the effective date of the proposed change, and must include the:

1. Name and job title of the person who no longer has the job title/position.
2. Name and job title of the person assuming the job title/position.
3. Effective date of the change.

14.14.9 Routing Request and Electronic Signature of Contracts

Reference: PCS Form 515

It is the policy of the Health and Human Services Commission that HHS agencies may accept electronically signed records, including records transmitted electronically by fax or email, and scanned documents that are attached to emails as valid signatures for contracts (HHS Circular C-038, *Guidelines for the Acceptance of Electronically Transmitted and Electronically Signed Contract Records*).

DocuSign is a tool used by many program areas to obtain electronic signatures from the vendor and the HHS signature authority to execute a contract. Only individuals with signature authority will be given DocuSign accounts.

Program staff must complete PCS Form 515.[119] The purpose of PCS Form 515 is to direct HHS contracts, work orders, amendments, renewals, and extensions through approval routing of the proposed contract documents. This form is completed for any document requiring CAPPS Financials approval routing and for all DocuSign signature routing. The requester shall adhere to any HHS Circular-046 requirements (HHS Circular C-046, *Approval and Signature Authority for HHS Agency Contracts*) in addition to consulting with program to complete the form prior to submission to Procurement and Contracting Services Quality Assurance (PCS QA). The information provided on the routing request form will be used by PCS QA to create the document routing approval path in CAPPS Financials, as well as creating the DocuSign path for contractor signatory and HHS signatory execution.

For questions regarding DocuSign, email PCS QA.

14.15 Vendor Debriefing

Reference: PCS Operating Procedure 578

Debriefing is the act of informing vendors, applicants, contractors, or service providers (respondents) that participated in a particular procurement or grant of the strengths and weaknesses of their response – that is, a bid, proposal, offer, or application — relative to the advertised evaluation criteria, as well as how the agency's decision complied with applicable procurement law and the published solicitation. It is not a forum to discuss the responses submitted by other respondents or any information that may be confidential by law. Debrief meetings may not be held until after notification of contract award is publicly posted.

[119] *PCS Form 515 meets the requirements of TEX. GOV'T CODE § 2261.254(c), TEX. GOV'T CODE § 2261.254(d).*

Following the public posting of notice of contract award and upon the receipt by PCS Purchaser of a request for a debrief by a respondent, a PCS team member will hold a debrief meeting with the respondents as soon as practical.

14.15.1 Grant Applicant Notifications

Reference: PCS Operating Procedure 539

To ensure transparency and public confidence in HHSC's RFA process and to provide applicants with timely information on application status, it is the policy of PCS that applicants should be notified as soon as reasonably practicable following a decision made regarding their application. PCS Operating Procedure 539 includes information on roles, responsibilities, and procedures for the following:

1. Notice of Ineligibility.
2. Late applications.
3. Intent to Award letters.
4. Funding denial letters.
5. Notice of Award.
6. Legislative inquiries.

14.15.2 Post-Award Grant Debriefing

Reference: PCS Operating Procedure 580

Applicants not selected for funding after the evaluation and award process may request feedback on their application and non-selection. It is not a forum to discuss the applications submitted by other applicants or any information that may be confidential by law. Feedback is provided first through an informal discussion and then, if additional information is requested, a formal debrief meeting.

Through the application feedback discussion, the applicant may obtain information as to why its application was unsuccessful so that it may apply "lessons learned" in future grant initiatives with the state. Similarly, the application feedback discussion provides an opportunity for the agency to obtain valuable insight, from the applicant's perspective, of the grant opportunity process. PCS Operating Procedure 580 outlines roles, responsibilities, and procedures for post-award grant debriefing.

14.16 Bid Protests

Bid protests filed by a vendor who is allegedly aggrieved in connection with a solicitation, evaluation, or award of a contract by HHSC shall follow the requirements set forth in Title 1, Part 15, Chapter 391 of the TAC.

Contract Management

15. Contract Management

Contract management begins with the creation of and execution of a contract. The objective of contract management is to ensure the responsibilities of the HHS agency and contractor are properly discharged. Effective and efficient contracting requires adherence to contract management standards, and best practices, as well as statutes, regulations, and policies.

15.1 System of Contract Operation and Reporting (SCOR)

On September 5, 2017, the HHS Contract Administration and Tracking System (HCATS) was replaced by the System of Contract Operation and Reporting (SCOR). Prior to September 5, 2017, HCATS or other contract management systems served as the official source of record for HHS agency contract information. As of September 5, 2017, SCOR is the database for all general administrative and client services procurement and contract documentation. SCOR is a single system of record for the management and reporting of contract information. SCOR is also the system of record for the final electronic procurement file. (Procurement documents related to contracts with an effective date before May 1, 2019, remain in CAPPS Financials or a separate file, including some paper files.)

Actions related to contract establishment, contract amendments, and contract termination begin in CAPPS Financials with contract details merging into SCOR in "real-time." SCOR serves as the official electronic repository for procurements and contracts. Information pertaining to contracts with an end date before September 5, 2017, is available in agency-specific instances of HCATS. Procurement documents related to contracts with a begin date before May 1, 2019, remain in CAPPS Financials or a separate file.

Prior to gaining access to SCOR, HHS employees or contracted staff must complete PCS Form 130 and become familiar with the SCOR User Guide.

The SCOR User Guide is a resource developed to promote consistent use of SCOR and compliance with this Handbook. HHS contract managers are required to adhere to the SCOR User Guide.

HHS staff request access to SCOR through the HHS Portal. HHS staff should consult their supervisor to determine the appropriate SCOR security role before submitting a request at IAMOnline. For more information, refer to the SCOR User Guide.

HHS program areas are required to document business processes related to data entry and document upload to SCOR. Program areas should have additional business processes in place to not only verify information migrated from CAPPS Financials to SCOR, but to

make sure contract managers are complying with the requirements within SCOR to ensure integrity of the data.

15.2 Contract Manager Responsibilities

The contract manager is responsible for ensuring all contract requirements are satisfied, goods and services are delivered in accordance with the contract, and the financial interests of the HHS agency are protected. The contract manager must have a thorough understanding of all components of the solicitation and contract to ensure the contract is performed satisfactorily and the responsibilities of the HHS agency and contractor are properly discharged.

The primary responsibilities of a contract manager include:

1. Being involved throughout each stage of the procurement and contract lifecycle.
2. Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract.
3. Being well versed in the contract terms, including its purpose, scope, requirements, deliverables, and milestones, and ensuring the contractor is held accountable for performance, including timeliness.
4. Providing training and technical assistance, as needed.
5. Promoting the use of best practices throughout the contract lifecycle.
6. Establishing specific, time-bound performance measures and requirements to ensure contractor accountability.
7. As needed, hosting a post award contractor conference to ensure all parties are aware of the performance requirements and administrative procedures agreed in the contract.
8. Verifying completion of data entry into the SCOR Contract Detail submodule and uploading contract documents into the SCOR Contract History or Documents submodule within 10 days from the contract effective date.
9. Maintaining thorough and up to date documentation in SCOR.
10. Assessing the level of risk and establishing a contract monitoring plan.
11. Monitoring and documenting the contractor's performance and entering results into SCOR.

12. Identifying and tracking contract deliverables and documenting the status of deliverables in accordance with PCS Policy 358, Contract Deliverables Tracking.
13. Verifying the accuracy of invoices and authorizing payments consistent with the contract terms.
14. Consulting System Contracting to address legal concerns or issues.
15. Managing, approving, and documenting changes to the contract through the amendment process authorized by the terms of the contract.
16. Identifying and resolving disputes with the contractor in a timely manner.
17. Elevating to management in a timely manner disputes or deficiencies with the contractor's performance.
18. Exercising remedies, as appropriate, when a contractor's performance is deficient.
19. Confirming services and deliverables are complete prior to the expiration date of the contract or in accordance with the terms.
20. Monitoring Subcontracting Plan, if applicable.
21. Completing contract closeout processes to include, as applicable, submission of a vendor performance report (PCS Form 147).
22. Complying with record retention requirements.

While staff identified as a "Lead Contact" may periodically assist the Contract Manager with basic management functions, the Contract Manager is responsible for ensuring the successful performance of the contract by the contractor.

15.2.1 Internal Oversight Protocols

As stated in Section on Standards and Authority, HHS agencies/divisions must develop and implement policies and procedures including internal quality review protocols to ensure compliance with established requirements. Internal protocols must, at a minimum, include the following:

1. Performing periodic quality reviews of contract documents and data to verify completion in compliance with applicable policies and procedures and documenting results;
2. Ensuring identified deficiencies are corrected;
3. Ensuring SCOR accurately reflects the assigned contract manager.

15.3 Contractor Training

Contract managers and/or program staff must hold contractors accountable for ensuring compliance with state and federal regulations, contract terms and conditions, and protecting the state's financial interests. Communication is essential for a successful partnership. Also, in an effort to support successful contract outcomes and compliance and make expectations more transparent, contract managers may need to consider providing additional training and technical assistance to contractors.

15.3.1 Training for Contractors

Contract managers and contracting areas may provide training to contractors to address program requirements, VetHUB contract compliance, reporting requirements, changes in agency policies, state and federal requirements or other items as deemed necessary. Contract managers should coordinate with their agency leadership regarding curriculum, materials, presenters, training dates, and locations.

The contract manager and/or program staff must ensure training is documented to include the following items and uploaded into SCOR:

1. Date, time, and location of training.
2. Sign-in sheet with the name and signature of each contractor representative in attendance (either in person or virtually).
3. A copy of the materials and/or approved curriculums.

15.4 Technical Assistance for Contractors

Contract managers and program areas/contracting divisions may provide technical assistance, as needed, throughout the term of the contract. Technical assistance must be uploaded into SCOR . Technical assistance may be provided by phone, virtual meeting, email, or during on-site visits, and can include circumstances such as:

1. Turnover in key agency or contractor staff.
2. Difficulty with following contract terms and conditions, policies, and procedures, or reporting requirements.
3. Clarification of HHS agency policies.
4. Clarification of monitoring and oversight requirements.
5. Billing or payment issues.
6. Other identified needs.

15.4.1 Mitigating Minor Contractor Issues

Contract managers and/or designees may determine a contractor may benefit from technical assistance in instances when the contractor:

1. Has minor noncompliance issues that do not warrant formal actions.
2. Has technical problems or issues with billings.
3. Has difficulty in determining an approach to correct a problem or issue.

15.4.2 Technical Assistance Documentation

The contract manager and/or designee must ensure technical assistance is adequately documented and uploaded into SCOR. Documentation of technical assistance must include the following items:

1. The name of the contractor.
2. The contract numbers.
3. Date of technical assistance.
4. Summary of technical assistance provided.
5. Action items, if any.

15.4.3 Audits

Technical assistance should not be provided to a contractor when an open or ongoing audit is taking place. The contractor should be directed to the auditing entity staff to address any questions or needs for technical assistance to the audit team for the duration of the audit.

15.5 Contract Oversight

Contract managers must conduct contract oversight activities to verify the contractor is performing all contract obligations, so the HHS agency is aware of and able to address any developing issues. Contract oversight includes planned, ongoing, periodic, or unscheduled activities that measure and ensure compliance with the terms, conditions, acquisition, service delivery, and related requirements of a contract.

The objective of contract oversight is to promote accountability and ensure the state gets what it pays for by:

1. Determining compliance with the terms and conditions of the contract, including applicable state and federal regulations.

2. Providing feedback and technical assistance to prevent noncompliance.
3. Evaluating system and process controls to ensure reliable validation of service deliverables.
4. Assessing and evaluating progress towards successful completion of performance requirements and outcomes.

15.6 Oversight of Grant Performance

Contract managers who manage grant agreements must ensure grantees are responsible for the oversight of the operations of the state award-supported activities. Grantees must monitor their activities under state awards to assure compliance with applicable laws, regulations, and the specific award requirements, and to ensure performance expectations are being achieved. Grant agreements should be managed in accordance with UGG, TxGMS (or its successor) and the same contract management requirements and best practices in this Handbook, as applicable. As always, federal and state requirements take precedence if any conflict exists between the Handbook and federal or state requirements.

15.6.1 Grantee Accountability

The contract manager is responsible for grantee accountability in meeting grant requirements and must ensure that the grantee has policies in place to oversee and monitor their subcontractors. The grantee must:

1. Maintain effective control over, and accountability for all grant funds, property, and other assets.
2. Safeguard all assets and assure that they are used solely for authorized purposes.
3. Evaluate and monitor compliance with statutes, regulations, and the terms and conditions of the awards.
4. Take prompt and appropriate action when instances of noncompliance are identified.
5. Take reasonable measures to safeguard protected personally identifiable information and other information designated as or considered sensitive.

15.6.2 Overseeing Grant Performance

In overseeing grant performance, program staff and contract managers must ensure grantees achieve goals and complete deliverables. HHS agencies oversee grant performance by conducting programmatic and fiscal monitoring. Contract managers must

strive to ensure fiscal and program compliance by reviewing the results of fiscal and programmatic monitoring. Fiscal monitoring may include reviewing internal controls, indirect costs, and expenditures for allowability, reconciling expenditures with service delivery, and monitoring the overall fiscal compliance of the grantee. Programmatic monitoring may include monitoring performances and accomplishments against program objectives and compliance with reporting requirements.

By closely monitoring performance throughout the grant period, potential problems can be addressed to keep grantees on course. Monitoring can be done through formal methods, such as reporting, on-site reviews, and desk reviews.

Grant management includes:

1. Effectively monitoring grantees using management systems and site visits to provide timely and accessible information on performance and deliverables.
2. Identifying, prioritizing, and managing potential at-risk grantees. Higher risk grantees may require more frequent and intensive monitoring and technical assistance to ensure overall success.
3. Sharing monitoring results with grantees to assist with improving performance.
4. Reviewing reports for timeliness, quality, and accuracy on an ongoing basis, including data entered into reporting systems.
5. Measuring effectiveness to determine if reported results are satisfactory.
6. Reviewing data to determine if funding is over or under what is awarded.

15.7 Contract Risk Assessment

A Contract Risk Assessment is an evaluation of how the elements of a contract may impact the risk of health and safety to clients or cause financial loss to the state if the contractor performs poorly, does not fulfill the terms of a contract, or engages in fraud, waste, or abuse.

In HHS, the purpose of the Contract Risk Assessment is to help ensure the allocation of time and staff towards contract oversight is commensurate with each contract's risk level. For example, high risk contracts would warrant more oversight and increased monitoring than low risk contracts.

Contract managers (or other individuals designated by the program area/contracting division) must complete the SCOR Baseline Risk Assessment, with some exceptions, as stated in Section on SCOR Baseline Risk Assessments – Exemptions. Program areas/contracting divisions may also require contract managers to complete program

specific risk assessments, in addition to the SCOR Baseline Risk Assessment. Other divisions, such as CQC, may also complete risk assessments for purposes such as financial monitoring. *(Reference Section on Other Contract Risk Assessment for additional information).*

Program areas/contracting divisions must establish written policies and procedures to ensure risk assessments are completed in accordance with HHS requirements and any internal requirements.

15.7.1 SCOR Baseline Risk Assessment

The purpose of the SCOR Baseline Risk Assessment is to evaluate the contract risk level for standardized risk elements. At a minimum, HHS requires completion of the SCOR Baseline Risk Assessment on an annual basis for all contracts not listed in Section SCOR Baseline Risk Assessment Exceptions. The SCOR Baseline Risk Assessment is comprised of two tiers of factors that assess the contract and contractor characteristics.

1. Tier One (1) SCOR Baseline Risk Assessment factors include factors that are likely to have a high impact to clients and/or the agency and contain the highest weight values.
2. Tier Two (2) SCOR Baseline Risk Assessment factors contain factors that, while still important to assess, would have less impact to the agency and have lower weight values assigned.

The total score from each tier is added together to determine a SCOR Baseline Risk Assessment final risk score. The total score determines the baseline risk range and risk level (low, medium, or high).

The SCOR Baseline Risk Assessment must be completed no later than 60 calendar days of the effective date of a:

1. New contract as stated in the terms of the contract, which is reflected in SCOR as Begin Date within the Contract Detail submodule; and
2. Contract amendment to:
    a. Increase current contract value; or
    b. Update the terms and conditions that could impact the delivery of goods and/or services.

Risk must also be assessed annually to account for any changes that may affect the contract's risk level and, in turn, the prioritization of contract oversight activities. The assessment must be completed no less than once every 12 months, measured from either the contract begin date or the date the most recent risk assessment was completed.

Note: Program areas/contracting divisions should consider whether an amendment to reduce contract funding will impact the risk of the contract and complete a new risk assessment accordingly.

The results of the SCOR Baseline Risk Assessment and any other risk assessment must be used to develop and/or update a contract monitoring plan, in accordance with Section regarding Contract Monitoring Plan.

For instructions on how to complete the SCOR Baseline Risk Assessment, see "Risk Assessments" in the SCOR User Guide.

15.7.2 Contracts subject to SCOR Baseline Risk Assessment Applicability

SCOR Baseline Risk Assessments are required for the following:

1. Bilateral contracts.
2. Contract Purchase Orders (CPOs).
3. Revenue generating contracts[120] that include:
4. Confidential information; and/or
5. Deliverables related to client services.

15.7.3 SCOR Baseline Risk Assessments - Exemptions

Program areas/contracting divisions are not required, but may choose, to complete the SCOR Baseline Risk Assessment for all other types of contracts not required in Section regarding Contracts subject to SCOR Baseline Risk Assessment Applicability. In addition, the following types of contracts are exempted from completing the SCOR Baseline Risk Assessment:

1. Transactional Purchase Order contracts, as defined by PCS Operating Procedure 758.
2. Administrative contracts with a current contract value of less than $25,000 (as stated in SCOR).
3. MOUs or MOAs that have no monetary value and have minimal noncompliance issues.

[120] *Revenue generating contracts will be required to complete the SCOR Baseline Risk Assessment manually until the SCOR automation functionality is available.*

4. Texas SmartBuy Purchase Orders through the CPA term contracts and TXMAS contracts that have the following Purchase Category Codes (PCC):

6. **PCC A:** Purchases from CPA SPD term contracts using the Texas SmartBuy online ordering system.

7. **PCC C:** Purchase from CPA SPD Managed term contracts by issuing internal Purchase Orders directly to the contractor.

8. **PCC G**: Non-Delegated procurements processed by CPA SPD through competitive IFB or RFP on behalf of the requesting agency.

9. **PCC X:** Purchase of items from CPA TXMAS contracts through the Texas SmartBuy online ordering system.

The following purchases are exempt from SCOR Baseline Risk Assessments regardless of the resulting contract type, such as a bilateral contract, CPO or TPO.

1. Software and software maintenance purchases under $1 million dollars. This does not include software development.
2. Software licenses
3. Staff augmentation
4. Temporary staffing

> ***Note:*** *Although these purchase types are exempt from a SCOR Baseline Risk Assessment, at a minimum, basic contract management is required, and management must be made aware of any significant performance issues.*

15.7.4 Other Contract Risk Assessment

Other Contract Risk Assessment means any assessment of a contract's risk (e.g., evaluation of one or a group of risk factors), in addition to the SCOR Baseline Risk Assessment, that a program area/contracting division or other division is required to complete in accordance with internal policies and procedures.

Examples of other risk assessment factors may include but are not limited to:

1. **Financial Stability.**
2. **Program-Specific Risk Assessment Factors:** May include, but are not limited to, the following:
    - Contract Type (Administrative or Client Services).

- Ongoing or continual training and/or technical assistance in prior contract periods with minimal progress towards correcting an issue(s).
- Number of deliverables required as part of the contract.
- Program or legislative requirements.
- Other areas of concern.

3. **Agency Experience:** How much experience agency personnel have with the product provided or the type of work to be performed.
4. **Funding Source Complexity:** Involves the complexity of the budget sources supporting the contract including, but not limited to match requirements, multiple funding sources, single funding source, mix of federal and state funding sources, etc.
5. **Stability of Organization:** Changes to the collective and individual personnel including staff reductions, increases in staff, changes impacting knowledge base and performance proficiency, and a change of key personnel suggesting overall organizational impact.
6. **Subcontracts:** All or significant portions of client services are provided through subcontracts; key contract deliverables are dependent on subcontractors.

In general, other types of contract risk assessments are tailored to programs or contract types and include additional evaluation criteria than the SCOR Baseline Risk Assessment provides. However, these other types of contract risk assessments cannot replace the SCOR Baseline Risk Assessment; they may be conducted in addition to it.

Other Contract Risk Assessments must:

1. Result in a risk level of **Low**, **Medium**, or **High**.
2. Be used in addition to the Baseline Risk Assessment to inform the Contract Monitoring Plan in accordance with Section on Contract Monitoring Plan; and
3. Be uploaded to SCOR within ten (10) business days from date of completion.

See **Risk Assessment** section of the SCOR User Guide for instructions on uploading other types of contract risk assessments to SCOR.

15.7.5 Risk Assessment Compliance

Program areas/contracting divisions must have a written, quality review process in place that specifies quality reviews are performed at least monthly by supervisors or their

designees to ensure staff complete the SCOR Baseline Risk Assessment accurately and timely. For program areas/contracting divisions that require a programmatic or other risk assessment, supervisors or their designees must also ensure that staff have followed their internal policies and procedures.

The review process for ensuring compliance with the SCOR Baseline Risk Assessment must (i) be initiated and completed by the supervisor (or their designees) before the end of the last business day of each month and (ii) result in actions to address contracts whose SCOR Baseline Risk Assessments are not compliant or are at risk of being noncompliant. The process should include a methodology for the supervisor to select and review a representative sample of contracts.

Note: *The supervisor (or designee) should use the "SCOR Risk – Initial Baseline Assessment Due" report to determine which contracts are noncompliant or are at risk of being noncompliant. In addition, the "Begin Date" for contract amendments listed in the SCOR Contract History submodule should be used to determine which contract amendments are not compliant or are at risk of being noncompliant. See SCOR Standard Reports Guide" for instructions on how to use the report.*

PCS may also complete compliance reviews. When PCS identifies noncompliance with SCOR Baseline Risk Assessment requirements, PCS communicates the deficiencies and requests resolution within a specified timeframe. If the issue is not resolved or when there are patterns of noncompliance, PCS may escalate the issues for resolution.

15.8 Contract Monitoring Plan

A Contract Monitoring Plan establishes the monitoring schedule and activities for contracts. Each program is expected to develop a monitoring plan based on the level of risk associated with the area's contracts. Contract managers must refer to the SCOR Baseline Risk Assessment, and other risk assessment instruments, as applicable (e.g., fiscal, programmatic, etc.). The contract Manager must also include other considerations such as federally-mandated monitoring frequency to prioritize monitoring activities in the contract monitoring plan. Other factors, such as known significant performance issues, should also be considered when developing or updating the monitoring plan.

Contract monitoring plans must be developed within 60 calendar days after the completion of SCOR Baseline Risk Assessment and prior to commencing monitoring. The monitoring plan must be uploaded and maintained in the SCOR Documents submodule within 10 business days of completion of the monitoring plan. Contract managers may develop a monitoring plan for a single contract or a group of contracts with similar services.

(Reference Section regarding SCOR Baseline Risk Assessment for timeframes to complete the baseline risk assessment).

In some cases, a separate fiscal monitoring plan may also be developed, in coordination with an HHS agency, division, or program, as applicable, for certain subrecipient or recipient contractors based on level of risk.

15.8.1 Contract Monitoring Plan Minimum Elements

Contract managers must use risk assessment results combined with other relevant factors, such as identified contract performance issues and federal or state-required minimum monitoring requirements, if applicable, to drive development of the monitoring plan and priority of monitoring activities. The contract monitoring plan must identify the contracts that will be monitored during an established timeframe and identify monitoring activities based on the complexity, value, and risk of the contract.

The minimum elements required in a monitoring plan include the following:

1. **Contractor Name:** legal entity as listed in SCOR.
2. **Contract Number:** contract number as listed in SCOR.
3. **Contract Manager:** the name of contract manager assigned to and responsible for oversight and management of the contract.
4. **Risk Assessment Type(s):** SCOR Baseline Risk Assessment, fiscal, programmatic, etc.
5. **Risk Ranking**: low, medium, high.
6. **Standard and Enhanced Monitoring Activities:** monitoring events and activities selected based on risk of contract.
7. **Review Method/Type**: onsite, desk, combination of desk and onsite, etc.
8. **Review Level:** e.g., focused, programmatic, comprehensive, fiscal, and administrative.
9. **Monitoring/Review Schedule**: event date, time, and/or frequency, etc.
10. **Management Approval and Signature:** management (or designee) signature for review and approval of the monitoring plan as detailed in internal policies and procedures.
11. **Notes/Comments:** additional details on the monitoring activities.

The elements listed above are minimum requirements; however, program areas/contracting divisions may require more elements in the monitoring plan, which must be documented in the area's internal policies and procedures.

Note: *An optional template Contract Monitoring Plan may be found on the Contract Manager Toolbox.*

15.8.2 Adjustments to the Contract Monitoring Plan

Adjustments to the contract monitoring plans are reviewed by management (or designee) in accordance with the program area's/contracting division's internal policies and procedures. Monitoring plan adjustments may result from situations such as:

1. Identified performance issues.
2. Initiation of enhanced monitoring not already identified in the monitoring plan.
3. Risk assessments completed after development of the monitoring plan.
4. Other situations as identified by the program area/contracting division.

Note: *Adjustments to the contract monitoring plan must be documented and entered in the SCOR Monitoring submodule.*

15.8.3 Contract Monitoring Plan Exceptions

A monitoring plan is not required for contracts exempt from the SCOR Baseline Risk Assessment as outlined in the SCOR Baseline Risk Assessments – Exemptions Section unless significant performance issues have been identified.

15.8.4 Contract Monitoring Plan Compliance

Contracts should be monitored according to the approved Contract Monitoring Plan. Once a Contract Monitoring Plan has been developed and approved, it should be entered into the SCOR Monitoring submodule, which allows contract managers to document contract monitoring activities. See the SCOR User Guide for more information.

Program areas/contracting divisions must have a written quality review process in place that is performed by supervisors (or their designees) to help ensure their staff complete Contract Monitoring Plans. This process must include steps that supervisors (or their designees) will take to ensure the contract oversight activities are commensurate with the increased risk level such as enhanced monitoring activities.

The supervisor (or designee) should use the SCOR Monitoring – Events Planned report to identify contracts that are not compliant with implementing monitoring plans.

15.9 Contract Monitoring

Contract monitoring is a standard requirement to ensure all contracts are in compliance with terms and conditions. Additionally, per Texas Government Code, § 2261.258, the State Auditor's Office (SAO) is tasked with the responsibility for assigning contract monitoring ratings of additional monitoring warranted, reduced monitoring warranted, or no additional monitoring warranted to each of the 25 largest state agencies. The Comptroller has published 34 Texas Administrative Code § 20.166, which stipulates expanded requirements for agencies placed in the additional monitoring designation by the SAO in the Contract Management and Termination phase. When under this designation, agency staff must complete required training and other contract management activities as outlined in 34 Texas Administrative Code Rule § 20.166. Therefore, the contracting divisions must adhere to the aforementioned rules and standards documented in the below section.

Contract monitoring is the review and/or reconciliation of a contractor's records, business processes, deliverables, and activities to ensure compliance with the terms and conditions of the contract. Contract monitoring can be either standard or enhanced. Enhanced monitoring is an increased level of monitoring beyond standard monitoring.

Each HHS agency that contracts for goods or services is responsible for actively monitoring contractor compliance with contract terms and conditions. Not every contract will require the same level of monitoring; small dollar value or less complex contracts may require minimal monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed necessary. Conversely, large dollar contracts may not require in-depth monitoring if the items or services purchased are not complex, the contractor is meeting performance standards, or the level of risk associated with the contract does not meet the enhanced monitoring requirement.

The goals of contract monitoring are to:

1. Protect the health and safety of those that receive services.
2. Ensure delivery of quality goods and services.
3. Ensure contractor performance meets the contract terms.
4. Protect the financial interest of the state.

The HHS contract monitoring policy is intended to serve as minimum standards. Program areas/contracting divisions must establish internal contract monitoring policies and procedures that incorporate the minimum standards and outline processes for standard and enhanced contract monitoring requirements. Internal policies must also address how

program areas/contracting divisions will ensure applicable staff are in compliance with requirements of 34 Texas Administrative Code Rule § 20.166.

15.9.1 Standard Contract Monitoring

All contracts must have a monitoring review, unless otherwise exempt, within the lifetime of the contract, considering elements such as contract value, associated risk level, type of contract, and/or services provided. Standard monitoring activities are routine monitoring requirements that are outlined in the program area's/contracting division's contract monitoring policies and procedures.

Standard monitoring includes, but is not limited to, the following:

1. Regularly scheduled monitoring (desk or onsite) yearly, once every three years, biennially, etc.
2. Routine review of the contract requirements, including deliverables, financial activities, program standards, performance measures, program rules, and other requirements.

Monitoring tools are typically tailored to each contract's specific services being provided, programs, or such other categorization as outlined in the program area's/contracting division's internal policies and procedures.

15.9.2 Enhanced Contract Monitoring

Per Texas Government Code § 2261.253(c), agencies are required to establish a procedure to identify each contract that requires enhanced contract or performance monitoring for high dollar and high-risk contracts.

According to the Comptroller's State of Texas Procurement and Contract Management Guide, enhanced monitoring is an increased level of monitoring beyond standard monitoring.

Enhanced monitoring may vary across program areas/contracting divisions based on contract type, performance issues, and/or risk and must be performed in accordance with the program's internal policies and procedures and agency requirements.

Enhanced monitoring is required for contracts that meet one or more of the following criteria and must be documented in SCOR per the SCOR User Guide

High Dollar Contracts

Enhanced monitoring is required for:

1. Current contract value or maximum potential contract value of **$20 million or more**; or
2. Contracts with no stated value ($0 dollar contracts) with actual expenditures of **$20 million or more**.

High-Risk Contracts or Significant Performance Issues

Enhanced monitoring is required for:

1. A SCOR Baseline Risk Assessment resulting in a high contract risk level, (any baseline risk assessment determined to be high risk requires enhanced monitoring regardless of any other risk assessment results).
2. Other risk assessment(s), that results in a high-risk score as determined by the programming contracting division or other division. (Reference Section regarding Other Risk Assessments, for additional information).
3. Significant Performance Issues identified.

Texas Government Code § 2261.253(c), some contracts are exempt from enhanced monitoring requirements. However, the following HHS contract types must undergo Enhanced Monitoring and be included in the required Executive Reporting if significant performance issues are identified:

1. MOUs
2. MOAs
3. IACs
4. Interlocal Contracts (ILCs)
5. Contracts for which there is no cost.

Enhanced monitoring may include, but is not limited to, the following:

1. More in-depth, intensive contract desk or site reviews than occur with standard monitoring based on risk, concern, and/or unsatisfactory performance.
2. Focused reviews to specifically concentrate on identified areas of risk, concern, and/or unsatisfactory performance.
3. Follow-up reviews to verify implementation and assess effectiveness of corrective action.
4. Increased/focused technical assistance or training based on repeated issues of noncompliance.

5. Additional or more frequent contractor meetings, documentation, and/or reporting requirements to address risks or issues.
6. Other contract monitoring activities above and beyond standard monitoring deemed necessary by the contract manager, program/division, or agency.

15.9.3 Enhanced Monitoring Executive Reporting

To ensure compliance with Texas Government Code § 2261.253(c) and 1 Texas Administrative Code Section § 391.605, HHS must report information on contracts identified as requiring enhanced monitoring at least quarterly. The requirements for the Enhanced Monitoring and Remedies Executive report can be found in PCS 363, Executive Reporting Guide.

Immediate Escalation

Quarterly reporting does not eliminate the need for more immediate escalation of serious contract issues or risks.

Contract managers must notify program area/contracting division leadership immediately when serious contract issues or risks are identified between routine reporting periods, and ensure the issue is documented in SCOR. Program area/contracting division leadership should escalate serious issue to the HHS Executive Commissioner.

The program area/contracting division must keep leadership informed of progress, resolution, or ongoing concerns. PCS CMS will include the information documented in SCOR in the next quarterly Enhanced Monitoring report.

Program area's/contracting division's internal policies and procedures must include requirements for Enhanced Monitoring Executive Reporting.

15.9.4 Enhanced Monitoring Compliance Assessment

Program areas/contracting divisions must have a written quality review process in place that is performed by supervisors, or their designees, to help ensure staff appropriately identify contracts that require enhanced monitoring and schedule enhanced monitoring activities.

Program management may use several resources to monitor compliance with enhanced monitoring such as the SCOR Monitoring - Risk Level Report to identify high risk contracts. The Enhanced Monitoring Report can be used to track contracts at risk of being noncompliant with the enhanced monitoring requirements or contracts with performance issues. See the SCOR Standard Reports Guide for instructions on how to use the SCOR report and Enhanced Monitoring Report for more instruction on using the report.

15.10 Contract Monitoring Activities

Contract monitoring activities are documented in the SCOR Monitoring submodule and can be planned, ongoing, periodic, or unscheduled. These may be conducted in a variety of ways, but they must remain objective and address contract complexity, value, performance, and risk. There are standard items each program area/contracting division may review across all contracts. However, monitoring activities, questions, methods, and tools should also target specific elements or issues of concern unique to a contract or a group of contracts with similar or like services. In determining what monitoring activities to conduct for a given contract, consider the following:

1. Type of purchase.
2. Contract requirements.
3. Changes in the contractor's operations, personnel, or environment (e.g., shifts in population demographics or staff turnover).
4. Individual risk factor scores on the programmatic or fiscal risk assessment instruments. Consider focusing on risk factors scored the highest to identify weaknesses and help develop solutions for improvement.
5. Prior monitoring history and past performance (e.g., problems recently resolved, recurring issues).
6. Contractor strengths in areas tested and proven to be continuously compliant, in which case it may be appropriate to omit or reduce monitoring of those areas.
7. Recent reviews from or collaboration with other HHS agencies or contract divisions to coordinate monitoring efforts, reduce duplication, and promote consistency.

15.10.1 Examples of Monitoring Activities

1. **Post Payment Validation:** For contractor payments already made by the Agency, staff may consider conducting a more in-depth review of contractor records to further validate payments in accordance with the terms of the contract, such as satisfactory service delivery and appropriate rates. This also helps determine if the supporting documents, such as cost reports, third party receipts for expenses, adequately support the request for payment already made by the Agency. Ongoing issues or issues identified in standard monitoring with contractor billing or invoicing may indicate a need for technical assistance and/or enhanced monitoring. This exercise does not replace contract invoice approval requirements prior to payments.

2. **On-Site Visit:** On-site visits are conducted at the contractor's location or service delivery site to review information and documents, personnel, physical facilities, live operations, service delivery, records, or other observable characteristics to objectively validate compliance with contract requirements. A site monitoring checklist or monitoring tool is used to identify contract compliance requirements from which to assess the contractor's performance. To assess compliance, it may be necessary to review invoices, service delivery documents, personnel files, policies and procedures, internal controls, system reports and data, and audit files. Face-to-face interviews may be an effective method to use during site visits.
3. **Desk Review:** A desk review is conducted at an HHS agency office to review information and documents to objectively validate compliance with contract requirements. Reviewing reports submitted by the contractor or other documents such as invoices, files, internal controls, system reports and data, audit files, financial records, personnel files, or phone interviews may be effective methods to use during desk reviews. A standardized desk review tool is used to measure contractor compliance.
4. **Third Party Monitoring:** Third Party Monitoring is conducted by an independent party to validate and verify compliance with contract requirements. This monitoring may be conducted as either a site visit, desk review, or both.
5. **Process Improvement Monitoring:** Process improvement monitoring is an approach using statistical data and pool sampling methodology (e.g., six sigma) that measures overall quality to help determine likelihood of compliance and applies root cause analysis to negative findings to support corrective measures. This approach is also used to conduct targeted monitoring for specific requirements to ensure compliance with quality standards.
6. **Inspection and Testing:** Inspection occurs at the contractor's place of business to determine whether the goods or services comply with the contract under which they were purchased. Tests may be performed on samples. When products tested fail to meet all applicable specifications, the costs of the sample used as well as any testing performed, shall be borne by the contractor.

Assessing Contractor's Internal Controls: Internal controls are necessary to promote efficiency, reduce risk, and help ensure the reliability of financial information. A well-planned and operational internal control system provides reasonable assurance that an entity can achieve goals and objectives as set in the contract terms and conditions.

15.10.2 Effective Internal Controls

Effective Internal Controls include the following components:

1. **Control environment:** Sets the tone of an organization, and includes factors such as integrity, ethical values, management's philosophy, and operating style.
2. **Risk assessment:** The identification and analysis of relevant risks to achieving objectives and determining how the risks should be managed.
3. **Control activities:** The policies and procedures that help ensure management directives are adhered to.
4. **Information and communication:** Pertinent information must be identified, captured, and communicated in a form and timeframe that enables employees to carry out responsibilities.
5. **Monitoring: Internal control systems** must be monitored to assess the quality of the system's performance over time.

15.10.3 Generally Accepted Control Activities

If a program area/contracting division requires submission of a contracted agency's internal controls, contract managers may coordinate with other agency staff as needed to assess the adequacy of the agency's internal controls by using the five generally accepted control activities shown below with examples:

1. **Segregation of Duties:** Different individuals are assigned responsibility for different elements of related activities. For example, the same individual should not receive cash, deposit the cash, record the receipt of the cash, and be responsible for purchasing goods and services and subsequently disbursing funds through the accounts payable system.
2. **Proper Authorization**: Transactions and activities should include the proper authorization that will help ensure that all company activities adhere to established guidelines unless responsible managers authorize another course of action. For example, a fixed rate sheet may serve as an official authorization of price for staff. A properly stated control should be in place for authorized deviations from this rate sheet.
3. **Adequate Documents and Records**: Controls designed to ensure adequate recordkeeping include the creation of invoices and other documents that are easy to use and sufficiently informative. These controls may include the use of pre-numbered, consecutive documents and timely preparation.

4. **Physical Control Over Assets and Records:** These controls help protect the organization's assets. Activities may include electronic or mechanical controls, such as employee ID cards, fences, a safe, cash registers, fireproof files, and locks. They may include computer-related controls dealing with access privileges or established backup and recovery procedures. When evaluating controls for the safeguarding of assets, it is important to consider the various types of assets that tend to be more vulnerable. Examples may include cash at hand or easily accessible in the form of cash deposits, checks, loans, accounts receivable, and marketable securities (bonds, notes, shares, stocks) that an organization owns.
5. **Independent Checks**: Independent checks are carried out by employees who did not perform the work being checked. For example, a supervisor verifies the accuracy of an employee's petty cash drawer at the end of the day.

15.10.4 Monitoring Types

The scope of monitoring may be categorized into separate types or may include elements of multiple types as shown in the following chart.

Table 14. Types of Monitoring

Monitoring Type	Description	Possible Actions
Standard Monitoring	Standard monitoring activities are routine monitoring requirements that are outlined in the program area's/contracting division's contract monitoring policies and procedures.	• Include, but not limited to, actions listed in fiscal, programmatic, administrative, and goods monitoring. • Review may be onsite or desk
Fiscal Monitoring	A review of a contractor's financial operations, which may include review of internal controls for program funds in accordance with state and federal requirements, an examination of principles, laws and regulations, and a determination of whether costs are reasonable and necessary to achieve program objectives. (This activity involves assessment of financial statements, records, and procedures. It is like an audit, but with a lesser degree of detail and depth, and usually a higher degree of frequency.)	• Review the terms of their contracts, accounting systems, appropriate billings to the funding agency, and submit reports for compliance with state and federal laws, rules, and regulations. • Report on the grantee's compliance with HHS contract terms and provisions regarding fiscal requirements. • Review, accept, and verify Cost Allocation Plans. • Review, reconcile, and accept Grantees' Property Inventory Reports. • Verify that goods and services

Monitoring Type	Description	Possible Actions
		billed were delivered according to contract requirements.
Programmatic Monitoring	A review of a contractor's service delivery system to determine if it is consistent with contract requirements including outputs, outcomes, quality, and effectiveness of programs. In programmatic monitoring, service-related information is reviewed for compliance with process and outcome expectations as identified in standards, rules, and contracts. This activity assesses the degree to which the identified need is being met and the quality of the service being provided.	• Review the provisions of the contract to determine desired outputs and outcomes. • Review contractor compliance with contract terms and conditions. This may include assessment of the subcontractor performance. Results will be addressed with the contractor. • Review contractor monitoring of subcontractor compliance with contract terms and conditions. • Review materials to determine if goods or services are being provided appropriately. • Interview organization personnel, contract staff, individuals receiving services, or others to determine if the services are being performed according to the contract.
Administrative Monitoring	A review of a contractor's internal controls and operating processes.	• Review personnel files and records. • Verify required training and licensure. • Verify background check requirements. • Verify contractor insurance coverage. • Review contractor compliance with contract terms and conditions. This may include assessment of the subcontractor performance. Results will be addressed with the contractor. • Review contractor monitoring of subcontractor compliance with contract terms and conditions. • Validate internal control processes, such as adherence to contractor's written policies/processes or application of information security

Monitoring Type	Description	Possible Actions
		protections. • Review of complaints and resolutions.
Goods Monitoring	Activities to determine whether the delivered goods comply with the contract under which they were purchased.	• Inspection of goods. • Testing using standard industry testing methods. • Verify the invoice and supporting documentation, if any, is correct.
Enhanced Monitoring	Increased monitoring, over and above standard monitoring, to address high dollar/ high risk and contractor performance issues. Can overlap with the other types of monitoring listed in this table.	• Reference Section on Enhanced Contract Monitoring for examples of enhanced monitoring. • Increased review contractor compliance with contract terms and conditions. This may include assessment of the subcontractor performance. Results will be addressed with the contractor. • Increased review contractor monitoring of subcontractor compliance with contract terms and conditions.

15.11 Contractor and Grantee Post-Award Checks

HHS agencies must demonstrate due diligence to ensure every contractor and grantee with whom HHS contracts is and remains eligible to do business with the State of Texas. Vendor check activities must be documented at the time they are performed, and records maintained in SCOR.

Vendor checks are completed prior to contract award, renewal, extension, and in conjunction with contractor/grantee organizational changes. *(Reference Section regarding Contractor/Grantee Organizational Change regarding Ownership or Name Change for more information when the Texas Identification Number [TIN] changes.)*

Program areas/contracting divisions may elect to establish policies to conduct checks at any other key contract activities, such as during a contract monitoring event. Vendor checks are completed by accessing and searching various databases and verifying and documenting results. Procedural information is available on the Vendor Checks Job Aid.

The Vendor Checks Job Aid includes a checklist and provides the necessary steps for staff to perform each vendor check. The Vendor Checks Job Aid was developed to assist divisions that procure and manage contracts in complying with general HHS vendor check and

documentation requirements. However, the Vendor Checks Job Aid does not address program, solicitation, or contract specific vendor checks that may be required pursuant to applicable law or other governing sources; programs must ensure all checks are properly and timely completed and documented. Divisions that manage contracts are strongly encouraged to use the Vendor Checks Job Aid and checklist tools. If staff do not use the Vendor Checks Job aid, the division must ensure their vendor checks align with the requirements (steps and applicability) outlined in the Vendor Checks Job Aid.

Contract managers must maintain documentation in the contract file to support the outcome of the required checks. If an issue is identified, staff may refer to the Vendor Checks Job Aid and Section regarding Escalation of Contract Issues to determine the appropriate action. All documentation and applicable escalation communication must be uploaded into SCOR.

See also, Section on Vendor Checks, Section on Additional Vendor Checks, Section on Ownership or Name Change, and Section on Escalation of Contract Issues.

15.12 Subcontracting Plan Monitoring and Progress Assessment Report

The contract manager should be aware that the contractor is required to submit, if applicable, a completed Progress Assessment Report (PAR) monthly as a condition of payment. The completed PAR must include the subcontracting payments that the prime contractor paid to each subcontractor for the reporting (month) period the report covers. The PAR must monitor the prime contractor's SP to ensure the contractor is using only the subcontractors stated on the approved SP, and that new subcontractors are not being used without prior approval from the VetHUB Coordinator and in compliance with the good faith effort requirements for subcontracting

***Note**: Using an unapproved subcontractor may be considered breach of contract.*

SP auditing is required to verify the subcontracting payments reflected on the PAR form. This verification is performed by comparing the information on the current approved SP to the subcontractors' invoices submitted with the request for payment by the prime contractor.

Should a discrepancy in the PAR be discovered during the contract term, the program area/contracting division and VetHUB Program will work together to address and correct any potential SP noncompliance. Any documented SP noncompliance must be factored into the Vendor Performance Tracking System (VPTS) Score.

At contract closeout, a complete review of the SP must be conducted to determine whether the prime contractor implemented the SP contract provision in good faith. If the prime contractor-maintained compliance with the good faith effort subcontracting requirements, then it may be deemed the SP was implemented in good faith.

15.13 Monitoring Subcontractors

The contractor is responsible for ensuring that the services completed under all subcontracts are performed in compliance with the contract terms and conditions. The level of monitoring by the contractor should be determined based on factors such as the nature and complexity of the services performed under the subcontractor. At a minimum, the contract manager is responsible for adequately assessing the performance of the contract, including verifying the contractor is ensuring satisfactory performance of requirements provided through subcontracts and internal controls. HHS Contracting Divisions with contracts that involve subcontracting must:

1. Incorporate subcontracting in the programmatic risk assessment process, as applicable, considering factors such as whether the direct delivery of goods or services are provided through subcontracts and the degree to which subcontracting is utilized.
2. Ensure the contractor monitoring of subcontracts is included in assessing the contractor's overall contract compliance.
3. Ensure the contractor is addressing issues with subcontractors through written corrective action and other remedies as applicable.

HHS Contracting Divisions should develop and implement internal processes and procedures to ensure the contractor is meeting performance requirements for goods and services provided through subcontracts.

15.14 Monitoring Data Use Agreement (DUA) Compliance

HHS Circular C-049, HHS System Office of the Chief Data Officer, established the Office of Chief Data Officer (OCDO) for managing data and creating a governance structure for data created, managed, or maintained with the HHS System.

A contract manager must include an assessment of compliance with DUA requirements when monitoring contracts that contain confidential information. Appendix H – DUA

Confidential Information Protection provides an assessment that may be used in conjunction with existing monitoring processes.

15.15 Monitoring of Staff Augmentation Contractors

Monitoring of staff augmentation contractors includes documentation of their tasks and time tracking as a form of verification that the agency is receiving value from the acquisition. Documentation may include the following:

1. Contract employee files that may include resumes, results of selection process, job description, time sheets, progress reports, feedback, and evaluation notes.
2. Status report of tasks performed, or deliverables completed at scheduled intervals (monthly, bi-weekly, weekly).
3. Timesheet or time tracking system that should include a reconciliation of any approved leave or modified schedule approvals.

When monitoring results in issues or findings, contract managers must also follow up with additional action to ensure findings are resolved.

15.16 Sampling

Depending upon the monitoring scope and the risk, complexity, value, federally mandated, and/or volume of goods or services being performed under the contract, it may be appropriate to select a representative sample of contractor information and documentation when conducting monitoring.

When planning to monitor, sampling can be used to determine what size and selection of information (e.g., the number of files, records, and expenditure items to be tested) accurately represents the contractor's overall performance for the item(s) being reviewed.

Use of a standard sampling methodology helps eliminate the appearance of bias during the sampling selection. This methodology gives each item in the population an equal chance of being reviewed and allows for random selection of individual items. However, it may be necessary to use an alternative sampling methodology when there is a small population, or it is needed to evaluate risk for fraud, waste, and abuse.

15.17 Contract Monitoring Documentation and Follow-Up Activities

Contract managers must ensure documentation of all monitoring activities and results are thorough, factual, complete, and substantiate findings, such as performance deficiencies or instances of noncompliance.

Monitoring activities and supplemental documents such as the monitoring tool, final report, and remedies, including but not limited to a corrective action plan must be in SCOR, unless prohibited from view by state or federal rules or regulations.

Once a monitoring event is concluded, a clear and concise monitoring report is developed by the contract manager. The initial monitoring report identifies, documents, and communicates to the contractor the facts, findings, and conclusions resulting from the review. The final monitoring report includes acceptance of the contractor's corrective action plan (CAP), if applicable. Confidential or employee identifying information must not appear in the report.

Monitoring documentation should include:

1. HHS agency and associated program or division.
2. Name of person conducting monitoring.
3. Date of monitoring activities.
4. Fiscal year being reviewed.
5. Type of monitoring activity (site visit or desk review, or a combination of both).
6. Sampling methodology used and the selected sample.
7. Any monitoring tools and working papers used.
8. Substantiated findings and dispute resolution, if any.
9. Copies of supporting documentation to substantiate findings.
10. Actions taken, such as escalation, liquidated damages, corrective action plans, or service or payment hold, as a result of findings from the monitoring activities.

Table 15. Examples of Monitoring Follow-up Activities

Nature of the Finding	Possible Action Response	Other Optional Steps
Contractor misunderstanding of requirements.	Communication with contractor.	• Technical assistance. • Follow-up monitoring to verify

Nature of the Finding	Possible Action Response	Other Optional Steps
		compliance. • Corrective action plan. • More frequent check ins with the contractor.
Contractor noncompliance issues. High Risk Examples: • Significant harm or risk of harm to individuals or agency. • Significant misuse of agency funds or resources. • Concerns of fraud, waste, or abuse.	Contract Adverse Actions/Remedies to resolve the problem and/or eliminate negative impact. Formal corrective action.	• Escalate to program management. • Require a Corrective Action Plan. • Implement enhanced monitoring. • Reduce services or dollars associated with the contract. • Collection of improper payments/ disallowances. • Impose adverse actions/remedies: ○ Suspension of referrals or services. ○ Suspension of payments. ○ Assess liquidated damages or penalties. ○ Termination of contract prior to contract end date. • Report the contractor, as applicable, for unsatisfactory performance, to the appropriate licensing organization, the Inspector General, or law enforcement.

15.18 Financial Management of Contracts

Financial management of contracts means the actions contract managers take to effectively monitor contract funding and oversee contract budgets, contract expenditures, and payments to contractors. The following are financial management responsibilities and HHS-specific policies by which contract managers must abide. For questions about Financial Management of Contracts and referenced policies, email the PCS CMS team.

15.18.1 Budget and Expenditure

Reference: PCS Policy 352

Contract managers or designees are responsible for monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract.

HHS contract managers or designees must obtain approval of contract amounts from the HHSC Chief Financial Officer (CFO) budget department for the contracts they manage, or will manage, each fiscal year, in accordance with PCS Policy 352, Budget Roster Approval.

In addition, HHS Contract Managers or designees must track and document contract expenditures, ensure the contractor is providing goods and services as agreed upon, and ensure contract expenditures do not exceed the approved contract value in accordance with PCS Policy 354, Expenditure Tracking.

15.18.2 Invoice Processing

Reference: PCS Policy 353

Contract managers or designees are responsible for verifying the accuracy of invoices and authorizing payments consistent with the contract terms.

HHS contract managers (or designees) must follow HHS requirements for receiving, approving, processing, and tracking payment of invoices in accordance with PCS Policy 353, Invoice Processing.

15.18.3 Bankruptcy

There are three (3) common levels of bankruptcy protection; each with potentially different implications for the contractor and HHSC and DSHS. These are as follows:

1. Chapter 7: A business ceases operations unless allowed to continue by the Chapter 7 trustee. Chapter 7 can also involve an individual who receives a discharge of most debts addressed in the bankruptcy case.
2. Chapter 11: A reorganization of the debtor, often resulting in the sale of the business or a new managing party, which may be a corporation, sole proprietorship, or partnership. Chapter 11 includes a Plan of Reorganization. Some complex Chapter 11 bankruptcies can take years to close.
3. Chapter 13: Allows individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years.

There are other types of bankruptcies, such as a Chapter 9 Municipality Bankruptcy, but these are rarely, if ever, at issue with HHS contracts.

15.18.3.1 Notification of Bankruptcy

Upon receiving notice of a bankruptcy protection filing involving an HHS contractor, the contract manager must immediately inform their management and consult with an OCC

Litigation attorney in HHSC OCC Litigation (OCC Litigation) to develop an appropriate plan of action relating to the contract(s). Activities included in a plan of action may vary from contract to contract. The plan of action must be documented and, at a minimum, must include:

1. Date of consultation with OCC Litigation and the name of the attorney.
2. The HHS point of contact responsible for communicating with the contractor, i.e., OCC Litigation or Contract Manager.
3. Decisions on monitoring such as whether to:
4. Move forward with planned monitoring per the approved monitoring plan; or
5. Schedule a monitoring that was not previously planned.
6. Decisions about whether termination of the contract is appropriate. This is particularly important in a Chapter 11 bankruptcy in which the debtor has the right to choose whether to assume or reject any executory contracts.
7. Other decisions about the contract.

15.18.3.2 Bankruptcy Involving Termination:

Bankruptcy cases are complex and may involve coordination with other agencies such as the OAG. OCC Litigation is available to provide guidance on a case-by-case basis.

If termination of a contract involving an organization under bankruptcy is approved by OCC Litigation, the contract manager must prepare and send the notice of termination that complies with established requirements to address record retention and standard language for termination notice.

(Reference Section regarding Contract Expiration, Termination and Closeout.)

15.18.3.3 Documentation of Bankruptcy in SCOR

Upon notification of bankruptcy and/or bankruptcy case closure, PCS CMS assists with updating SCOR to reflect bankruptcy status. Therefore, notifying PCS CMS of bankruptcy filing and bankruptcy case closures, once approved by OCC Litigation, is necessary.

In addition, the contract manager or designee is responsible for ensuring all documentation, including the plan of action described above is uploaded in SCOR.

15.19 Contractor Performance Issues and Contract Remedies

Contract management staff must comply with the General Appropriations Act (GAA) 17.09(b)(8) requirements regarding enforcement of damage provisions for vendor non-performance.

The contract manager and/or designee should communicate with other areas, such as regulatory, that monitor contractor performance routinely and maintain a reasonable level of awareness of a contractor's performance throughout the duration of the contract. The contract manager and/or designee is responsible for evaluating, analyzing, and addressing unacceptable contractor performance as quickly as possible.

The contract manager must take steps to address identified instances of noncompliance, which includes imposing a remedy authorized under the contract, except for in limited circumstances, such as when a contractor demonstrates that the issue has been corrected prior to the remedy being imposed. Contract managers and program staff should be familiar with remedy provisions in the contract and should consult PCS CMS and System Contracting as needed to determine the correct response to a contractor's noncompliance.

The contract manager must notify the contractor in writing of identified instances of noncompliance unless directed otherwise by System Contracting.

15.19.1 Establishment of Remedy Procedure

Contracting divisions are responsible for ensuring compliance with this policy/OP by establishing written protocols.

Each division's process must include, at a minimum, the following elements:

1. Coordination and escalation processes when enforcing remedies as outlined below in Enforcement of Remedies Section.
2. Coordination with System Contracting is required for Termination for Cause as well as any remedies that require litigation.
3. Coordination with Accounts Receivable is required for any remedies that include funds to be returned to HHS. For HHSC contracts, see HHSC Accounts Payable Policy and Procedures Handbook.
4. Process for notifying the contractor of a breach and requesting written acknowledgement.

5. Quality review process performed by supervisors or their designees, to help ensure staff appropriately track remedies and complete required actions.
6. Enhanced Monitoring and Remedies Executive Report review and approval process.
7. Any program or division specific requirements regarding compliance with the enhanced monitoring and remedy executive reporting requirements set forth in PCS 363 Executive Reporting Guide.

15.19.2 Initial Steps for Remedy Enforcement

Prior to imposing a remedy, contract management staff must identify supporting documentation to prepare for the steps outlined below in Section on Enforcement of Remedies. This should include at a minimum:

1. Citation(s) for specific requirement(s) in the contract that was breached,
2. Date of breach,
3. How and by whom the breach was determined,
4. Description of breach, and
5. Documentation of communications regarding the breach as well as any previous related issues or attempted corrections.

15.19.3 Enforcement of Remedies

Upon completion of Initial Steps for Remedy Enforcement, contract management staff must perform the following actions:

1. Identify available remedies outlined in the contract to address the breach.
2. Identify the appropriate remedy, or remedies, to address the breach and confirm that the circumstances warrant use of the specified remedy.
3. Consult and engage with the appropriate personnel within the contract manager's division and coordinate with, escalate to, or report to others as required or necessary as outlined in internal procedures. Staff should review the Contract Remedies Guide that includes examples of other HHS divisions, departments, or personnel that staff may need to coordinate with or escalate to.
4. As authorized under the contract, notify the contractor in writing of missed requirements and the remedy to be imposed, unless directed otherwise by the Office of Chief Counsel. Notification must also include a request for acknowledgement of receipt by the contractor.

5. Track any remedies and required actions through completion and closure.
6. Maintain all documentation related to contract breach in the System of Contract Operation and Reporting (SCOR) contract file, including but not limited to:
7. Notification(s) to contractor of breach,
8. Documentation of all notifications and any acknowledgement of receipt(s) from contractor. Staff should request acknowledgement from the contractor.
9. Documentation of remedy enforcement and any associated tasks or actions (as required), and
10. Final resolution.

15.19.4 Payment Plan Requirements

The agency must recover funds owed by the contractor due to imposed remedies. These could include payments of disallowed costs, liquidated damages, or other applicable circumstances. Occasionally, a contractor may request a payment plan for amounts due. HHS contract management staff must work with their management and other personnel necessary to ensure a payment plan is appropriate and permissible under the contract, and if there are any applicable funding source restrictions, applicable law(s), or other governing authority restrictions. Payment plan agreements and any supporting documentation must be stored in the SCOR contract file.

This section only addresses payment plan agreements when the contract's invoicing and payments are processed through the Centralized Accounting and Payroll/Personnel System (CAPPS) Financial system and are therefore managed through HHS Accounting.

For specific requirements related to payment plan agreements, refer to the HHSC Accounts Payable Policy and Procedures Handbook.

15.19.5 Reporting

Contract management staff must also take into account any enforced remedies when completing vendor performance reporting and risk assessments. Contract management staff must comply with required reporting for remedies as specified in this section and per Texas Government Code § 2261.254.

15.19.5.1 Performance Reporting Requirements

Current performance reporting requirements should consider any assessed remedies in the scoring for Vendor Performance Tracking System (VPTS), Enhanced Monitoring reporting, and risk assessments. VPTS reporting should incorporate any assessed remedies

in the contract's scoring as a measure of compliance and performance. If the remedies assessed are the result of significant performance issues or result in a risk assessment with a high score, the contract is subject to enhanced monitoring as outlined in the HHS Procurement and Contract Management Handbook (PCMH) and should be reported accordingly. In addition, risk assessment scores should reflect assessed remedies during the evaluation period as it relates to the risk factors outlined in SCOR.

15.19.5.2 Executive Reporting

The Enhanced Monitoring and Remedies Executive report is required for contracts that are on enhanced monitoring and/or those that do not currently require enhanced monitoring but have a remedy that has been initiated and meets other conditions set forth in the PCS 363 Executive Reporting Guide. This report will be used to comply with both the reporting requirements outlined in Texas Government Code § 2261.254 for contracts with a value of more than $1 million and reporting requirements outlined in 1 Texas Administrative Code Section § 391.605 and Texas Government Code § 2261.253(c) regarding enhanced monitoring. The requirements for the Enhanced Monitoring and Remedies Executive report can be found PCS 363 Executive Reporting Guide.

15.20 Disputes

Disputes may arise during any part of the contract lifecycle. The contract manager is responsible for handling disputes per applicable state and federal requirements, contract terms and conditions, and agency policy, as well as internal processes and any other applicable governing authority.

If a dispute arises, the contract manager should assess the facts, circumstances and controlling authority (e.g., statute, agency rule, contract provision), ensure all communications are documented in writing, notify their management, and work to resolve the dispute promptly with the assistance and guidance of management, and as necessary, other agency divisions.

If there is an established agency or division process, that process should be followed. For example, for invoice disputes the contract manager should follow agency policy and procedures regarding such disputes, including PCS Policy 353.

If a contractor asserts a claim of breach of contract (whether Texas Government Code Chapter 2260 is referenced or not), the contract manager must engage their management and, after consultation with management, the Litigation Department within the HHSC Office of Chief Counsel, and copy the System Contracting Department, also within the HHSC Office of the Chief Counsel.

All related documentation must be uploaded to SCOR.

15.21 Escalation of Contract Issues

1 Texas Administrative Code Section § 391.605 requires HHS to report information on contracts that require enhanced monitoring to the Executive Commissioner at least quarterly. Contracting areas must develop an internal escalation process to communicate contract-related issues to agency executive leadership, program management, and PCS CMS that fall outside quarterly enhanced monitoring reporting periods outlined in Section on Enhanced Monitoring Executive Reporting. Appropriate departments in the Office of Chief Counsel should be consulted, as necessary. Any suspicious activity related to fraud, waste, neglect, or abuse should also be reported to the appropriate entities (e.g., OIG, DFPS, etc.). Examples of appropriate issues for escalation include:

1. Loss or misuse of agency funds.
2. Risk the contract will exceed budget limitations or timeframes.
3. Harm or risk of serious harm to individuals.
4. Repeated noncompliance.
5. Publicized or political concerns.
6. Pattern of complaints or a high-profile complaint.
7. Appearance of impropriety or potential conflict of interest.
8. Suspicion of fraud, waste, neglect, or abuse.
9. Vendor/Contractor/Grantee check results that identify issues.

Contract managers and/or designees must ensure agency executive leadership, program management, PCS CMS, and other applicable staff are notified immediately when they become aware of significant contract issues or risks. Although contractor noncompliance issues are often identified during routine contract management activities or monitoring, contract managers must maintain an awareness of a contractor's performance throughout the duration of the contract.

Effective escalation helps ensure problems and issues are addressed quickly to prevent harm to individuals, gaps in goods or service coverage, or misuse or waste of taxpayer dollars.

In cases where an HHS agency has a committee or other entity that is responsible for sanctioning contractors for nonperformance, the agency's escalation process takes precedence over committee timeframes and procedures.

See also, Section on Vendor Checks, Section on Additional Vendor Checks, Section on Contractor and Grantee Screening Post-Award Checks, and Section on Contractor/Grantee Organizational Change.

15.22 Review for Amendment, Renewal or Reprocurement

Contract managers must regularly review assigned contracts to determine which contracts expire soon. The contract manager should consult with their management to determine whether the contract will be renewed, extended, re-procured, or allowed to expire. If no more renewals remain available under a contract, contract managers should consult with program staff to determine whether the services are still needed, and a new solicitation must be issued. The contract manager's assessment should consider all required internal and external timeframes necessary for successful renewal or re-procurement.

15.23 Contract Amendments, Bridge Extensions and Renewals

A contract amendment is a formal, written change to an existing contract. All contract changes require a contract amendment.

Procurement and contract documents serve as the primary guide in establishing whether contract modifications can be allowed. The contract must contain provisions that allow changes to services, deliverables, or other aspects of the contract agreement. Additionally, the contract manager must ensure contract modifications comply with applicable law, HHS agency policy, and do not violate procurement requirements. All amendments must be executed prior to the expiration date of the contract.

> ***Note**: If a change is needed to a contract, the change must be within the original scope, or parameters of the solicitation. An amendment may not result in a material or substantial change to the statement of work because such a change would go against the concept of fair competition with an equal playing field for all the vendors. Any substantial or material change could only be made through a new solicitation to ensure compliance with the competitive bidding statutes.*

A request to amend a contract is required if there is a change to the contract terms and conditions, such as:

1. The service description or the statement of work (SOW).
2. Performance measures.
3. Dollar amount.

4. Geographic service area.
5. Contract period outside of the contract period stated in the contract.
6. An extension to the contract within the contract period stated in the contract.

15.23.1 Bridge Extensions

Reference: PCS Operating Procedure 754

A Bridge Extension is an extension to an existing contract beyond the period of performance (including any renewals or optional extensions provided in the contract) to address immediate operational or service delivery needs caused by a delay in awarding a new contract.

HHS must not use appropriated funds to pay for an extension to an existing contract beyond the base term and optional extensions provided for in that contract unless certain conditions are met. The duration and cost of the extension is limited to not more than one additional option period as defined in the contract to address immediate operational or service delivery needs. If the contract does not contain a defined option period, the extension is limited to one year.[121]

The HHS Executive Commissioner must approve the use of a bridge extension through the agency's action memo process. To ensure compliance with Article IX, Sections 7.11(d) and 17.09(e)(2), (3) of the GAA, HHS agency staff must follow the process provided in the procedure.

15.23.2 Major Information Resource Project (MIRP) Contract Amendments

Before amending a contract related to a MIRP, HHS must notify the governor, lieutenant governor, speaker of the house, presiding officers of the house and senate standing committees with primary jurisdiction over appropriations, and the QAT if the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent or if the amendment requires the contractor to provide consultative, technical expertise, or other assistance defining project scope or deliverables. Notice to the QAT must include justification for the amendment. (*Reference Section on Amending or Canceling MIRP Contracts).*

[121] *GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 17.09(e).*

15.23.3 Contract Renewals

Reference: PCS Operating Procedure 645

A contract with expenditures exceeding $5 million cannot be amended to exercise a renewal option until a vendor performance report has been completed and entered into the CPA's Vendor Performance Tracking System.[122] (*Reference Section on Vendor Performance Reporting).*

To amend a contract, the contract manager should consult the procedure to follow the process for renewing the two different types of contracts listed below:

1. **Bilateral Contract:** When amending a bilateral contract, including grant agreements, all parties to the contract agree to the new contract term and any negotiated modifications (if allowed) or other provision of the contract that needs to be altered. This means that the contractor must agree to the renewal terms and conditions by signing a bilateral contract amendment.
2. **Contract Purchase Order (CPO)**: Exercising a renewal for this type of contract requires a CAPPS Financials requisition for the PCS Purchaser to execute a signed PCS Form 135, POCN Contract Amendment and issue a Purchase Order.

15.23.4 Revenue-Generating Contract Amendments

To amend a revenue-generating contract, the contract manager must update the record in SCOR. A new procurement is required if the proposed change is outside of the scope of the executed contract. Consult System Contracting as needed to determine if a change requires an amendment to the contract or a new procurement.

15.23.5 Certificate of Interested Parties (Form 1295) – Contract Amendments

The information reported by a contracting entity on the Certificate of Interested Parties form submitted in support of an HHS contract may require revision during the term of the HHS contract. In addition, a 1295 may be required for certain contract amendments.

The contract manager must ensure the vendor completes a new 1295 for the following situations:

Form 1295 Required When Not Previously Submitted

[122] *TEX. GOV'T CODE §2155.089(b-1).*

If a contract that was previously exempt from the Form 1295 submission requirements under Texas Government Code § 2252.908, is later amended, changed, or extended in a way that makes the contract subject to Form 1295 submission requirements, Form 1295 must be submitted.

New Form 1295 Required When Previously Submitted

Additionally, a Form 1295 must be submitted if there is a change (including an amendment, change order, or extension of a contract) made to an existing contract if a Form 1295 was previously submitted and:

1. There is a change to the disclosure of interested parties.
2. The changed contract requires an action or vote by the governing body of the entity or agency.
3. The value of the changed contract is at least $1 million greater than the value of the existing contract.

If vendors are required to complete Form 1295, Certificate of Interested Parties, it must be filed with the TEC and acknowledged by the contracting agency before the agency may sign the amendment.

If a change to the disclosure of interested parties should occur or if an amendment or extension of a contract would require disclosure, the contractor must complete Form 1295, Certificate of Interested Parties to reflect the updated information. The new Form 1295 is submitted to the HHS contract manager, who must acknowledge receipt of the form using the TEC online acknowledgement within 30 calendar days from HHS receipt of the filed 1295 and upload it into SCOR.

Reference Section on Disclosure of Interested Parties.

15.23.6 VetHUB Program Office Notification

The contract manager must notify the VetHUB Program Office of proposed amendments when the aggregate contract amount approaches $100,000 or more, or when the contract with an existing SP needs to be amended to comply with 34 Texas Administrative Code § 20.285.

When the original statement of work expands beyond the subcontracting opportunities designated by the CPA class and item codes in the original solicitation, the contractor may be required to submit a revised Subcontracting Plan.

If the VetHUB Program Office determines additional VetHUB subcontracting opportunities exist, the assigned VetHUB coordinator and contract manager will work with the contractor

to assist them with developing and revising an adequate SP. Once evaluated, the VetHUB Program Office will submit the conclusion to the contract manager, who will ensure its inclusion in the contract file.

Additional VetHUB information can be found on the Veteran Heroes United In Business Opportunities Program Page; and *Section on Coordination and Preparation of Contract Documents,* and *Section on Subcontracting Plan Monitoring and Progress Assessment Report.*

15.23.7 Contractor/Grantee Organizational Change

Contractors sometimes undergo ownership changes, name changes, or other organizational changes. Organizational changes refer to the actions in which the contractor/grantee of record alters a component of its structure such as undergoing a name change, buyout or sales, mergers, and/or re-assignments. All changes must be permitted under the contract and if necessary, processed through a contract amendment. For buyout or sales, the contractor/grantee of record must send the contract manager a letter stating the circumstances of the buyout or sale. If the contractor/grantee of record has already ceased operating as a separate business, the contractor/grantee should send the contract manager a letter indicating the sale of the company to the new contractor.[123] Once a contract manager is notified or becomes aware of a contractor/grantee of record's organizational change, the contract manager should consult the Organizational Changes Guide to determine the next steps. The contract manager must complete, and document required vendor checks and consult with program management, System Contracting, and other appropriate parties prior to approving the change. If the organizational change is an assignment, the contract manager must provide written approval on behalf of HHS to the contractor/grantee prior to taking effect.[124]

When routing the amendment, contract managers must also submit required accounting forms to HHS Accounts Payable (AP) to ensure the changes are captured in CAPPS Financials and SCOR. These forms are required regardless of the type of change to ensure the new contractor/grantee will be able to receive payment instead of the contractor/grantee of record. Failure to do so could result in inaccurate information in CAPPS Financials/SCOR and/or payments to the incorrect legal entity.

Contract managers must process vendor checks again if, for any reason, the contractor/grantee's TIN changes (whether it is a change in TIN made by the original

[123] *Comptroller's Guide, Buyout or Sale.*
[124] *TEX. GOV'T CODE Section 2262.056 prohibits vendors from assigning the vendor's rights under a services contract to a third party without approval by the HHS System Agency*

contractor/grantee or a TIN change that results from some type of organizational change or other action (e.g., assignment).

In the event of any change, the contract manager should review applicable provisions of the Comptroller's Guide and the Contractor/Grantee Organizational Changes Job Aid to determine the appropriate action.

Reference Section on Vendor Checks, for additional information.

15.23.7.1 Name Change

As stated in the Comptroller's Guide, any name change requires documentation from the original contractor on company letterhead stating the circumstance of the name change and the new name. The letter should be signed by an authorized representative, showing the change and the effective date.

> ***Note:*** *DSHS The contract manager will notify the DSHS Vendor Set Up at vendor@dshs.texas.gov and upload the signed letter indicating the name change to SCOR.*

15.23.7.2 Texas Identification Number Change

Most organizational changes, other than a name change only, will result in a new CPA TIN. Examples of circumstances that result in a new TIN include sales and mergers. For contracts that required Notice of Attestation Letters to the LBB, the contract manager must notify the PCS External Reporting (ERT) Team mailbox to request a Note to File. Upon receipt of the Note to File from PCS ERT, the contract manager must also upload a copy to the SCOR contract record. For assignments related to Major Information Resources Projects (MIRPs), see also, Section on General Requirements-MIRP. For more information regarding specific types of organizational changes and how to process a TIN change, please refer to the Organizational Changes Guide.

16. Contract Expiration, Termination, and Closeout

16.1 Contract Expiration

A contract expires pursuant to its term. Both parties may have obligations that survive the expiration of the contract.

16.2 Purchase Order Contract Fulfilled

A Purchase Order contract is fulfilled when both parties have met obligations prior to the original expiration date. These may be for simple Purchase Order contracts that do not have any obligations that survive the expiration of the contract.

16.3 Contract Termination

Contract Termination occurs when:

1. Both parties agree to terminate the contract; or
2. Either party terminates the contract.

Contract termination can occur with any contract, including Purchase Orders and revenue generating contracts. Contracts may be terminated in whole or in part. Both parties may have obligations that survive the expiration of the contract.

16.3.1 Types of Contract Terminations

16.3.1.1 Termination — Mutual Agreement

Termination by mutual agreement occurs when the HHS agency and the contractor mutually agree to terminate the contract prior to the expiration date, relieving the parties of any further obligations, except for terms that survive the expiration of the contract.

16.3.1.2 Termination — For Convenience

Termination for convenience may occur when it is in the best interest of the State of Texas. This type of termination is also known as no-fault termination or termination without cause and is effective on the date specified in the HHS agency's notice of termination.

16.3.1.3 Termination for Non-Appropriations — Excess Obligations Prohibited

Termination due to "Excess Obligations Prohibited," also referred to as "non-appropriation," is related to availability of funds and occurs without penalty to the HHS agency. This termination may occur if the HHS agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either the HHS agency or contractor's delivery or performance impossible or unnecessary. The HHS agency will not be liable to the contractor for any damages that are caused or associated with the termination. The HHS agency should provide notice as soon as practical.

16.3.1.4 Termination for Cause

The HHS agency may terminate a contract in whole or in part for cause if it determines that the contractor has done one or more of the following:

1. Failed to perform or make progress.
2. Breached the contract in any way.
3. Failed to adhere to any laws, ordinances, rules, regulations.
4. Failed to follow the orders of any public authority with jurisdiction and such violation prevents or impairs the contractor's duties under the contract.

Examples of contract breaches that may result in a termination for cause include:

- Misrepresentation in any aspect of contractor's solicitation response.
- Failure to deliver goods or perform services or otherwise comply with provisions of the contract.
- Failure to make progress, which could jeopardize the carrying out of the contract.
- Failure to comply with HHS agency rules, policies or procedures as outlined in the contract.
- Submission of falsified documents or fraudulent billings or making false statements.
- Failure to obtain or maintain required licensure or certification.
- Inappropriate use or mismanagement of state or federal funds.
- Performance that results in threats to individual health or safety.
- Continued instances of unacceptable performance.
- Inclusion on any debarred entity lists, such as but not limited to, the System for Award Management (SAM).

16.3.2 Termination Decision

The contract manager must review the contract (i.e., terms and conditions), agency policy, and applicable laws and regulations to ensure termination is allowed and to determine the basis for termination. The contract manager must consult with their management and System Contracting regarding the termination of a contract. Executive management must approve the decision to terminate a contract prior to any action to notifying the contractor. Executive management approval must also align with the approval and signature authority outlined in Circular C-046.

The contract manager is responsible for ensuring termination of a contract is completed per established contractual agreements, applicable laws, administrative code, agency policy or internal processes. Additionally, the contract manager must facilitate and document all activities related to contract termination, including but not limited to:

1. Remedies taken to achieve compliance.
2. Escalation of concerns.
3. System agency consultation.
4. Formal written correspondence.

Note: *If there has been notice or any indication of potential bankruptcy filing, contact System Contracting prior to taking any action with the contract.*

16.3.3 Written Notice of Termination

Termination of a contract must be coordinated at the earliest possible stage so alternate arrangements can be made for goods or services and to ensure a smooth transition before the contract termination date. When practical, the agency should give the contractor at least a 30-calendar day notice prior to the date of contract termination. When a contract is terminated by HHSC or DSHS, a written notice of termination must be sent to the contractor prior to the termination date and always be consistent with any terms and conditions in the contract. Unless stated otherwise in the contract, staff should send notices of termination by certified mail, return receipt requested, or by courier with proof of receipt. Additionally, the termination notice must be approved and signed by executive management that approved the execution of the contract, as stipulated in Circular C-046.

The contract manager or designee must upload the notice of termination and all related documents in SCOR.

16.3.4 Notice of Termination: Minimum Requirements

The notice must contain the following, at a minimum:

1. The effective date of the termination.
2. The reason for the termination.
3. The contract citation that allows the termination.
4. Details including timelines on any other actions to be completed by the contractor (e.g., return of equipment, bond release, or final billing).

5. Reminders of ongoing responsibilities that survive the contract including requirements around record retention and security and privacy. See PCS 507, Record Retention Letter or PCS 508-Standard Language for Termination notices.
6. A Termination for Cause notice must include the following additional elements:
    a. A statement of contract provisions that the contractor failed to meet.
    b. Identification of any related materials demonstrating contractor failures.
    c. Notice of the contractor's rights, if any, in addition to Texas Government Code Chapter 2260.

16.4 Contract Termination or Expiration: Privacy and Security Requirements

Immediately, but no later than the same business day as the effective date of termination or expiration of a contract, the contract manager must complete and submit IT-001 to remove a Contractor's access to any HHS system. When terminating a contract, the contract manager must also notify the contractor in writing of their responsibility to retain and safeguard all records and confidential information related to the contract in accordance with the contract requirements. PCS 507 and 508 provide standard language that may be used in expiration or termination notices. See Information Security Controls policy for other security considerations and Section Records Retention.

16.5 Contract Closeout

Contract closeout is a detailed process that consists of fiscal, programmatic, and administrative procedures as the final step in the contract lifecycle. The contract manager must compare contract performance against performance measures, goals, and objectives. The complexity of closeout may vary depending on factors such as the procurement or contract type, type of goods or services, contractor performance, and/or type of termination.

Contract closeout must be completed as soon as possible but, unless otherwise stated in the contract, within 90 days of the contract end date, unless extenuating circumstances exist.

Per 34 Texas Administrative Code § 20.166, additional closeout activities for a contract identified as requiring enhanced monitoring, including RGCs and TPOs, must be documented within 30 days of the closeout including:

1. Each of its performance expectations for the contract.

2. The performance indicators are monitored during the contract.
3. The methods it used to monitor performance indicators.
4. Whether the contractor met its performance expectations.
5. A summary of corrective action plans and corrective actions taken by the contractor.
6. Any liquidated damages assessed or collected from the contractor.
7. A summary of lessons learned during management of the contract that the agency will apply to future procurements.

Adherence with HHS requirements stipulated in Contract Closeout Section for timeliness in completing closeout will ensure compliance with 34 Texas Administrative Code § 20.166.

Staff must complete the automated contract closeout form for contracts in the SCOR contracts and TPO modules.

Staff must complete PCS Form 506 to document closeout for Revenue Generating Contracts that have been identified as needing enhanced monitoring.

Staff must ensure the completed form is acknowledged by the supervisor and maintained in the contract management file.

Note: *Texas Government Code § 2261.258, tasks the State Auditor's Office (SAO) with responsibility for assigning contract monitoring ratings of additional monitoring warranted, reduced monitoring warranted, or no additional monitoring warranted to each of the 25 largest state agencies. The Comptroller has published 34 Texas Administrative Code § 20.166, which stipulates expanded requirements for agencies placed in the additional monitoring designation by the SAO in the Contract Management and Termination phase. When under this designation, agency staff must complete required training and other contract management activities as outlined in 34 Texas Administrative Code § 20.166. See Enhanced Monitoring section.*

16.5.1 Contract Closeout Process

Every contract requires some level of closeout depending on the nature and complexity of the contract.

The contract closeout process may include, as applicable to the contract:

1. Completion of all administrative actions.
2. Completion of contract deliverables and corresponding documentation, in accordance with PCS Policy 358.
3. Appropriate handling of any HHS confidential information and/or any Agency/division confidential information that may be returned to the agency.

4. Audit of any records or payments.
5. Resolution of financial transactions, such as overpayments, underpayments, or unprocessed payments.
6. Cancellation of any goods or services not yet received.
7. Resolution of contract disputes, if any.
8. Transferring of caseloads and files.
9. Transferring of equipment, hardware, software, and goods.
10. Transferring access to any information or reporting systems.
11. Disposition of equipment.
12. Verifying that contractor access to HHS systems has been terminated.
13. Review of SP and submitted PAR forms in coordination with VetHUB Program and in accordance with Section on SP Monitoring and Progress Assessment Report (PAR).
14. Vendor performance (VPTS reporting).

16.5.2 SCOR Closeout Submodule

Staff must complete the automated contract closeout form for contracts in the SCOR contracts and TPO modules. If contract closeout cannot be completed within 90 days, the contract manager must document information about the delay in the SCOR Closeout submodule, as outlined in the SCOR User Guide. There may be limited instances when a closed contract should be reopened. If a closed contract needs to be reopened, please contact PCS Level 1 SCOR Support and include a detailed explanation. PCS Level 1 will coordinate with PCS CMS on the request.

16.5.3 Supervisor Acknowledgement

Contract managers are responsible for obtaining supervisor acknowledgement on the SCOR closeout form or PCS Form 506, as applicable, for:

1. Contracts subject to Enhanced Monitoring.
2. Contracts with expenditures that exceeded the current contract value that could not be resolved.
3. Contracts with funds that could not be recouped.
4. Contracts that were terminated, for any reason, prior to their contract end date.

Supervisors are responsible for ensuring division leadership is aware of any issues.

16.5.4 Contract Closeout Compliance

Contracting divisions should establish written protocol for management oversight of the contract closeout process to ensure closeout activities are completed in accordance with established requirements. The written protocol should include a methodology for selecting and reviewing a representative sample of contracts to ensure compliance.

17. Contract Records

Maintaining and documenting contract management activities is critical to effectively managing contracts, making informed decisions, settling claims or disputes, and accurately accounting for and reporting contract data.

17.1 System of Contract Operation and Reporting (SCOR)

HHS contracts and agreement (including agreements such as MOUs and MOAs) must be uploaded into SCOR as specified in the SCOR User Guide. Supporting documents are uploaded to the SCOR Contract Documents submodule. HHS staff must ensure documents that contain confidential information, such as protected health information, are identified as confidential when uploading into SCOR. Staff may consult with the Chief Privacy Officer as needed to determine if contract documents include confidential information.

Contract managers must ensure the contract information in SCOR is updated throughout the contract lifecycle and is accurate and complete. If corrections to information in SCOR are required, contract staff either make the necessary correction or submit a request to the SCOR Mailbox. Supplemental contract records, including automated systems, electronic files, and paper records, may also be maintained to complete the contract record. Examples of documents uploaded to SCOR include:

- Solicitation.
- Executed contract.
- Contract amendments.
- Contract correspondence.
- Disclosures and conflict of interest forms.
- Risk assessments.
- Deliverables.

- Monitoring documents.
- Performance outcomes and reports.
- Single audits.
- Subcontracting plan and progress assessment reports.
- Data Use Agreement (DUA) and Security and Privacy Inquiry (SPI) forms.
- Closeout documentation.
- VPTS reports (PCS Form 147).
- Legislative, statutory, or federal required documentation (i.e., Disclosure of Interested Parties, Attestations, federal Assurances and Certification Regarding Lobbying, etc.).

17.2 Contract File Checklists

Reference: PCS Policy 355

Effective September 1, 2019, Texas Government Code § 2262.053 requires agencies to maintain contract file checklists that address each stage of the procurement and contracting lifecycle. As a result, the PCS CMS unit created checklists and associated procedures that incorporate requirements outlined in the Comptroller's Guide. This policy applies to any contract solicitation or management activity initiated or required on or after September 1, 2020.

Purchasers and the SCOR-designated contract manager will complete and upload into SCOR the appropriate checklist for each phase of the procurement and contracting lifecycle. For the 170-M and 170-F checklists, staff have the option to utilize the digital checklist forms in the Documents submodule. PCS Procurement will complete checklists for the procurement and award phases of contracts in which Procurement is involved. The contract manager is responsible for completing, certifying, and uploading a PCS Form 170-F and/or PCS Form 170-M into SCOR to document completeness of the contract file at the appropriate contract phase or at certain contract events (i.e., amendments, monitoring, closeout).

Contracting divisions and supervisors are responsible for ensuring the contract files are complete, certified, and uploaded by the SCOR-designated contract manager per established requirements.

17.3 Disclosure or Audit of Contract Records

All contract records and documents are subject to examination and audit by the CPA, SAO, HHS Internal Audit, the Inspector General, and other state, and federal auditors.

Additionally, most government contract documents are public and must be released upon request, unless disclosure is expressly prohibited or confidential under law. All requests for public information must be handled in a timely fashion, and specific, formal protocols apply to requests made under the Public Information Act, Texas Government Code Chapter 552.

Other than routine communication with staff, external stakeholders, or members of the public, only HHS Open Records Division staff in the Office of Chief Counsel are permitted to respond to public information or other external requests for information, except as permitted by PCS 231 External Data Request. If staff receive an information request, direct the requester to email the HHS Open Records Division or visit the HHS Open Records Division website. The HHS Open Records Division will coordinate the development of the response and release the response to the requester.

17.4 Records Retention

In accordance with Texas Government Code § 441.1855, all contracts and related documents, including solicitation documents, must be retained for a minimum of seven (7) years after a contract is complete (expired, terminated, or otherwise closed) or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved, whichever is later. A contract solicitation document that is an electronic document must be retained in the document's electronic form. A state agency may print and retain the document in paper form only if the agency provides for the preservation, examination, and use of the electronic form of the document, including any formatting or formulas that are part of the electronic format of the document. Pursuant to Texas Government Code § 441.1855, "contract solicitation document" includes any document, whether in paper form or electronic form, that is used by a state agency to evaluate responses to a competitive solicitation for a contract issued by the agency. HHS also requires contractors to adhere to the same retention provision.

Consult with HHS agency records retention personnel for detailed retention requirements.

17.4.1 Building Construction Contracts

In accordance with HHSC Records Retention Schedule and Texas State Library and Archives Commission Records Retention Schedule for Texas State Agencies Section 5.2.028, building construction contract and inspection records are to be retained for a minimum of ten (10) years following the life of the asset.

17.5 Absent Contract Records Requirements

17.5.1 Absent Records Definition

For purposes of this section, "absent records" refers to a contractor's records that are:

1. Lost.
2. Destroyed by fire, natural disaster, or other cause.
3. Damaged beyond access or use.
4. No longer in the contractor's possession for any other reason (e.g., stolen) before the retention period has been met.

17.5.2 Absent Record Impact to the Contract Monitoring Plan

The contract manager is responsible to assess the impact of absent records on the scheduled monitoring of the contractor's performance. The contract manager will determine the need for revisions to the contract monitoring plan. The original Contract Monitoring Plan should proceed if no revisions are necessary. Necessary revisions to the Contract Monitoring Plan require approval of the Deputy Associate Commissioner. Whether or not the monitoring plan is revised, the contract manager must fulfill the duties outlined below.

17.5.3 Contract Manager Duties upon Notification or Discovery of Absent Records

If a contract manager is notified of, or otherwise discovers, absent records, the contract manager must take the following actions:

1. Obtain the following information from the contractor regarding the absent records and the circumstances giving rise to the absence including:
    - A summary of the circumstances causing the absence of the records.
    - If deemed necessary or reasonable under the circumstances, copies of relevant photographs or other documentation.

- A listing (as specific as possible) of the absent records to include a description of the contents and the time period covered by the records.
- A copy of all correspondence, including claims filed with the contractor's insurance company, if applicable.
- Certification that the reported information is true, complete, and correct. The certification may be in any written form, including an email. The certification is not required to be notarized but should be completed by an individual with authority to provide the certification on behalf of the contractor.

2. Confirm the contractor followed all records safeguarding, storage, and reporting requirements as set forth in the contract. To determine whether there is contractual storage or reporting requirements, the contract manager should review the contract and submit questions to System Contracting regarding contractual requirements that remain after contract review.
3. Consult with program management and PCS if the contract manager determines the contractor has not complied with the requirements, to determine if additional action will be taken (e.g., notification to Privacy Office, adverse action review due to breach etc.).
4. Send written correspondence to the contractor (letter or email) instructing the contractor to provide written notification within 48 hours to both the contract manager and the HHS Privacy Office of either of the following events:
   - Discovery by the contractor that records previously reported as destroyed were not destroyed, but lost, stolen, or otherwise absent in such a form that the records may still exist.
   - The contractor has obtained copies of the absent records.
5. Upload all submitted documentation and correspondence into SCOR and notify the HHS Privacy Office that the information has been uploaded.
6. Email a copy of the incident summary and listing of absent records to the HHS Records Management Office. The HHS Records Management Office will determine if any additional reporting to the Texas State Library and Archives Commission is required and will complete such reporting if necessary.

17.5.4 Contract Manager Duties upon Notification that Records are No Longer Absent

If a contract manager receives notification from the contractor that the contractor has either determined that records previously thought to be absent may still exist (e.g., contractor initially thought records were destroyed, but later learned they were stolen) or that copies of the records have been located, the contract manager must:

1. Consult with program management to determine what additional action, if any, will be taken including, but not limited to, whether a new monitoring event should be scheduled.
2. Confirm with the HHS Privacy Office that the contractor notified the HHS Privacy Office of the event.

Questions regarding privacy, confidential information, or related issues should be directed to the HHS Privacy Office.

18. Required Reporting

18.1 Vendor Performance Reporting

Requirements for the Vendor Performance Tracking System (VPTS) and vendor performance reporting are established by Texas Government Code § 2262.055, and Section 2155.089. Additionally, the CPA published rules regarding the vendor performance reporting process and requirements in 34 Texas Administrative Code Section 20.115 and Section 20.509.

In accordance with Texas Government Code § 2262.055, the CPA developed and implemented an evaluation process and VPTS portal, which state agencies must use to report vendor performance. Vendor reporting allows agencies to share vendor performance information and assist in efficient oversight of state contracts. As stipulated in Texas Government Code, state agencies must:

- Review and report vendor performance, **AND**
- Use the CPA VPTS portal in determining whether to award a contract to a vendor reviewed in the VPTS.

Vendor performance reporting is required within 30 days after the completion or termination of a Purchase Order or a contract. This applies to:

- Each purchase exceeding $25,000 in total contract value from contracts administered by the CPA or the Department of Information Resources; AND
- Each agency contract except as provided in 34 Texas Administrative Code § 20.509(f).

Furthermore, if the value of a contract exceeds $5 million, vendor performance reporting is required within 30 days after the completion of each key milestone identified in the contract and at least once each year during the term of the contract.

Pursuant to Texas Government Code § 2155.089(b-1), a state agency may not extend a contract before it submits the required vendor performance reports to the CPA VPTS portal for any contract valued over $5 million. Compliance with VPTS reporting requirements must be verified before renewing or extending contracts exceeding $5 million.

Note: *Per 34 Texas Administrative Code § 20.25(b)(13), Contract value or the value of a contract is the estimated dollar amount that a state agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions, and renewals of the contract.* ***At HHS, total contract value is referred to as the maximum potential contract value.***

State agencies must submit a vendor performance report to the VPTS portal as outlined in 34 Texas Administrative Code § 20.509. If a report is not submitted in within 30 days of completing or terminating a Purchase Order or contract, the state agency must document the reason for the late submission. For a contract with a value exceeding $5 million, a reason must be documented if the report is not submitted within 30 days after the completion of key milestone stated in the contract.

After each vendor performance report is submitted to the CPA VPTS portal, the CPA sends a copy of the report and the resulting grade to the vendor. If a vendor receives a grade lower than a "C", they may submit a response to the CPA regarding the performance report and grade.

If the CPA receives a response from the vendor within 30 days, after providing the performance report and grade, the CPA will forward a copy of the vendor's response to the respective state agency. The CPA will then review the performance report, resulting grade, the vendor's response, and any other relevant information about the Purchase Order or contract. The CPA may revise the performance report or grade.in accordance with 34 Texas Administrative Code § 20.115(c). Per 34 Texas Administrative Code § 20.115(e), except for a grade that was revised in the vendor's favor under subsection (c), the executive head of a state agency may request, within 48 months of submission of a vendor performance report and grade, request a revision of the report and grade for a particular Purchase Order or

contract within 48 months of submission by submitting a written justification to the CPA. For more information, go to www.cpa.texas.gov.

(Reference Section regarding Vendor Performance Reporting outlines the vendor reporting process for HHS agencies.)

18.1.1 Exemptions from VPTS Reporting

The following contracts are exempt from VPTS reporting:

1. An enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015.
2. Interagency contracts.
3. Interlocal agreements/contracts.
4. MOUs.
5. Sub-contracts issued by a company with which the state has a contract.
6. Grants-funded contracts determined to be subrecipient or recipient.

> ***Note:*** *Grant-funded contracts that are determined to be a contractor are required to comply with vendor performance reporting.*

18.1.2 Vendor Performance Reporting Process

HHS staff must complete PCS Form 147 to report vendor performance, thereby ensuring compliance with reporting requirements as outlined in Texas Government Code, Texas Administrative Code, and comptroller publications as summarized above. In assessing vendor performance, staff should consider whether the contractor met the requirements in the contract and, if applicable, consult with other staff involved in the contract. The information entered in the PCS Form 147 will be entered into the CPA portal, where the CPA will assign a grade to the contractor's performance.

18.1.3 Vendor Performance Report Requirements

Contract managers or their designee must report on vendor performance by ensuring a fully complete and accurate PCS Form 147 is submitted to PCS at least five business days prior to the date the report is due to CPA *(Reference Section regarding Vendor Performance Reporting for CPA deadlines)*. While other individuals may assist the contract manager with submission of PCS Form 147, the contract manager is ultimately responsible for ensuring that VPTS reporting accurately reflects the contractor's performance and is otherwise

completed per requirements. Incomplete or late PCS Form 147s may put the agency at risk of failing to meet required CPA reporting timelines.

Before submitting the PCS Form 147 to PCS, the contract manager, or their designee must ensure:

1. Contractor identifying Information on the report matches information in SCOR.
2. The report is supported by documented contract management notes and monitoring activities.
3. The contract manager's leadership is made aware of significant performance issues.
4. Leadership has reviewed reports for any contract identified as requiring enhanced monitoring.
5. Justification is included in the appropriate space on the PCS Form 147 when the report is completed outside of the 30-day CPA requirement.

Note: *Any explanation provided for a delayed VPTS report will be posted publicly on the CPA website.*

PCS reviews each PCS Form 147 for completeness before submitting the final vendor performance report to the CPA via the VPTS portal. If corrections to the PCS Form 147 are needed, PCS requests corrections from the staff that submitted the form and provides a deadline for corrections. If no response is received, PCS will escalate the request for corrections to the original submitter's management or leadership to help ensure timely and accurate VPTS reporting.

Upon receipt of an approvable PCS Form 147, PCS CMS:

1. Enters the vendor performance reporting in the CPA VPTS portal on behalf of the contract manager.
2. Uploads the CPA report to SCOR after the CPA has accepted and published the report in the VPTS.
3. Vendor Performance Review-Quality Reviews

Program areas/contracting divisions must include in their processes/procedures, a quality review process performed by supervisors, or their designees, to help ensure staff appropriately complete and submit vendor performance reports in accordance with requirements. While the manager is ultimately responsible for ensuring accountability for staff compliance, the internal processes may allow the manager to designate someone in a leadership position to conduct the reviews on their behalf. The internal process should include information on escalation to the manager when issues are noted.

18.2 Federal Funding Accountability and Transparency Act of 2006 (FFATA) Reporting

FFATA requires federal grant prime recipients such as HHSC or DSHS to report subrecipient[125] award obligations and subrecipients' executive compensations in order to be publicly searchable via a single website at www.USASpending.gov. The Transparency Act reporting requirements are codified in 31 USC Section 6101 note and 2 CFR Part 170.

In brief, FFATA requires the following:

1. Subrecipient awards of $30,000 or more must be reported.
2. Prime awardees must report certain information regarding those funds.
3. If certain criteria apply, the compensation of the top five executives within a subrecipient's organization must also be reported.
4. Grant information reported for American Recovery and Reinvestment Act (ARRA) grants is not required to be reported in FFATA.

18.2.1 HHSC Subrecipient Reporting

Effective October 1, 2021, the HHSC Federal Funds Office (FFO) issued a policy outlining a new process for HHSC program areas to report their subrecipient award obligations and subrecipients' executive compensations. FFO will collect and report the data to FFATA Subaward Reporting System (https://sam.gov/fsrs).

Program areas must ensure the following:

1. All subrecipients must obtain a Unique Entity Identifier (UEI) at www.sam.gov. Instructions for obtaining a UEI are currently outlined in the Form 8040 Attachment A.
2. When obtaining a UEI, all subrecipients must register their addresses with nine-digit zip codes.
3. All subrecipients must complete the HHSC FFATA Certification Form (Form 8040 Attachment B) at least once per state fiscal year. Program areas will use the completed FFATA Certification form to complete the applicable sections of the FFATA Reporting template.

[125] *Recipients of state grant awards from HHSC or DSHS are not applicable to FFATA reporting. Additionally, a subrecipient award funded with both federal and state funds is only reported if the federal portion exceeds $30,000 and then only the federal portion is reports.*

4. If a subrecipient meets the following criteria, the subrecipient's top five highest paid executives' compensation amounts must be reported using FFO's FFATA Reporting Template.
5. The subrecipient received 80% or more of their annual gross revenue from federal procurement contracts or federal financial assistance.
6. The subrecipient's annual gross revenue from federal procurement contracts or federal financial assistance was or exceeded $25 million.
7. The subrecipient's executive compensation information is not publicly available.
8. Program areas must submit the FFATA Reporting Template to the FFO team at HHSCFFATA@hhs.texas.gov for all applicable subrecipients by the 15th of every month, or the date specified in the monthly reminder email.
9. Program areas must designate two employees to be the FFATA contacts to submit reporting templates to FFO and respond to FFO's communication.

Questions regarding FFATA requirements or reporting are to be sent to the HHSC FFATA Administrator at HHSCFFATA@hhs.texas.gov.

18.2.2 DSHS Subrecipient Reporting

Contract managers are required to enter information for all contracts to the applicable SharePoint site including legal name, contract number, execution date, type of agreement, relationship determination (contractor, recipient, subrecipient), and CAPPS Financials requisition number for solicitation initiation.

From the SharePoint list, DSHS Contract Management Section (DSHS CMS) identifies applicable subrecipient awards for reporting and fulfills the requirement,

Questions regarding DSHS FFATA requirements or reporting are to be sent to DSHS CMS at tina.walker@dshs.texas.gov.

18.3 WorkQuest Exception Reporting — Monthly Report on Set Aside Exceptions

If an HHS agency determines that a product/service offered by WorkQuest needs to be purchased from another source, an exception justification must be included in the file. Texas Human Resources Code Section 122.016 requires PCS to file a WorkQuest exception report to CPA. The report is due the fifteenth (15) working day of each month.

The Texas Human Resources Code Section 122.016(b) requires the CPA to provide a monthly report to the Texas Workforce Commission (TWC) listing all items/services

purchased as exceptions to Texas Human Resources Code Section 122.016(a) and Texas Government Code § 2155.138(a). In order for CPA to provide this information to TWC, each state agency must provide to CPA all delegated purchases made as exceptions to the set-aside contracts.

18.4 Reporting HHS Contracts[126]

There are many reports and notifications related to state contracting that are required by the Legislature, LBB, CPA administrative rules, and statutory requirements. Some of the major reporting and notification requirements related to state contracting are provided in the table below. For more information regarding state agency reporting requirements, see the Texas State Library and Archives Commission's Report of Required Reporting by State Agencies and Institutions of Higher Education.

18.5 CMS Executive Reporting

Reference: PCS 363 Guide

Quarterly, or at a time specified by the Executive Commissioner, PCS reports on key contract management functions and compliance across the agency to the Executive Commissioner either in person or through an information memo. PCS works with the Points of Contact (POCs) for each program area/contracting division to gather the required information. Areas of focus may change over time, but the current descriptions of reporting can be found on PCS 363, Executive Reporting Guide.

[126] *MIRPs have specific reporting and notification requirements associated with the amendment of existing contracts. TEX. GOV'T CODE §§ 2054.1181(j), 2054.160(c), (d); GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.01(d)–(f).*

Table 16. Select HHS Contract Reporting and or Notification Requirements[127]

Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
Administrative - Procurement Plan	Agency Procurement Plan	Tex. Gov't Code § 2155.132; 34 Texas Administrative Code. Part 1, Chapter 20, Subchapter B, Division 3, § 20.132(b); Comptroller's Guide	PCS	CPA	November 30
Consulting Contracts - Notice of Intent and Finding of Fact (FOF)	Major Consulting Contracts (exceeds $15,000) Notice of Intent and Request for FOF memo from Office of Governor (also applies to renewal, amendment, or extension)	Tex. Gov't Code §§ 2254.028(a), 2254.031	Program (PCS Form 804-A, initiated and completed by) and CPRO, Policy and Rules Division (PCS Form 405, routed for signatures and submitted by)	Governor's Budget & Planning Office; LBB	Before entering the contract
Consulting Contracts - Publication	Major Consulting Contracts (exceeds $15,000) -- Publication in ESBD invitation for offers of consulting services (also applies to renewal, amendment, or extension)	Tex. Gov't Code §§ 2254.029, 2254.031	PCS	ESBD	Not later than 30 days prior to entering into a major consulting services contract
Consulting Contracts - Conflict of Interest	Report on Conflict of Interest in Consulting Services Contract	Tex. Gov't Code § 2254.032	PCS	Executive Commissioner	Not later than 10th day after offer submitted by private consultant

[127] *Always refer to actual governing law (e.g., statutes and other referenced authorities) for specific requirements.*

Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
Consulting Contracts - Contract Notification	Contract Notification–Consultant Services Exceeding $50,000 (including amendment, modification, renewal, or extension)	Tex. Gov't Code § 2254.0301	PCS	LBB	Not later than 30 days after contract execution
Consulting Contracts - Archives	Archives—copies of documents, films, recordings, or reports compiled by the consultant under the contract	Tex. Gov't Code § 2254.036	Program and Records Management	Texas State Library	After contract end
Consulting Contracts - Budgetary Hearing	Report of Actions Taken in Response to Consultant Recommendations	Tex. Gov't Code § 2054.037	Program and Government Relations	LBB and Governor's Budget and Planning Office	As part of the biennial budgetary hearing process
Contract Notification	Contract Notification—Posting of contract and solicitation documents (includes POs), as redacted pursuant to statute	Tex. Gov't Code § 2261.253	PCS	Agency Website	Upon contract execution (may post monthly for contracts valued at less than $15,000)
Contract Notification - Attestation Letter	Contract Notification—Filing of attestation letter and documents for contracts exceeding $10 Million or $1 Million for emergency, sole source or non-competitive contracts (includes amendments and extensions, excludes enrollments)	GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 7.11	PCS	LBB	Prior to date on which first payment will be made, but no later than 15 calendar days after contract award: if an emergency contract within 5 days after award

Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
Contract Notification Bridge Extension	Contract Notification—Notice of extension beyond the base term and any optional extensions provided in a contract	GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 17.09(e)	PCS	LBB	At least 30 days prior to execution of contract extension
Contract Notification Construction	Contract Notification—Construction Contracts exceeding $50,000 (including amendment modification, renewal, or extension)	Tex. Gov't Code § 2166.2551	PCS	LBB	Not later than 30 days after contract execution
Contract Notification Consulting Contracts	Contract Notification—Consultant Services exceeding $50,000 (including amendment, modification, renewal, or extension)	Tex. Gov't Code § 2254.0301	PCS	LBB	Not later than 30 days after contract execution
Contract Notification Contracts Exceeding $50,000	Contract Notification—Contracts exceeding $50,000 (includes amendment, modification, renewal, or extension that increases contract value from less than or equal to $50,000 to greater than $50,000)	GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 7.04	PCS	LBB	Before the 30th day after awarding the contract or granting an amendment, modification, renewal, or extension
Contract Notification Interagency Contracts	Interagency Contracts exceeding $10 Million	GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 7.15	PCS	Agency Website and LBB	Not later than the 30th day after the end of each fiscal year

Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
Contract Notification Major Information System	Contract Notification—Major Information System Contracts Exceeding $100,000	Tex. Gov't Code § 2054.008	PCS	LBB	10 days after contract execution
Contract Notification Professional Services Contracts	Contract Notification—Professional Services Contracts (excluding physician or optometric services) Exceeding $50,000 (including amendment, modification, renewal, or extension)	Tex. Gov't Code § 2254.006	PCS	LBB	Not later than 30 days after contract execution
Contract Notification - Vendor Contracts	Vendor Contracts Exceeding $100,000	Tex. Gov't Code § 2054.126(d)(4)	PCS	Agency Website	During the biennium
GAA - Compliance	Compliance with State Procurement Requirements	GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 17.09(f)	PCS	Office of the Governor and LBB	September 30th to report on the first year of the biennium August 31 every other year to report on both years of the biennium
HUB Report - Annual and Semi-annual	Annual and Semi - Annual HUB Report	34 Texas Administrative Code Part 1, Chapter 20, Subchapter D, Division 1, § 20.287	PCS, VetHUB Program	CPA	March 15 and September 15

Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
HUB Report - Internal Assessment; Policy Compliance	HUB Participation/Internal Assessment/Expenditure Analysis	GAA, S.B. 1, 89th Leg., R.S., art. IX, secs. 7.06, 7.07	PCS	CPA and LBB	December 1, 2021; and every other year after a legislative session
HUB Report - Legislative Appropriation Request (LAR)	Report on Compliance with HUB Goals (included with LAR, detailed report of compliance with HUB statute)	Tex. Gov't Code § 2161.127	PCS	LBB	Submitted with agency LAR
HUB Report - Progress Report	State Agency Progress Report (submitted with agency non-financial report)	Tex. Gov't Code § 2161.124	PCS	Governor's Budget & Planning Office, Lieutenant Governor, and the Speaker of the House of Representatives	December 31
Major Contracts – CAT Review	Review of Major Contracts of $5 Million or More (Solicitation and Contract Documents)	Tex. Gov't Code § 2262.101(a)(1); Comptroller's Guide	PCS	CAT	Prior to advertising the solicitation
Major Contracts – Internal Reporting	Major Contracts exceeding $1 Million (Internal Contract Reporting Requirements)	Tex. Gov't Code § 2261.254	PCS	Internal to Governing Body	As needed
Medical / Health Services Contracts – OAG Review	OAG "880" Review of Contract of $250 Million or More Related to Goods or Services in Connection with the Provision of Medical or Health Care Services,	Tex. Gov't Code § 531.018	Office of Chief Counsel	OAG	At the time the agency initiates the planning phase of the contracting process (typically prior to solicitation

Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
	Coverage, or Benefits (form and terms of the proposed contract)				publication). Required before a contract may be entered into.
MIRP - Acquisition Plan	Acquisition Plan (MIRPs with a value of $10 Million or more)	Tex. Gov't Code § 2054.305	IT, Federal State Coordination Team	QAT	Before issuing solicitation
MIRP - Notice of Award	Notice of Completed Contract (MIRPs with value of $10 Million or more)	GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.02(b)(3)	IT, Federal State Coordination Team	QAT	Within 10 business days of contract award
MIRP - Post-Implementation	Post-implementation Review	Tex. Gov't Code § 2054.306	IT, Federal State Coordination Team	Agency Executive Director and QAT	After implementation
MIRP - Project Plan	Major Information Resources Project Plan	Tex. Gov't Code § 2054.304(b)	IT, Federal State Coordination Team	QAT	Before spending 10% of allocated funds for the project
MIRP - QAT Review	Draft Contract containing Proposed Contract Terms (MIRPs with value of $10 Million or more)	Tex. Gov't Code § 2054.160(a)(1); GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.01(c)	IT, Federal State Coordination Team	QAT	Prior to negotiations
MIRP - QAT Review	Final Negotiated, Unsigned Contract (MIRPs with value of $10 Million or more)	Tex. Gov't Code §§ 2054.158(b)(4), 2054.160(a)(2), (b); GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.01(c)	IT, Federal State Coordination Team	QAT	After final negotiations
MIRP - QAT Solicitation Notice	Notice of Solicitation (must include requisition number)	GAA, S.B. 1, 89th Leg., R.S., art. IX, sec. 9.02(b)(2)	IT, Federal State Coordination Team	QAT	Upon public notice of solicitation (advertisement)

Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
MIRP - Texas Project Delivery Framework	Texas Project Delivery Framework documents (Business Case and Statewide Impact Analysis)	Tex. Gov't Code §§ 2054.158(b)(2), 2054.303	IT, Federal State Coordination Team	QAT	Before project initiated concurrent with filing of agency legislative appropriations request
MIRP – Amendment Notification	Notice of Amendment if the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent or more; or the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.	Tex. Gov't Code § 2054.160(c), (d) and GAA, S.B. 1, 89th Leg., R.S., art. IX, 9.01(d) – 9.01(h)	Program (IT)	Governor, Lieutenant Governor, Speaker of the House of Representatives, Senate Finance Committee, House Appropriations Committee, and QAT	Before amending the contract
Statutory - Cybersecurity Training	Contractor Cybersecurity Training Compliance Report	Tex. Gov't Code § 2054.5192	PCS	DIR	Upon occurrence
Statutory - ESBD	Notice Regarding Procurements Exceeding $25,000	Tex. Gov't Code § 2155.083(g)-(i)	PCS	CPA / ESBD	Upon the posting, a minimum of 14 or 21 days as required by statute
Statutory - ESBD	Notice Regarding Awarded Procurements Exceeding $25,000 (including TXMAS awards)	Tex. Gov't Code §§ 2155.083(k), 2155.509	PCS	CPA / ESBD	Upon award for procurements and after PO has been placed for TXMAS contracts

Type	Required Report and/or Notification	Mandated By	Responsible Party	Receiving Body	Due Date
Statutory – Historic Building	Repair exceeding $100,000 to a building with historic designation must submit a copy of all bids and evaluation of bidder qualifications	Tex. Gov't Code § 2166.254	Agency Staff Involved with the Purchase (Facilities Staff)	Texas Historical Commission (THC)	Prior to contract award
Statutory - IT Commodity Items	Planned Procurement Schedule (PPS) for IT Commodity Items and notice of substantive changes to PPS	Tex. Gov't Code § 2054.1015(b), (d)	IT	DIR; notice of substantive changes to PPS must be provided to DIR and LBB	Must be provided before the agency's operating plan may be approved; Based on a rolling 12-month reporting period
Statutory – State Building	Notification of intent to alter, renovate, or demolish any building possessed by the state that was constructed at least 50 years before the alteration, renovation, or demolition and that has not been designated a landmark by THC	Nat. Res. Code § 191.098	Agency Staff Involved with the Purchase (Facilities Staff)	THC	60 days prior to work
Statutory - State Use Program	State Use Program Exception Report	Tex. Hum. Res. Code § 122.0095(a)(2)	PCS	CPA and TWC	15th of each month

19. Revision History

This section is used to document revisions made to the Handbook in accordance with instructions in the Preface.

19.1 Revision History Log

Date	Version No.	Sections Affected
10/01/2020	1.0	Publication date of the HHS Procurement and Contract Management Handbook.
01/13/2022	1.1	Revisions were made to the following sections: Planning and Development, Procurement Methods; Competitive Procurement, Non-Competitive Contracts, Agreements and Open Enrollments, Grants; Contract Formation and Award, Contract Management, and Appendix D.
11/30/2023	1.2	Non-substantive modifications (e.g., format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the guide. Non-substantive clarifications were made to the following sections: Competitive Procurement, Planning and Development, Procurement and Contracting Services Division, Procurement Methods, Required Reporting and Appendix A. Substantive revisions were made to the following section: Contract Management.
07/15/2024	1.3	Non-substantive modifications (e.g., format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the guide. Non-substantive clarifications were made to the following sections: Introduction Contractor Compensation, Nondisclosure Conflict of Interest Nepotism Certification. Substantive revisions were made to the following section: Vendor Performance Reporting to align HHS process with rule changes in 34 Texas Administrative Code § 20.509 and changes to the Texas Comptroller of Public Accounts Vendor Performance Tracking System as well as inserted additional section for quality reviews.
09/26/2024	1.4	Non-substantive modifications (e.g., format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the guide. Revisions were made to the following sections: Standards and Authority, Certified Contract Manager, Contracts and Purchase Orders, Contract Purchase Order, Funding Purchase Order, Contract Formation Requirements, Transactional Purchase Orders,

Date	Version No.	Sections Affected
		Contract Manager Responsibilities, Disclosure of Interested Parties, Contract Management, Contract Risk Assessment, SCOR Baseline Risk Assessment, Contracts subject to SCOR Baseline Risk Applicability, SCOR Baseline Risk Assessments – Exemptions, Other Contract Risk Assessment, Contract Monitoring Plan, Contract Monitoring Plan Exceptions, Enhanced Contract Monitoring, Enhanced Monitoring Executive Reporting, Contract Renewals, Contract Closeout, Contract Closeout Process, SCOR Closeout Submodule, Contract Definitions, Quality Reviews, Appendix A and Glossary of Terms.
12/19/2024	1.5	Revised SCOR Baseline Risk Assessments – Exemptions section.
09/05/2025	1.6	Non-substantive modifications (e.g., format adjustments, inclusion of hyperlinks, correction of typographical errors) throughout the guide. Revisions were made to the following sections: Procurement Forecast and Action Plan, Appendix A – Retention Period, Bankruptcy Involving Termination, Bid Room, Records Retention, Certificate of Interested Parties (Form 1295) – Contract Amendments, Certification Regarding Lobbying, CMS Executive Reporting, Enforcement of Remedies, Compliance, Disclosure of Interested Parties, Contract Award, LBB Contract Database, Contract Closeout, Contract Expiration Termination and Closeout, Contract File Checklists, Contract Manager Duties upon Notification or Discovery of Absent Records, Contract Monitoring Activities, Contract Monitoring Documentation and Follow-Up Activities, Contract Termination, Contract Value Estimate, Contractor and Grantee Post-Award Checks, Cybersecurity Training and Required Verification of Completion, Disclosure of Interested Parties, Disclosure or Audit of Contract Records, Enhanced Contract Monitoring, Enhanced Monitoring Executive Reporting, Evaluation Committee, Financial Capacity Review, Financial Management of Contracts, Disputes, Internal Oversight Protocols, Monitoring Subcontractors, Monitoring Types, Multiple Payment Types, Non-Competitive Contracts and Agreements, Notification of Bankruptcy, PCS Liaisons, PCS Roles, Planning and Development - Needs assessment, ProCard, The Procurement Teams, Procurement Lead Times, Program Responsibilities, SCOR Closeout Submodule, Solicitation Review, Standards and Authority, System Contracting, System of Contract Operation and Reporting (SCOR), Technical Assistance Documentation, Technical Assistance for Contractors, Termination Decision, The Business Operations Team, Training for Contractors,
10/24/2025	1.7	Grantee Single Audit Requirement
02/13/2026	1.8	Updated terminology to replace references to HUB with VetHUB throughout the document and revised Texas Administrative Code (TAC) citations to reflect current requirements.

Date	Version No.	Sections Affected
09/17/2026	1.9	Updated terminology to replace references to VetHUB HSP with SP throughout the document and revised Texas Administrative Code (TAC) citations to reflect current requirements. Updated terminology by replacing references to "VetHUB HSP" with "Subcontracting Plan (SP)" and revised Texas Administrative Code citations. Reorganized the Preface; revised section numbering and headings; added or reorganized subsections in Planning and Development, Procurement Methods, Non-Competitive Contracts, Solicitation Review, Vendor Selection, and Contract Formation and Award; updated required reporting and appendices; and made non-substantive formatting, hyperlink, and typographical corrections throughout the Handbook.

Appendices

Appendix	Description
A:	Glossary
B:	Acronyms and Abbreviations
C:	PCS Policies*
D:	PCS Operating Procedures*
E:	PCS Forms*
F:	PCS Manuals, Guides, and Job Aids
G:	CPA Delegated Purchases Table
H:	DUA Confidential Information Protection
I:	PCS Authority Chart
J:	Texas Government Code Crosswalk
K:	Texas Administrative Code Crosswalk

*****_Accessible only by HHS staff_

Note: *This Handbook contains references to pages that are only accessible by HHS employees. You can submit a Public Information Act (PIA) request if you are not an HHS employee by going to* OpenRecordsRequest@hhsc.state.tx.us*.*

Appendix A: Glossary

This appendix provides definitions for procurement and contract management terms used throughout this handbook.

A

Administrative Contract

A contract for goods or services primarily for direct use by an HHS agency in the day-to-day support of an agency's administrative operations.

Amendment

Written addition or change to a contract.[128]

Assignment

Transfer of contractual rights from one party to another party.[129]

Assignee

The person to whom an assignment is made**.**

Assignor

The person who makes the assignment.

B

Biennium (State of Texas)

A period of 24 consecutive months, beginning on September 1 of each odd numbered year: For example, September 1, 2017, through August 31, 2019.[130]

Bilateral Contract

A bilateral contract is a binding agreement between two parties that is signed by the contractor and the agency signature authority. The agreement between the agency and the contractor is the executed bilateral contract and any executed amendment.

Bridge Extension

An extension to an existing contract beyond the period of performance (including any renewals or optional extensions provided in the contract), to address immediate operational or service delivery needs caused by a delay in awarding a new contract.

Business Day

Any day other than Saturday, Sunday, or a day when state offices are authorized or obligated by law or executive order to be closed.

C

CAPPS

Centralized Accounting and Payroll/Personnel System. The CAPPS Financials module is the agency's system of record for procurement activities.

[128] Comptroller's Guide, Glossary.
[129] Comptroller's Guide, Glossary.
[130] Comptroller's Guide, Glossary.

Centralized Master Bidders List (CMBL)

An online directory, maintained by SPD, containing contact information and product categories of vendors registered to receive procurement opportunities from public entities.[131]

Client Services Contract

A contract to provide goods or services that is primarily for the direct benefit of an individual receiving services from an HHS agency and is for the purpose of carrying out one or more of the HHS agency's programs.

Contract File

Encompasses the procurement file and any other documentation related to the management and monitoring of the resulting contract.

Contract Manager

A person who is: (i) employed by a state agency; and (ii) has significant contract management duties for the state agency as determined by the agency in accordance with CPA requirements, see Texas Government Code § 656.052 and CPA administrative rule (34 Texas Administrative Code § 20.133).

Contract Period

A definite period of time stated in the contract, within the Contract Term, to which a specified amount of the contract's value may be allocated and can be expended. A contract may have multiple Contract Periods within the Contract Term.

Contract Purchase Order (CPO)

A CPO is a type of unilateral contract (also known as a "tracking contract") created to track allowable renewals in a procurement. The agency sends the agreement (in the form of a Purchase Order) to the contractor annually.

Contract Record

The complete set of information for a contract, including any hard-copy or electronic files and any contract information contained in other systems. The term may also be referred to as contract file.

Contract Term

The period of time beginning with the commencement date or effective date of a contract and ending when the contract expires in accordance with its terms or when it has been terminated. The contract term includes any exercised renewal and extension periods.

Contractor

A business entity or individual that has a contract to provide goods or services to HHSC.[132]

Corrective Action Plan

Specific steps to be taken by a contractor to resolve identified deficiencies and to address concerns that the contracting agency has regarding the contractor's compliance with contract terms or other applicable laws, regulations, and policies. The corrective action plan may also focus on improving contractor performance (as

[131] *Comptroller's Guide, Glossary.*

[132] *Comptroller's Guide, Glossary.*

it relates to service delivery, reporting, or financial stability).

Cost Allocation

The process of identifying, accumulating, and distributing allowable costs that are allocable to one or more than one cost objective. The cost allocation plan identifies the allocation methodology used for distributing costs to cost objectives in proportion to the benefit received. Cost allocation plans are consistent across funding sources and uniform for the business entity.

Customer Organizations

Customer Organizations: the agencies, offices, divisions, departments, sections, and units that receive procurement and contracting information, guidance, and services from HHSC PCS, including departmental groups within PCS. These customer organizations are components of the following agencies/areas: HHSC, Department of State Health Services (DSHS), Department of Protective Services (DFPS), Office of Inspector General (OIG), Texas Civil Commitment Office (TCCO), and other governmental entities that the HHSC PCS supports.

D

Deliverable

A tangible or digital work product prepared, developed, or procured by a contractor for the use or benefit of the agency or its clients. Examples of such work products may include reports, products, project documentation, work papers, materials, designs, specifications, systems, software, source code, training materials, recordings, methodologies, concepts, studies, or any other tangible or digital works.

E

Electronic State Business Daily (ESBD)

An online directory, administered by SPD, that publishes solicitations for the purpose of informing vendors of procurement opportunities and provides public notice of contract awards.[133]

Extension

The continuation of the contract for a set period of time that is stated in the contract that is beyond any renewal periods.

F

Federal Award

Federal financial assistance that a non-federal entity receives directly from a federal awarding agency or indirectly from a pass-through entity. (2 CFR § 200.38(a)(1)).

Fiscal Year (State of Texas)

A period of 12 consecutive months, beginning September 1 of each year and ending August 31 of the next year.[134]

[133] *Comptroller's Guide, Glossary.*

[134] *Comptroller's Guide, Glossary.*

G

Generally Accepted Government Auditing Standards (GAGAS)
Auditing standards published by the U.S. Government Accountability Office, also known as the "Yellow Book."

Grant
See Federal Award and/or State Award. An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance that is paid or furnished by the state or federal government to carry-out a program in accordance with rules, regulations, and guidance provided by the grantor agency. The term does not include technical assistance that provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee to carry out a program in accordance with the terms of the grant is not required to account. The term may also refer to the instrument setting forth the terms and conditions of the award, also referred to as the grant agreement. Additionally, the term is recognized as not synonymous with contract per TxGMS. See 2 CFR § 200.331 and Definitions table in Section on Determination of Subrecipient, Recipient, or Contractor Relationship Process of this Handbook for additional detail related to recipient, subrecipient, and contractor definitions and relationships.

Grant Agreement
A binding legal instrument of financial assistance that provides money, property, or both to an eligible entity to carry out an approved project or activity. This contractual mechanism is used to establish the terms and conditions of the grant award.

H

Handbook
HHS Procurement and Contract Management Handbook.

Health and Human Services Commission
The state agency with primary responsibility for ensuring the delivery of state health and human services in a manner that uses an integrated system to determine client eligibility; maximizes the use of federal, state, and local funds; and emphasizes coordination, flexibility, and decision-making at the local level.

Health and Human Services
Includes Health and Human Services Commission and Department of State Health Services.

I

Indirect Cost
Costs incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the

results achieved. Indirect cost allocation is one method of cost allocation.

Indirect Cost Allocation Plan

Document prepared by an entity to substantiate its request for the establishment of an indirect cost rate in accordance with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200. Approval of the plan indicates authorization for a contractor to recover administrative costs associated with the operation of a program through the application of an indirect cost rate approved by the contractor's coordinating agency or included in the contractor's independent annual audit report.

K

Key Performance Indicator (KPI)

A performance measure that measures business outcomes or goals of a contract.

L

Local Government

A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the State.

M

Major Information Resources Project (MIRP)

Any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed $5 million and that: (i) requires one year or longer to reach operations status; (ii) involves more than one state agency; or (iii) substantially alters work methods of state agency personnel or the delivery of services to clients; and any information resources technology project designated by the legislature in the GAA as a MIRP. MIRP; and any information resources technology project of a state agency designated for additional monitoring under Section 2261.258(a)(1) if the development costs for the project exceed $5 million. See Texas Government Code § 2054.003(10).

P

Procurement File

Written documentation pertaining to the management of a procurement.

Purchase Order (PO)

A document issued out of CAPPS Financials by the PCS Purchaser to a vendor, indicating types, quantities, and agreed prices for products or services the vendor will provide to the end user.

Q

Quality Assurance Team (QAT)
An interagency workgroup established to provide oversight of major information resources projects. The QAT is composed of representatives from the LBB, DIR, and CPA. The SAO serves on the QAT as an advisor. See Texas Government Code § 2054.158.

R

Recipient
A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients (2 CFR § 200.1). Recipient may also refer to a solely state-funded grantee.

Retention Period
The period during which records must be kept before they may be disposed of, usually expressed in years or contingent upon an event, such as end of calendar year. Record retention periods apply to state agencies and to the entities that contract with state agencies. Records must be retained in accordance with agency records retention policies and as specified in contract documents. Records may also be subject to additional federal record retention timelines. In the event of a conflict the longest applicable retention period will apply.

S

Service Level Agreement (SLA)
A performance measure that measures compliance based on a volume of activities and a target threshold of acceptable performance.

Single Audit
An audit that includes both the entity's financial statements and the federal awards in accordance with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) and Section IV of the Texas Grant Management Standards (TxGMS) or its successor, which sets forth standards for obtaining consistency and uniformity among federal agencies for the audits of states, local governments, and nonprofit organizations expending federal funds.

Subcontract
A written agreement between the original contractor and a third party to provide all or a specified part of the work or materials required in the original contract.

Subrecipient
A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. (2 CFR §

200.931.) May also be referred to as a grantee.

System of Contract Operation and Reporting (SCOR)
The agency's system of record for contracts, contract management, and contract monitoring activities. SCOR is also the system of record for the final electronic procurement file.

State Award
The state financial assistance that recipients receive directly from state awarding agencies.

T

Transactional Purchase Order (TPO)
A legally enforceable agreement to purchase a good or service established for a single procurement term not to exceed 12 months (no stated renewals). The point in time purchase (not affiliated with an existing contract) begins and ends with the delivery or completion of the purchased good or service, other than the warranty of the good or service to meet expectation.

U

Unallowable Costs
Costs that are expressly unallowable under applicable state and federal laws and regulations or under the terms and conditions of the contract, or that are unreasonable or unnecessary.

Unit Price
The price for a good or service in accordance with the unit of measure provided in the solicitation, [135] (e.g., price per ton, per labor hour, or per foot).

V

Vendor
A potential provider of goods or services to the State.[136]

VetHUB
Veteran Heroes United in Business as defined by 34 Texas Administrative Code § 20.282(7) and (17).

[135] *Comptroller's Guide*, Glossary.

[136] *Comptroller's Guide*, Glossary.

Appendix B: Acronyms and Abbreviations

This appendix provides commonly used procurement, contracting, and HHS-related acronyms referenced throughout the handbook.

Acronym	Meaning
AES	HHSC Access and Eligibility Services
AIS	Automated Information Systems
BAFO	Best and Final offer
CAPPS	Centralized Accounting and Payroll/Personnel System
CAT	Contract Advisory Team
CCTS	Capitol Complex Telephone System
CFDA	Catalog of Federal Domestic Assistance
CFR	US Code of Federal Regulations
CMBL	Centralized Master Bidders List
CMS	Pcs Contract Management Support
CPA	Comptroller of Public Accounts
CRP	Community Rehabilitation Programs
CTCD	Certified Texas Contract Developer
CTCM	Certified Texas Contract Manager
CTPM	Certified Texas Procurement Manager (Replaced by CTCD)
D&B	Dun & Bradstreet
DBITS	Deliverables-Based It Services
DCS	Data Center Services
DFPS	Department of Family and Protective Services
DIR	Department of Information Resources

Acronym	Meaning
DOT	US Department of Treasury
DSHS	Department of State Health Services
DUA	Data Use Agreement
DUNS	Data Universal Numbering System
EIR	Electronic and Information Resources
ERP	Enterprise Resource Planning
ESBD	Electronic State Business Daily
FAIN	Federal Award Identification Number
FFATA	Federal Funding Accountability and Transparency Act
FOF	Finding of Fact
FSRS	FFATA Subaward Reporting System
GAA	General Appropriations Act
GAGAS	Generally Accepted Government Auditing Standards
HCATS	HHSC Health and Human Services Contract Administration and Tracking System
HDIS	Health Developmental and Independence Services
HHS	Health and Human Services
HHSC	Health and Human Services Commission
IAC	Interagency Contract

Acronym	Meaning
IDD-BHS	HHSC Intellectual and Developmental Disabilities and Behavioral Health Services
IDIQ	Indefinite Delivery Indefinite Quantity
IFB	Invitation for Bids
ILC	Interlocal Contract
IR	Information Resources
IT	Information Technology
ITBO	HHS IT Business Operations
ITPP	Information Technology Purchasing Plan
ITSAC	IT Staff Augmentation Contract
IV&V	Independent Verification and Validation
LAR	Legislative Appropriations Request
LBB	Legislative Budget Board
M&C	HHSC Maintenance and Construction Division
MIMS	Material Inventory Management System
MIRP	Major Information Resources Project
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MSI	Multi-Sourcing Service Integrator
NOFA	Notice of Federal Award
NOGA	Notice of Grant Award
OAG	Office of The Attorney General
OMB	Office of Management and Budget

Acronym	Meaning
PAR	Prime Contractor Progress Assessment Report
PCC	Purchase Category Codes
PCS	Procurement and Contracting Services Division of HHSC
PCS CST	PCS Customer Service Team
ProCard	Procurement Card
PO	Purchase Order
POCN	Purchase Order Change Notice
POD	Procurement Oversight & Delegation
PPS	Planned Procurement Schedule
PRAI	Program-Specific Risk Assessment Instrument
QAT	Quality Assurance Team
RACI	Responsible, Accountable, Consulted, and Informed
RFA	Request for Applications
RFI	Request for Information
RFO	Request for Offers
RFP	Request for Proposals
RFQ	Request for Qualifications
RFQIT	Request for Quotes for Information Technology
RFx	Complex Procurement Methods that Include RFAs, RFOs, RFPs, AND RFQs
SAO	State Auditor's Office
SCOR	System of Contract Operation and Reporting

Acronym	Meaning
SEMARC	Search Engine for Multi-Agency Reportable Conduct
SOW	Statement of Work
SP	Subcontracting Plan
SPD	Statewide Procurement Division
SSLCs	State Supported Living Centers
STS	Shared Technology Services
TAC	Texas Administrative Code
TCCO	Texas Civil Commitment Office
TCI	Texas Correctional Industries
TDCJ	Texas Department of Criminal Justice
TEC	Texas Ethics Commission
TEX-AN	Texas Agency Network
TFC	Texas Facilities Commission
THC	Texas Historical Commission
TIN	Texas Identification Number
TLDM	Three Lines of Defense Model
TPO	Transactional Purchase Order
TULIP	Texas Unified Licensure Information Portal
TWC	Texas Workforce Commission
TxGMS	Texas Grant Management Standards
TXMAS	Texas Multiple Award Schedule
UGC	State of Texas Uniform General Conditions for Construction Contracts
UGG	Uniform Grant Guidance
VPTS	Vendor Performance Tracking System
VetHUB	Veteran Heroes United in Business

Appendix C: PCS Policies

This appendix provides links to PCS policies referenced throughout the handbook.

Policy Number	Policy Title
PCS 352	Budget Roster Approval
PCS 353	Invoice Processing
PCS 354	Expenditure Tracking
PCS 355	Contract File Checklist Policy
PCS 356	HHS Liability Provision
PCS 358	Contract Deliverables Tracking
PCS 400	Emergency Purchases
PCS 401	Proprietary Purchases
PCS 403	Nondisclosure Agreement, Conflict of Interest Certification, and Nepotism

Note: *The policies listed in this appendix are available only to HHS staff with the appropriate access permissions.*

Resource: PCS Policies and Forms SharePoint Library

Appendix D: PCS Operating Procedures

This appendix provides links to PCS operating procedures referenced throughout the handbook.

Procedure Number	Procedure Title
PCS 210	Response Handling
PCS 358	Contract Deliverables Tracking
PCS 363	Executive Reporting
PCS 410	TXSmartbuy
PCS 436	Direct Contract Award
PCS 437	Non-competitive Direct Grant Award
PCS 438	Contractor or Subrecipient Determination
PCS 442	Spot Purchases
PCS 444-A	Informal Open Market Purchases
PCS 444-B	Informal Open Market Purchases without Renewals
PCS 446	Formal Open Market Purchases
PCS 537	Advanced Notification and Delayed Award Dates
PCS 538	Respondent Notice Procedures/Tentative Awards
PCS 539	Grant Application Notification
PCS 543	Secondary Evaluations
PCS 544	Consensus Scoring
PCS 570	RFQ Procedure
PCS 571	RFP Procedure
PCS 571-C	RFP Construction Procedure
PCS 572	RFA Contract Procedure
PCS 576	Consultant Contract Procedure
PCS 578	Solicitation Debriefings
PCS 580	Post-Award Grant Debriefing
PCS 645	Renewals or Extensions of Contracts

Procedure Number	Procedure Title
PCS 650	Work Order Process
PCS 700-A	Department of Information Resources (DIR) Statement of Work (SOW)
PCS 700	Department of Information Resources (DIR) Cooperative Contracts
PCS 754	Bridge Extensions
PCS 755	Resolving Tie Bids
PCS 758	Contract Determination
PCS 805-P	Notice of Attestation Letter to LBB

Note: *The procedures listed in this appendix are available only to HHS staff with the appropriate access permissions.*

Resource: PCS Policies and Forms SharePoint Library

Appendix E: PCS Forms

This appendix provides links to PCS forms referenced throughout the handbook.

Form Number	Form Title
PCS 01	HHS Justification for Emergency Purchases
PCS 02	HHS Justification for Proprietary Purchases
PCS 08-G	Applicant Selection Justification and Solicitation Certification
PCS 08	Vendor Selection Justification and Procurement Certification
PCS 09	Work Order Selection Justification
PCS 117	HHS Procurement Specific Nondisclosure and Conflict of Interest Certification (PowerForm)
PCS 127	Potential Applicant Notification List
PCS 130	HHS Employee Nondisclosure and Conflict of Interest Certification (PowerForm)
PCS 135	POCN Contract Amendment
PCS 145	Vendor Reference Survey
PCS 147	Vendor Performance Reporting
PCS 148	Procurement Risk Assessment
PCS 170-F	HHS Contract File Checklist - Contract Formation, Contract Renewal or Amendment
PCS 170-M	HHS Contract File Checklist – Contract Management Contract Closeout
PCS 402	HHS Liability Provision Documentation (Need access to CAPPS Financials to Complete Form)
PCS 405	Consultant Contract Finding of Fact Request (Need access to CAPPS Financials to Complete Form)
PCS 406-F	VetHUB Subcontracting Determination
PCS 415	Subcontracting Plan Review
PCS 436-F	Direct Contract Award Determination
PCS 437-F	Non-Competitive Direct Award Justification
PCS 438-F	HHS Contractor or Subrecipient Determination
PCS 510	VetHUB Post-Contract Award Meeting SP and PAR
PCS 512-F	Unit Pricing Cost Proposal Template

Form Number	Form Title
PCS 513	Cost Evaluation Tool - Fixed Budget
PCS 514	Retrospective Cost Settlement or Prospective Price Determination Template
PCS 515	Contract Routing and Approval Request
PCS 542	Evaluation Team Template
PCS 543-F	Secondary Evaluation Oral Presentations Demo Site Visit Template
PCS 544-F	Secondary Evaluation Interview Template
PCS 550	RFP/RFO Solicitation Template (CAPPS Financials Template Library)
PCS 562	RFA Development Tool
PCS 805	LBB Attestation Letter (PowerForm)
PCS 806	LBB Attestation Letter - Non-Competitive Procurements (PowerForm)
PCS 807	DSHS LBB Attestation Letter (PowerForm)
PCS 808	DSHS LBB Attestation Letter - Non-Competitive Procurements (PowerForm)
PCS 811	LBB Attestation Letter - Revenue Generating Contracts (PowerForm)
PCS 812	LBB Attestation Letter - DSHS Revenue Generating Contracts (PowerForm)
8040	Federal Funding Accountability Act Reporting Guidance Letter and Attachments A and B

Note: *The forms listed in this appendix are available only to HHS staff with the appropriate access permissions. If a form does not open from your browser, download it to your desktop and open it locally.*

Resource: PCS Policies and Forms SharePoint Library

Appendix F: PCS Manuals, Guides, and Job Aids

This appendix provides links to PCS manuals guides and job aids referenced throughout the handbook.

Document Number	Document Title
PCS 363	Executive Reporting Guide
PCS 610	ProCard Manual
PCS 180-JA	Vendor Checks Job Aid

Note: *The manuals, guides and job aids listed in this appendix are available only to HHS staff with the appropriate access permissions.*

Resource: PCS Policies and Forms SharePoint Library

Appendix G: CPA Minimum Requirements for SPD Delegated Purchases

The following chart provides a summary of SPD delegated purchases.

Contract Value	Purchases of Goods**	Purchases of Services**	Direct Publication Purchases	Perishable Goods Purchases	Distributor Purchases	Fuel, Oil, and Grease Purchases	Internal Repair	Emergency Purchases**
$0 - $10, 000	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E	Competitive Process Not Required PCC K	Competitive Process Not Required PCC L	Competitive Process Not Required PCC M	Competitive Process Not Required PCC P	Competitive Process Not Required PCC E	Competitive Process Not Required PCC E
$10, 000.01 - $25, 000	Informal Competitive Solicitation PCC F	Informal Competitive Solicitation PCC Q	Competitive Process Not Required PCC K	Informal Competitive Solicitation PCC L	Informal Competitive Solicitation PCC M	Informal Competitive Solicitation PCC P	Informal Competitive Solicitation PCC Q	Informal Competitive Solicitation PCC Q
$25, 000.01 – $50, 000	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T
$50, 000.01 - $100, 000	Non-Delegated PCC S	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T
Over $100, 000	Non-Delegated PCC S	Non-Delegated PCC S	Formal Competitive Solicitation PCC K	Formal Competitive Solicitation PCC L	Formal Competitive Solicitation PCC M	Formal Competitive Solicitation PCC P	Formal Competitive Solicitation PCC S	Formal Competitive Solicitation PCC T

*Procurements made under SPD's delegation authority are subject to ESBD posting requirements as well as requirements applicable to CAT and QAT reviews.

Purchases for printing must comply with the **Printing Services and In-House Copy Centers procedures.

Reference: *Comptroller's Procurement and Contract Management Guide,*, *Procurement Method Determination, Summary of Minimum Requirements for Delegated Purchases*

Appendix H: Questions for DUA Confidential Information Protection

Category	Monitoring Questions	Response
Policies & Procedures	• Does the contractor have written policies and procedures regarding the protection of confidential information?	Yes No
Policies & Procedures	• Do the contractor's policies and procedures include limitations on the use and disclosure of confidential information?	Yes No
Policies & Procedures	• Do the contractor's policies and procedures include protocols for responding to a breach?	Yes No
Training	• Does the contractor have a training curriculum regarding protection of confidential information?	Yes No
Training	• Have all staff authorized to access confidential information taken the training?	Yes No
Training	• Was the training taken in a timely manner by all authorized staff (within 30 days of hire for new staff, annually for existingworkforce)?	Yes No
Sub-contractors	• Does the contractor have a signed Subcontractor Agreement Form (DUA Attachment 1) for all subcontractors?	Yes No
Safeguards for Protection of Confidential Information (Paper, Oral, & Electronic)	• Can the contractor demonstrate compliancewith minimum safeguards for protecting confidential information? Consider the following, as applicable: • Secured physical premises (building, locked file cabinets) • Unique computer login/password for each authorized user • Secured Wi-Fi (Password-Protected; Not Public) Records destruction (shredder v. trash can) • Encryption software	Yes No What encryption software (brand/version) does the contractor use?

Appendix I: PCS Authority Chart

Purchasing Authority	Best Value/Selection Standard	Procurement Method
HHSC Authority (e.g., client services; health care services; outsourcing purchasing, programmatic, or administrative functions) Tex. Gov't Code § 2155.144(a), (b), (b-1)(2) [HHSC, DSHS, DFPS, and agencies administratively attached to HHSC]	Tex. Gov't Code § 2155.144(d)	**Request for Proposals (RFP)** Tex. Gov't Code § 2155.144(c) 1 Tex. Admin. Code pt. 15, ch. 391, subch. B, § 391.201(a)
HHSC Authority- Construction (SSLC, state hospital expansion, and deferred maintenance) Tex. Gov't Code § 2155.144(b-2) 1 Tex. Admin. Code pt. 15, ch. 391, subch. B, div. 2, § 391.241(a) [HHSC and DSHS] [Technically, DFPS and agencies administratively attached to HHSC could use the construction authority in Section 2155.144(b-2), but these agencies do not own buildings or engage in construction solicitations.]	Tex. Gov't Code § 2155.144(d)	**Request for Proposals (RFP)** Tex. Gov't Code § 2155.144(c) 1 Tex. Admin. Code pt. 15, ch. 391, subch. B, div. 1, § 391.201(a) 1 Tex. Admin. Code pt. 15, ch. 391, subch. B, div. 2, § 391.241(b) Tex. Gov't Code ch. 2269, subch. D (general contractor), subch. F (construction manager-at-risk (CMR) one-step process § 2269.253(b)) **Request for Qualifications (RFQ)** Tex. Gov't Code § 2155.144(c) 1 Tex. Admin. Code pt. 15, ch. 391, subch. B, div. 1, § 391.201(a) 1 Tex. Admin. Code pt. 15, ch. 391, subch. B, div. 2, § 391.241(b) Tex. Gov't Code ch. 2269, subch. F (construction manager-at-risk (CMR) two-step process § 2269.253(b))
Comptroller Authority (by delegation, goods, and services for administrative operations) Texas Gov't Code § 2155.061	Tex. Gov't Code § 2155.074(b), (b-1) Tex. Gov't Code § 2156.007	**Request for Proposals (RFP)** Tex. Gov't Code § 2155.062 Tex. Gov't Code § 2156.121 (competitive sealed proposals) 34 Tex. Admin. Code pt 1, ch. 20, subch. C, div.2, § 20.206

Purchasing Authority	Best Value/Selection Standard	Procurement Method
		34 Tex. Admin. Code pt 1, ch. 20, subch. C, div.2, § 20.208 **Reverse Auction Procedure** Tex. Gov't Code § 2155.062 Tex. Gov't Code § 2155.085 34 Tex. Admin. Code pt 1, ch. 20, subch. C, div.2, § 20.206 34 Tex. Admin. Code pt 1, ch. 20, subch. C, div.2, § 20.212
DIR Procurement Authority a. Texas Gov't Code § 2157.068(e-1) b. Texas Gov't Code § 2157.068(e-4) Texas Gov't Code § 2157.006(a)(2)	Tex. Gov't Code § 2157.003	**DIR SOW** a. SOW **value $50K up to $5M** requiring DIR approval and signature before work may begin. b. SOW **value over $5M up to $10M**, **may purchase through DIR cooperative contracts** or solicit as an RFO. (See next row for RFO)
DIR Procurement Authority a. Texas Gov't Code § 2157.068(e-1) **Exemption** Texas Gov't Code 2157.068(f) b. Texas Gov't Code § 2157.068(e-4) Texas Gov't Code § 2157.006(a)(2)	Tex. Gov't Code § 2157.003	**RFO** a. Contract **value $50K up to $5M**, agency must first seek an **exemption** to use RFO method instead of soliciting through DIR cooperative contracts. b. Contract **value over $5M up to $10M**, may purchase through DIR cooperative contracts **or solicit as an RFO**.
IT Procurement Authority a. Texas Gov't Code § 2157.068(e-2) b. Texas Gov't Code § 2157.006(a)(2)	Tex. Gov't Code § 2157.003	**Request for Offer (RFO)** Contract **value exceeds $10M**, cannot use DIR cooperative contracts.
Governor Declared State of Disaster Authority purchase under a state of disaster may only be granted by a declaration; the specific authority granted varies by declaration. The Governor's authority to declare a state of disaster is found in Texas Government Code § 418.014, but this does not define the	As prescribed by the disaster declaration - procurement file must contain copy of disaster declaration.	As prescribed by the disaster declaration - procurement file must contain copy of disaster declaration.

Purchasing Authority	Best Value/Selection Standard	Procurement Method
procurement authority itself for any state of disaster.		
Professional Services (services must be one or more of those specified by statute) Tex. Gov't Code ch. 2254, subch. A	Tex. Gov't Code § 2254.003	**Request for Qualifications (RFQ)** Tex. Gov't Code § 2254.003
Architect, Engineer, and Surveyor Services Tex. Gov't Code ch. 2254, subch. A	Tex. Gov't Code § 2254.004	**Request for Qualifications (RFQ)** Tex. Gov't Code § 2254.004 (Architect, Engineer, Surveyor)
Consulting Services Tex. Gov't Code § 2254.026	Tex. Gov't Code § 2254.027[1]	**Request for Proposals (RFP)** Tex. Gov't Code § 2254.027
Outside Counsel Services Tex. Gov't Code § 402.0212 Tex. Gov't Code § 2254.153 1 Tex. Admin. Code pt. 3, ch. 57, § 57.4	1 Tex. Admin. Code pt. 3, ch. 57, §57.4(c)	**Request for Qualifications (RFQ)** Tex. Gov't Code § 2254.154 1 Tex. Admin. Code pt. 3, ch. 57, § 57.4(a)
Telecommunications (DIR waiver required) Tex. Gov't Code § 2170.051	Tex. Gov't Code § 2157.125	**Request for Proposal (RFP)** Tex. Gov't Code § 2157.121 (competitive sealed proposals)
Private Auditor Services (by State Auditor delegation) Tex. Gov't Code § 321.020	Tex. Gov't Code § 2155.074(b), (b-1) (for RFP) Tex. Gov't Code § 2254.003 (if certified public accountant required)	**Request for Proposal (RFP)** Tex. Gov't Code § 321.020(a)(3) Tex. Gov't Code § 2156.121 (competitive sealed proposals) **Request for Qualifications (RFQ)** (if certified public accountant is required) Tex. Gov't Code § 321.020(a)(3) Tex. Gov't Code § 2254.003
Grant, N/A – Not a Procurement	**N/A – Not a Procurement**	**N/A – Not a Procurement**
Proprietary Purchases		

Purchasing Authority	Best Value/Selection Standard	Procurement Method
In addition to being proprietary, a procurement must also have a specific purchasing authority with a best value standard and procurement method allowable under that authority. Requirements for Proprietary Purchases: Tex. Gov't Code § 2155.067 34 Tex. Admin. Code pt 1, ch. 20, subch. C, div. 2, § 20.206(a)(3) 34 Tex. Admin. Code pt 1, ch. 20, subch. C, div. 2, § 20.209 (Requires justification from PCS 02 and specific language in the solicitation, see CPA Guide pgs. 22-24)[2]		
Comptroller Emergency Authority – Not Governor Declaration (delegated by rule) In addition to being an emergency procurement, the procurement should also utilize a specific purchasing authority with a best value standard and procurement method allowable under that authority. Tex. Gov't Code § 2155.137 34 Tex. Admin. Code pt. 1, ch. 20, subch. B, div. 1, § 20.82(a)(2) 34 Tex. Admin. Code pt 1, ch. 20, subch. C, div. 2, § 20.206(a)(4) 34 Tex. Admin. Code pt 1, ch. 20, subch. C, div. 2, § 20.210		

Appendix J: Texas Government Code Crosswalk

Procurement Authority and General Purchasing

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code § 2155.004	Prohibits vendors from competing for contracts when they were compensated to prepare specifications or solicitation documents.	Competitive Procurements
Tex. Gov't Code § 2155.061-062	Establishes Comptroller purchasing authority and authorized procurement methods.	Procurement Authority
Tex. Gov't Code § 2155.067	Governs proprietary purchases.	Proprietary Purchases
Tex. Gov't Code § 2155.074-.075	Establishes best value requirements and evaluation factor disclosure requirements.	Solicitation Evaluation
Tex. Gov't Code § 2155.083	Requires posting certain procurements to the Electronic State Business Daily (ESBD).	ESBD Posting
Tex. Gov't Code § 2155.085	Authorizes reverse auction procurements.	Solicitation Methods
Tex. Gov't Code § 2155.089	Requires vendor performance tracking and reporting.	Vendor Performance
Tex. Gov't Code § 2155.132	Establishes authority for purchases below statutory thresholds.	Small Purchases
Tex. Gov't Code § 2155.137	Governs emergency purchases and HUB considerations for emergency procurements.	Emergency Procurements
Tex. Gov't Code § 2155.138	Provides exemptions for purchases from programs serving persons who are blind or visually impaired.	Exempt Purchases
Tex. Gov't Code § 2156	Establishes state purchasing methods, including competitive sealed proposals and bonding authority.	Solicitation Methods

HHSC Procurement Authority

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code § 2155.144	Establishes procurement authority for HHSC and HHS agencies.	Procurement Authority
Tex. Gov't Code § 2155.144(b)	Delegates procurement authority to covered HHS agencies.	Procurement Authority
Tex. Gov't Code § 2155.144(b-1)	Defines procurement categories excluded from common commodity purchasing restrictions.	Procurement Authority
Tex. Gov't Code § 2155.144(b-2)	Authorizes HHSC procurements related to state hospitals, SSLCs, and deferred maintenance projects.	Construction Procurements
Tex. Gov't Code § 2155.144(c)	Requires use of approved procurement methods that ensure best value.	Procurement Planning
Tex. Gov't Code § 2155.144(j)	Requires HHSC to maintain a Contract Management Handbook.	Handbook Authority
Tex. Gov't Code § 2155.144(l)	Grants HHSC authority to coordinate HHS procurement practices.	Procurement Governance
Tex. Gov't Code § 2155.144(o)	Authorizes negotiated awards in limited circumstances involving state hospitals and SSLCs when competition is unavailable.	Competitive Procurements

Information Technology Procurements

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code § 2054.003	Defines information resources terminology, including Major Information Resources Projects (MIRPs).	IT Procurements
Tex. Gov't Code §§ 2054.1181, 2054.158, 2054.160	Establishes Quality Assurance Team (QAT) oversight, review, reporting, and amendment requirements for major information resources projects.	IT Procurements
Tex. Gov't Code § 2054.5192	Requires cybersecurity training for contractor personnel with access to state systems or databases.	IT Security Requirements
Tex. Gov't Code Chapter 2157	Governs acquisition of Automated Information Systems (AIS).	IT Procurements

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code § 2157.068	Establishes DIR cooperative contract requirements and commodity purchasing procedures.	IT Products
Tex. Gov't Code § 2157.0685	Requires Statements of Work for certain IT procurements.	IT Services
Tex. Gov't Code § 2157.125	Establishes award requirements for AIS procurements.	IT Procurements
Tex. Gov't Code Chapter 2170	Governs telecommunications services for state agencies.	Telecommunications

VetHUB Requirements

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code Chapter 2161	Establishes the Historically Underutilized Business (HUB) Program.	HUB Requirements
Tex. Gov't Code Chapter 2161, Subchapter F	Establishes HUB Subcontracting Plan requirements for applicable procurements.	HUB Requirements
Tex. Gov't Code § 2161.001	Provides key HUB definitions.	HUB Requirements

Professional and Consulting Services

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code Chapter 2254	Governs procurement of professional and consulting services.	Professional Services
Tex. Gov't Code §§ 2254.003-.004	Establishes professional service selection and public interest requirements.	Professional Services
Tex. Gov't Code §§ 2254.027-.0301	Establishes consultant selection, ESBD publication, LBB notification, and oversight requirements.	Consulting Services
Tex. Gov't Code § 2254.031	Governs amendments, extensions, and renewals of professional service contracts.	Contract Amendments
Tex. Gov't Code § 2254.036	Establishes records retention and archival requirements for consulting	Records Retention

Citation/Link	Requirement	Related Handbook Section
	contracts.	
Tex. Gov't Code § 2254.038	Applies consulting services requirements to mixed-service contracts when consulting is the primary purpose.	Consulting Services

Construction and Facilities

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code § 2113.106	Requires use of state facilities when available for meetings and conferences.	Conference/Meeting Space
Tex. Gov't Code § 2166.302	Building construction and facility requirements.	Facilities
Tex. Gov't Code Chapter 2253	Establishes public work performance and payment bond requirements.	Construction Procurements
Tex. Gov't Code § 2253.021	Defines bonding thresholds and bond requirements.	Construction Procurements
Tex. Gov't Code Chapter 2258	Establishes prevailing wage requirements.	Construction Procurements
Tex. Gov't Code Chapter 2269	Authorizes alternative project delivery methods for construction projects.	Construction Procurements

Contract Management and Oversight

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code Chapter 2260	Establishes procedures for resolution of contract claims.	Contract Disputes
Tex. Gov't Code Chapter 2261	Establishes contract management standards, oversight, transparency, and accountability requirements.	Contract Management
Tex. Gov't Code §§ 2261.052-.054	Establishes evaluation and award documentation requirements.	Evaluation & Award
Tex. Gov't Code §§ 2261.253-.256	Establishes posting, monitoring, risk analysis, and accountability requirements.	Contract Administration
Tex. Gov't Code § 2261.258	Requires State Auditor contracting ratings and monitoring.	Oversight

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code Chapter 2262	Establishes statewide contract management requirements.	Contract Management
Tex. Gov't Code §§ 2262.053-.055	Requires contract file documentation and vendor performance management.	Contract File Documentation
Tex. Gov't Code § 2262.101	Establishes the Contract Advisory Team (CAT).	CAT Reviews
Tex. Gov't Code § 656.052	Requires contract manager training and certification.	Training Requirements

Ethics Transparency and Records

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code § 402.0212	Requires Attorney General approval of contracts for outside legal counsel.	Legal Services Contracts
Tex. Gov't Code § 2252.901	Restricts certain contracts with former or retired employees.	Ethics & Conflicts
Tex. Gov't Code § 2252.908	Requires disclosures of interested parties for applicable contracts.	Contract Formation
Tex. Gov't Code § 321.020	Governs private audit engagements.	Audit Requirements
Tex. Gov't Code § 441.1855	Establishes contract records retention requirements.	Records Retention
Tex. Gov't Code § 552	Public Information Act requirements.	Records Management
Tex. Gov't Code § 572.069	Establishes post-employment conflict-of-interest restrictions.	Ethics & Conflicts
Tex. Gov't Code Chapter 305	Lobbyist registration and disclosure requirements.	Disclosure Requirements

Grants and Intergovernmental Agreements

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code Chapter 771	Interagency Cooperation Act.	Interagency Contracts
Tex. Gov't Code Chapter 783	Uniform Grant and Contract Management Act.	Grants

Citation/Link	Requirement	Related Handbook Section
Tex. Gov't Code Chapter 791	Interlocal Cooperation Contracts.	Interlocal Agreements

Appendix K: Texas Administrative Code Crosswalk

Administration and HHSC Requirements

Citation/Link	Requirement	Related Handbook Section
1 Tex. Admin. Code § 57.4	Procedures for state agencies seeking approval to retain outside legal counsel.	Legal Services Contracts
1 Tex. Admin. Code § 215.44	Procedures for requesting exemption from Application Services Center requirements.	IT Procurements
1 Tex. Admin. Code § 391.201	HHSC procurement and contracting methods for acquiring goods and services.	Procurement Methods
1 Tex. Admin. Code § 391.241	HHSC construction and construction-related contracting requirements.	Construction Procurements
1 Tex. Admin. Code § 391.503	Contract posting and transparency requirements.	Contract Transparency
1 Tex. Admin. Code § 391.605	HHSC enhanced contract monitoring requirements.	Contract Monitoring

Procurement Authority and Methods

Citation/Link	Requirement	Related Handbook Section
34 Tex. Admin. Code § 20.25(b)(13)	Defines contract value.	Procurement Planning
34 Tex. Admin. Code § 20.82	Delegated purchasing authority granted to state agencies by CPA.	Delegated Purchases
34 Tex. Admin. Code § 20.115	Framework for selecting procurement methods.	Procurement Methods
34 Tex. Admin. Code § 20.206	Competitive sealed proposal procedures.	RFP Procedures
34 Tex. Admin. Code § 20.208	Proprietary purchase requirements.	Proprietary Purchases

Citation/Link	Requirement	Related Handbook Section
34 Tex. Admin. Code § 20.209	Emergency procurement procedures.	Emergency Procurements
34 Tex. Admin. Code § 20.210	Reverse auction procurement procedures.	Reverse Auctions
34 Tex. Admin. Code § 20.212	Defines contract value.	Procurement Planning

Contract Management and Oversight

Citation/Link	Requirement	Related Handbook Section
34 Tex. Admin. Code § 20.115	Enhanced contract monitoring and vendor performance requirements.	Contract Monitoring
34 Tex. Admin. Code § 20.115(c)	Comptroller authority to revise vendor performance reports and grades.	Vendor Performance
34 Tex. Admin. Code § 20.115(e)	Agency authority to request revision of vendor performance reports.	Vendor Performance
34 Tex. Admin. Code § 20.132	Statewide procurement and contract management standards.	Contract Management
34 Tex. Admin. Code § 20.133	Procurement and contract management training and certification requirements.	Training Requirements
34 Tex. Admin. Code § 20.166	Requirements for contracts subject to enhanced monitoring.	Enhanced Monitoring
34 Tex. Admin. Code § 20.509	Vendor Performance Tracking System (VPTS) reporting requirements.	Vendor Performance Reporting

Historically Underutilized Businesses (HUB)

Citation/Link	Requirement	Related Handbook Section
34 Tex. Admin. Code § 20.282	Defines Historically Underutilized Businesses (HUBs).	HUB Requirements

Citation/Link	Requirement	Related Handbook Section
34 Tex. Admin. Code § 20.284	Statewide HUB utilization goals.	HUB Program
34 Tex. Admin. Code § 20.285	HUB subcontracting opportunity requirements.	HUB Subcontracting Plans
34 Tex. Admin. Code § 20.287	HUB reporting requirements.	HUB Reporting