Texas Pension Review Board

Procurement and Contract Management Handbook

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Introduction

The Texas Pension Review Board (PRB), in compliance with Section 2261.256(b), Texas Government Code has developed this PRB Procurement and Contract Management Handbook to assist staff in the areas of ethics, procurement of goods and services, and the contract management process.

The Texas Comptroller of Public Accounts' Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services. Further guidance, in addition to the handbook, is available in the Comptroller's *State of Texas Procurement and Contract Management Guide*. PRB employees should also consult the agency's *Purchasing Policy* and *Procurement Card Policies and Procedures*.

Purpose

The purpose of this handbook is to assist PRB staff in the procurement of goods and services and offer PRB staff assistance on improving contract management processes and practices. The handbook is not designed to relieve staff nor contractors of their obligation or responsibility to ensure compliance with all laws, rules, and regulations.

This handbook is intended as a guide for PRB staff involved in the development and management of agency contracts, but it does not attempt to address all issues that may need to be considered in a particular circumstance. For complex or unusual contract/procurement questions, staff should seek legal assistance from the general counsel as early as possible in the contracting process.

Ethics and Standard of Conduct Policy

A significant responsibility is imposed on everyone who is entrusted with the awarding and expenditure of state funds. State employees should avoid any appearance of impropriety when interacting with contractors, potential contractors, and stakeholders. All PRB employees must act in an ethical, transparent, and professional manner at all times.

State 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 substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.[1]

State officials and employees are responsible for protecting the safety and welfare of the public's money. All state officials and employees should endeavor to pursue a course of conduct that does not raise suspicion among the public. Therefore, they must avoid acts that are improper or give even the appearance of impropriety. This conduct is particularly important for state purchasing and contract management personnel who are charged with the prudent expenditure of state funds.

[1] Section 572.001, Texas Government Code.

The nature of purchasing functions makes it critical that everyone in the purchasing process remains independent and free from the perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the purchasing process.

PRB Ethics Policy

PRB's ethics policy details nine standards of conduct and additional requirements, prohibitions, and guidance for state officers and employees. All PRB employees complete training on the state standards of conduct upon hire and biennially thereafter. Please refer to the PRB ethics policy for further details.

Conflicts of Interest

State law specifically prohibits employees who participate in the procurement process from having an interest in or receiving benefits from a contract or solicitation for the purchase of goods or services.

All staff involved in procurement and contract management are required to disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency. See the "required forms" section below for more information on this requirement.

Perception plays a key role in maintaining the highest level of integrity, including avoiding even the appearance of impropriety.

State law prohibits the PRB from entering into a contract that exceeds $25,000 for the purchase of products or services with a vendor with whom any of the following agency employees or officials have a financial interest:

- board members (agency's governing body);
- the executive director, general counsel, or director of business operations of the agency; or
- a family member related to an employee or official described by either bullet point above within the second degree by affinity or consanguinity.

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

- owns or controls, directly or indirectly, an ownership interest of at least 1 percent in the person/vendor, including the right to share in profits, proceeds, or capital gains; or
- could reasonably foresee that a contract with the person/vendor could result in a financial benefit to the employee or official.

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

Ethical standards for PRB staff involved in procurement or contracting activities

All PRB employees involved in procurement or contracting activities must act in the best interest of the state of Texas and avoid any activity that could potentially impair their ability to carry out their duties with independence and objectivity. Failing to abide by these rules or to disclose a potential conflict of interest could result in dismissal.

State employee conflict of interest

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

Nepotism

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

- A relationship by consanguinity is one established through bloodlines. The consanguinity relationship may be either lineal (persons in a direct line of descent) or collateral (persons not in a common line of descent but with a common ancestor).
- Relationships by affinity arise by virtue of marriage. A relationship by affinity exists between an individual and either the blood relatives of the individual's spouse or the spouses of the individual's blood relatives. Simply stated, if at least two marriages are required to establish a link between two persons, they are not related by affinity.

To determine if specific relationships could violate nepotism provisions, see Chapter 573, Texas Government Code or consult the general counsel.

Reporting ethical violations

The administrative team and general counsel are available to consult and assist with any ethical issues or concerns at any time during the procurement or management of the contract.

All PRB employees have a duty to report any potential ethics or standard of conduct violations to the general counsel. A project manager has an obligation to remain vigilant for signs of potential violations of ethics rules, policies, and standards of conduct.

Employment restrictions

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

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

A state agency may not enter into an employment contract or a professional services or consulting services contract under Chapter 2254, Texas Government Code with a former or retired employee of the agency

before the first anniversary of the last date on which the individual was employed by the agency.[2] This restriction does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.

Required forms

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

- **Conflict of interest and non-disclosure statement**. To ensure the integrity of the procurement process, PRB employees who are involved in the development, evaluation, award, or management of contracts with vendors must disclose any known or potential conflicts of interest. To safeguard the integrity of the evaluation process, PRB employees serving on an evaluation committee or as advisors on a procurement must sign a non-disclosure agreement prior to receiving the responses or participating in any evaluation committee activities.
- **SAO nepotism disclosure form and disclosure of interested parties form**. For major contracts with an expected value of $1 million or more, additional forms are required. Please contact the general counsel in the event of such a procurement.

Suspected fraud, waste, or abuse

The State Auditor's Office (SAO) investigates allegations of fraud, waste, or abuse. Administrative heads of agencies who have reasonable cause to believe that money was lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred are required to report this information to the SAO.

A reasonable cause to believe exists when a set of facts would lead a reasonable and prudent person to believe that an offense may have been committed. Employees and vendors who become aware of a situation that involves suspicious activities or fraudulent acts may also report the allegations to SAO.

Criminal offenses investigated by SAO include, but are not limited to, the following:

- Theft,
- Forgery,
- Tampering with a governmental record,
- Securing execution of document by deception,
- Misapplication of fiduciary property,
- Conversion of funds,
- Abuse of official capacity,

[2] This restriction applies specifically to contracts paid with appropriated funds. As of the fiscal years 2026-2027 biennium, the PRB receives and spends only appropriated funds.

- Gift to a public servant by a person subject to his or her jurisdiction
- Bribery

Reports of fraud, waste, or abuse involving state resources may be submitted through the SAO website, by phone at 1-800-TX-AUDIT (892-8348), or by mail to State Auditor's Office, Attn: IAS, P.O. Box 12067, Austin, TX 78711-2067. Someone who reports fraud may choose to remain anonymous.

Approval and signature authority

Each agreement, which includes contracts, interagency contracts, and amendments, must be approved by the appropriate approver, depending on contract value. Dollar thresholds for approval and signature authority are inclusive of all amendments and changes and all optional renewal periods.

Regardless of the total contract value, material changes to a contract for goods or services must be considered by the board in a meeting. State law specifies that a material change includes a change that:

- extends the length of or postpones completion of a contract for six months or more; or
- increases the total amount to be paid to the contractor by 10 percent or more.

The board must approve any contract for the purchase of goods and services that exceeds $1 million. The executive director must approve all other contracts. The executive director delegates signature authority to the deputy director, so long as the contract value does not exceed $10,000.

PRB Roles and Responsibilities

The key participants in the PRB's procurement and contracting processes are the administrative team, general counsel, executive management, and the board members, when necessary. This section provides an overview of the roles and responsibilities of these individuals.

Administrative team

At the PRB, the administrative team works as the purchasing team during the planning phase of the procurement, including solicitation and/or contract development. After a contract has been awarded or executed, it is the responsibility of the appropriate project manager to administer the contract, with assistance from the administrative team and general counsel as needed. The administrative team's responsibilities include:

- Facilitating and providing technical assistance on state procurement law, agency policies and procedures, and contract options for PRB staff
- Providing guidance to staff during the solicitation process and through the contract closeout process
- Receiving and processing requisitions
- Developing and reviewing specifications and scopes of work
- Identifying and selecting procurement methods
- Identifying and preparing evaluation criteria
- Preparing and advertising solicitation documents
- Tabulating respondent bids

- Reviewing respondent proposals and/or offers
- Receiving and responding to communications between the agency and the vendor as needed during contract formation/development
- Negotiating contract terms
- Preparing and completing contract award documents
- Working with the project manager and general counsel to create procurement documents, such as solicitations and contracts
- Reviewing and approving potential Historically Underutilized Business (HUB) or successor program subcontracting opportunities for contracts prior to solicitation, where required under state law
- Receiving and responding to communication between PRB and the contractor, when appropriate
- Processing contract amendments and change requests
- Exercising state remedies, as appropriate, when a contractor's performance is deficient
- Maintaining a copy of the submitted Vendor Performance Report into the Vendor Performance Tracking System for the procurement file
- Ensuring the project manager provides vendor performance documentation, when applicable
- Coordinating legal review and approval of contracts
- Publishing and reporting contract information to the public and state oversight agencies
- Creating and maintaining the official procurement file

Project team

The project team may have multiple roles throughout the procurement and contract process, depending on the circumstances of the specific procurement.

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

- Identifying the needs for products or services to fulfill the agency mandates or goals
- Participating in solicitation development and review of contract documents. The project manager should provide guidance around performance measures and contract provisions to include in the final contract.
- Researching and determining the budget for the anticipated procurement
- Developing an evaluation team, if required by the procurement method
- Evaluating responses received from the solicitation
- Working with the administrative team and general counsel to determine risk factors during the solicitation process and appropriate methods to manage risk during the term of the contract
- Consulting with the administrative team and general counsel when necessary

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

- Maintaining knowledge and understanding of the contract
- Serving as the primary point of contact for agency communications with the contractor
- Monitoring the contractor's progress and performance to ensure products and services conform to the contract requirements
- Performing enhanced monitoring for high-risk projects
- Assigning monitoring activities when necessary
- Documenting significant events
- Managing state property used in contract performance (e.g., computers, capital equipment, supplies, telephones, etc.)
- Identifying and resolving disputes with contractor(s) accordingly and in a timely manner
- Maintaining appropriate records concerning the contract, including but not limited to: progress reports, issues, risks, lessons learned, correspondence, and contract closeout
- Notifying the administrative team and general counsel of performance issues; if necessary, may draft a corrective action plan and provide to administrative team and general counsel for approval
- Monitoring any corrective action plan(s)
- Identifying and reporting disputes with the contractor to the administrative team and general counsel in a timely manner
- Monitoring the budget to ensure costs are within the approved budget and sufficient funds are available
- Verifying accuracy of invoices consistent with the contract terms
- Periodically performing risk assessments throughout the life of the contract
- Managing and documenting any changes to the contract
- Performing contract closeout processes
- Providing all required contract documentation to the administrative team for the procurement file

General counsel

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

- Providing legal assistance on procurement laws and regulations to the administrative team and project team
- Assisting in the review and approval of the solicitation, contract, and amendment templates and documents
- Providing legal support for contract negotiations
- Providing legal assistance for vendor performance concerns, including initiating remedies and defending disputes
- Partnering with the administrative team and project manager to determine risk factors during the solicitation process and appropriate methods to manage risk during the term of the contract

Risk management

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

The PRB's regularly assesses the risk level of a contract to identify what level of monitoring may be needed based on different factors. Risk assessments are conducted during contract planning, after award, and on an ongoing basis.

Risk Assessments are *not* required for:

- Contracts that have an overall value of less than $10,000;
- SPD Term and TXMAS contracts;
- Memorandums of Understanding or agreements that have no monetary value;
- Emergency Contracts, when time does not allow for a complete risk assessment.

The PRB risk management process includes:

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

Upon execution of the contract, the PRB project manager must determine the level of monitoring required for the contract by assessing the risk associated with the contract. The PRB project manager is typically the first team member to have knowledge and attempt to resolve any issues related to the performance of the contract.

To prevent disputes, PRB project managers must:

- Maintain regular communication between the PRB and contractors, as necessary.
- Respond promptly to all contractor inquiries regarding contract concerns.
- Notify the contractor promptly of any issues.
- Work with the PRB administrative team and general counsel to develop a strategy to resolve disputes and document any issues related to contract performance.
- Thoroughly document all issues and communications pertaining to contract issues.

Procurement process

Based on the PRB Strategic Plan, current biennial appropriations, and approved budget, staff develop projects to accomplish the goals and mission of the agency. Procurement requirements and methods for each project differ, but must always follow state law, the State of Texas Procurement and Contract Management Guide, and this handbook.

Procurement planning

PRB staff should determine the following prior to submitting a request to procure goods or services:

- Need for the goods or services
- Potential sources for the goods or services, such as other state agencies or a state operation
- Deliverables expected
- Timeframe for procurement
- Anticipated cost and funding availability
- Data sharing considerations

Needs assessment

The success of the procurement or contract is often dependent upon how well the business requirements are documented during the Procurement Planning phase. Once a request has been submitted to the administrative team and documented, administrative team staff will work with program staff on the needs assessment, where the necessary details are obtained to identify key business requirements. As part of the needs assessment, depending on the type of procurement, the agency may conduct market research, study historical spending, use benchmarking, and issue a Request for Information (RFI) to the vendor community. For technology purchases, staff must consult the information resource manager (IRM) to ensure the purchase is compatible with agency systems and reasonable for the agency to purchase. For purchases over $10,000, a formal needs assessment must be conducted.

Cost estimate

The agency must develop a cost estimate as well as make an initial determination of the funding source that will be used for the procurement during the procurement planning phase. Depending on the procurement, a cost estimate may be developed from a vendor's advertised price list, developed through online research, or may be prepared using standardized estimation methods and based on historical spend. The administrative team may contact someone within the agency who has knowledge in the subject area to assist with the cost estimate. The cost estimate must be developed in good faith as it will be used not only in the selection of the appropriate procurement method, 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.

Determining procurement method

The next step of the procurement process is to determine which procurement method would best achieve the identified business requirements and procurement objectives. SPD and DIR are charged with the responsibility of establishing and overseeing statewide contracts for use by agencies. Agencies must use SPD and DIR designated procurement methods unless the procurement is subject to a statutorily specified exclusion or authorized exemption. Texas law requires that contract awards may only be made to responsive vendors providing best value to the state. The most used state contracts at the PRB include:

- DIR contracts;
- term contracts; and

- travel service contracts.

For more information on the solicitation process, procurement method determination, and other details, refer to the *State of Texas Procurement and Contract Management Guide*.

Purchases of IT-related goods and services

DIR establishes and manages contracts in three program areas for eligible customers: (1) Cooperative Contracts, (2) Shared Technology Services (e.g., Private Cloud, Public Cloud, Print/Mail/Digitization), and (3) Telecommunications. DIR uses strategic sourcing and other methods to obtain best value for IT commodities, including commercial software, hardware, and technology services, such as managed services, IT staff augmentation, training, and deliverables-based projects.

The PRB must procure goods and services in these areas through DIR, unless an exemption is approved by DIR. Certain blanket exemptions apply. Specific requirements related to temporary IT staffing also apply. IT Staff Augmentation Contracts provide temporary IT staff resources on an as-needed hourly basis. When acquiring IT Staffing Services, agencies may solicit a Request for Resume or issue a Statement of Work (SOW) for more complex staffing services solutions.

Monetary thresholds for competitive bidding under a DIR contract

When purchasing under a DIR contract, the PRB must follow the procedure below:

- $50,000 and under – the PRB may directly award the contract to a DIR vendor;
- Over $50,000 to $1 million – the PRB must submit a request for pricing to at least three vendors or resellers

Additional requirements exist for contracts over $1 million; in the event of such a procurement, please contact the general counsel.

Contract formation

The next step of the procurement process is to enter into a legally enforceable contract that not only meets the agency's business need but is also compliant with Texas procurement law. The purpose of a written contract is to establish the agreement between the parties – it records the terms of the agreement to prevent misunderstanding and conflict regarding the obligations of the parties. The contract between the agency and the selected vendor may be in the form of either a purchase order (PO) or formal signed agreement. If a formal signed agreement is used, the PO documents the encumbrance of funds by the agency for the transaction.

For many procurements, the contract formation and award phase is a relatively quick process. For example, a contract to acquire a good or service from SPD Term Contracts may be awarded by PO immediately following the selection of the vendor. In contrast, the contract formation and award phase may take longer for procurements where the parties desire to enter into a formal written agreement following the negotiation of terms and conditions.

The essential provisions that must be included in every contract are:

- **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 which address the following:
    - Scope of work
    - Financial provisions, such as price and payment terms
    - Contract term and termination provisions
    - Identification of the contracting parties
- **Required contract clauses**. State law requires certain contract provisions, listed in Appendix 24 of the *Texas Procurement and Contract Management Guide*.

Pre-award compliance checks

The agency performs all required pre-award compliance checks:

- Warrant/Payment Hold
- Texas Debarred Vendor List
- Systems for Award Management (SAM)
- Divestment Statute Lists
- Vendor Performance Tracking System (VPTS)

Contract management

The final step in the procurement process is contract management. The objective of contract management is to ensure the contract is performed satisfactorily and the responsibilities of both parties — the agency and the contractor — are properly discharged. Effective contract management prevents, minimizes, and resolves problems and potential claims and disputes. For contract management to be successful, the project manager must be involved throughout the procurement cycle.

At the PRB, the assigned project manager to oversee contract performance serves as the contract manager.

Once the contract has been awarded, the PRB project manager should schedule a post-award conference with the contractor. This conference is a meeting between the PRB and the contractor to discuss the deliverables and terms of the contract. Participants in the post award conference may include the agency's assigned administrative team member and project team, and the contractor's project manager and key personnel. The conference provides an opportunity to review expectations, review major performance milestones, affirm communication plans, and resolve any potential misunderstandings before work begins.

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

Contract monitoring

Contract monitoring includes planned, ongoing, scheduled, and unscheduled activities that measure and ensure compliance with the terms, conditions, acquisition, service delivery, and related requirements of the contract.

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

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

Amendments

All contract amendments are approved in accordance with state law. A project manager interested in obtaining guidance on amending a contract should contact the administrative team. Amendments will be approved only as allowed under state law. The PRB processes any proposed changes to a contract in compliance with the state's procurement and contracting laws, agency policies, terms of the contract, and within the scope of the original solicitation (if applicable).

Contract Close Out

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

- All contract deliverables, including any reports, have been delivered to and accepted by the PRB;
- Final payment is issued;
- Any outstanding monitoring issues have been resolved;
- All property inventory and ownership issues are resolved, including disposition of equipment or licenses purchased under the contract;
- The PRB project manager has indicated the final acceptance of all deliverables (if applicable);
- Any deficiencies identified during the contract close-out process have been documented and communicated to the appropriate parties and documented as a "lesson learned."

Vendor performance report

No later than 30 calendar days after the completion or termination of a purchase order or contract with an overall value of $25,000 or more, the project manager shall submit a performance review to the vendor performance tracking system (VPTS) on the comptroller's web page. The comptroller's website offers more information on using the VPTS.

Records retention

Aside from the responsibility of maintaining the procurement file, the project manager, or designated responsible agency employee, is also responsible for ensuring that contract documents are retained by

the agency in the required format for the appropriate amount of time as determined by applicable law and the agency's records retention schedule.

If the contract was executed on or after September 1, 2015, most documents in the contract file will have a minimum retention period of seven years after the contract is closed.