

Contract Management Handbook

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TEXAS VETERANS COMMISSION

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1. INTRODUCTION

The Texas Veterans Commission's (TVC) Contract Management Handbook (Handbook) complies with Texas Government Code §2261.256. The purpose of this handbook is to establish consistent contract management policies and procedures for TVC staff to follow to promote the efficient use of resources and provide transparency and accountability of TVC's expenditure of public funds. The information contained in this Handbook is a companion to the TVC Finance Division Standard Operating Procedures Manual.

TVC also uses the Texas Comptroller of Public Accounts (CPA) State of Texas Procurement Manual and Contract Management Guide to ensure the proper State of Texas procurement and contracting procedures are observed by the agency.

2. STATE AND AGENCY ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES

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

Agency purchasing and contract management personnel must adhere to the highest standards of professionalism in performing their official duties. The nature of purchasing and contract management functions makes it critical that everyone in the contract management process remain 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 and contract management process. Therefore, all TVC employees who participate in the state procurement and contracting activities shall adhere to state and agency ethical standards. Violation of these standards is subject to discipline, up to and including termination.

3. CONFLICTS OF INTEREST

By statute, any person involved in the development or approval of a contract that has an actual or potential conflict of interest must disclose it and must be removed from involvement in the contracting process. All purchasing and contract management staff must sign a **Conflict of Interest Statement (Appendix A)**. In addition, by signing the agency Contract Approval Form (CAF) routing sheet through the internal review process, each approval authority certifies that he or she:

- ✓ Has no financial interest in, or in connection with, the contract;
- ✓ Has not accepted or received, and will not accept or receive, from a person or entity to whom the contract has been awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation; and
- ✓ Has disclosed any possible conflicts of interest to the TVC Executive Director.

TVC staff who have knowledge of any conflicts of interest by any staff involved in the procurement process that has previously not been disclosed must report it to the TVC Executive Director.

Under Texas Government Code §2262.004, officers or employees involved in the specification development or a contract award determination for any major contract (contract with a value of at least \$10 million) must sign a **Nepotism Disclosure Form (Appendix B)** before the agency may award the contract to a business entity. Each TVC staff member working on the contract must disclose in writing to the TVC Executive Director any relationship that the employee has with an employee, a partner, a major stockholder, a paid consultant with the prospective vendor for contracts valued more than \$25,000; or other owner of the business entity that is within a degree described by Tex. Gov't Code §573.002.

Tex. Gov't Code §2252.908 prohibits agencies from entering into contracts over \$1 million unless the business entity submits a disclosure of interested parties to the agency at the time the business entity submits the signed contract. Before fully executing a contract valued at \$1 million or more, TVC must obtain a copy of the **Disclosure of Interested Parties Form (Appendix C)** from the proposed vendor. TVC will submit the Disclosure of Interested Parties Form to the Texas Ethics Commission within 30 days of receipt of the disclosure.

Under Tex. Gov't Code §2261.252, TVC may not enter into a contract with a vendor if any of the following agency employees or officials has a financial interest in the contract:

- A member of the agency's governing body;
- The governing official, Executive Director, General Counsel/Attorney, Chief Procurement Officer or Procurement Director of the agency;
- A family member related to an employee or official described above within the second degree by affinity or consanguinity.

Having a "financial interest" in this section is defined as a state agency employee or official that:

- owns or controls, directly or indirectly, at least 1% in the person, including the right to share in profits, proceeds or capital gains or;

- could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.
- A financial interest that is prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than 1% in a corporation.

Revolving Door

Under Tex. Gov't Code §572.069, state officers and employees who participated in a procurement or contract negotiation are prevented from accepting employment with the vendor for two (2) years after the contract is signed or the procurement is terminated or withdrawn.

Required Forms

1. Conflict of Interest Statement (Appendix A)
2. Nepotism Disclosure/Disclosure Statement for Purchasing Personnel (Appendix B)
3. Disclosure of Interested Parties Form (Appendix C)

4. SIGNATURE AUTHORITY

An authorized signature on a contract will reflect a representation that the contract has been properly submitted, reviewed and approved in accordance with all agency policies and procedures, and that the contract is in the best interest of the state.

The TVC Executive Director is the authorized signatory for all contracts for the agency, regardless of dollar amount. Only the TVC Executive Director or the employees named in a signed delegation of authority letter are authorized to sign contracts on behalf of the agency. NOTE: Effective September 15, 2017, the TVC Executive Director delegated signature authority for contracts and purchases under \$25,000 to the individuals serving as the Deputy Executive Director, Director of Resource Management, and Director of Operations. This delegation includes contracts that are non-monetary and not required by statute.

If a contract is signed by anyone other than the Executive Director, or an authorized designee, the contract may be considered void and unenforceable.

Employees who make a purchase without proper authorization or sign a contract on behalf of the agency will personally be responsible for paying the vendor.

5. CONTRACT MANAGEMENT

Contract Management refers to the entire contracting process from beginning to end. It is the coordination and management of four (4) core phases:

- Planning
- Procurement
- Contract Formation
- Contract Administration (through closeout)

A contract is any agreement that contains terms and conditions between two or more entities ("parties") in which there is a promise to do something. Not all contracts involve a payment. A contract is a formal and legally binding agreement that is enforceable by law. Therefore, it is imperative that the agency performs its due diligence to fully vet all contracts prior to signing.

Contracts may have other names, for example: Agreement, Memorandum of Understanding, Memorandum of Agreement, Statement of Intent, License Agreement, and others (all are hereinafter referred to as "contract"). Each is considered a legally binding contract if it provides for mutual promises or duties by the parties.

Contract management is a dynamic process. Not all contracts will need to move through all 4 phases. Likewise, there are times when program staff or other divisions will take the lead on certain aspects of the process. Planning and regular communication are vital among the team throughout the entire process.

PLANNING

The first step in contract management is planning. Planning helps staff identify the need for the goods or services; identify the planning team and assign tasks, determine the correct procurement method; draft the solicitation/content of the procurement document; and determine a cost estimate. The contract manager is involved in all aspects of planning for the contract.

PROCUREMENT

In cooperation with the agency purchaser the contract manager will assist as needed in developing the procurement document needed to select a vendor for the project. The contract manager may also be involved in the vendor proposal evaluation process used to select the vendor. The agency Information Resources Manager (IRM) must be involved in all purchases of goods or services through the Texas Department of Information Resources (DIR).

CONTRACT FORMATION

The purpose of a written contract is to serve as a reference document that records the terms of the agreement between parties to prevent misunderstanding and conflict regarding the obligations of the parties at a later date. The contract creates a legal, binding and enforceable obligation. The legal elements of a contract are: 1) offer, 2) acceptance, 3) legal purpose, 4) mutuality of obligation, 5) consideration, 6) competent parties and 7) documented/in writing.

The contract manager drafts a contract document based on the procurement document. The contract manager may coordinate with and receive guidance from the General Counsel, purchaser, IRM, and/or program staff to ensure all the necessary elements are documented in the contract instrument to meet the agency's needs and State of Texas contracting laws and requirements. Program staff may be asked to assist with collecting information related to the statement of work, specs, budget or other elements. Program staff should not, however, perform purchasing functions or contract negotiations for the agency.

After the contract has been drafted, it must be routed internally for agency approval of the contract. The contract manager prepares a Contract Approval Form (CAF) routing sheet to document internal agency approvals of the contract. All reviewers must initial and date the form and indicate approval or note any edits or concerns.

The following staff are always included on the CAF: director or manager of the program/division initiating the procurement; division director for the originating program; General Counsel; Chief Financial Officer; Director of Resource Management; Deputy Executive Director; and Executive Director. IRM must be included on all DIR contracts or statements of work. Other reviewers may be added as needed.

The contract manager is responsible for coordinating edits to the contract during the internal review process, and preparing the final version of the contract document before it is presented to the Executive Director, or authorized designee, for signature.

Upon receipt of a fully-executed contract, the contract manager saves the contract in the file and sends notice of the executed contract to the TVC staff listed on the CAF.

CONTRACT ADMINISTRATION

Contract Administration and oversight includes the following general processes:

- Monitoring Performance
- Change Management
- Payment Approval
- Dispute Resolution
- Termination
- Contract Closeout

The primary goals of contract administration are to:

- Verify contractor performance for purposes of issuing payment
- Identify material breach of contract by assessing the difference between the contract requirements and contractor performance/nonperformance
- Determine if corrective action is necessary and take such action if needed
- Report vendor performance in the Comptroller's Vendor Performance Tracking System (Tex. Gov't Code §2155.089)

The level of contract administration necessary will not be the same for all contracts. The level of contract administration should be consistent with the complexity and level of risk of the contract, its term, and dollar value.

Exceptions:

TVC's Training and Events Management (TEM) division manages processing hotel and venue contracts required for agency-related training and events. TEM coordinates with the agency purchaser and contract manager throughout the contract management process, regardless of the dollar amount of the contract.

TVC's Fund for Veterans' Assistance (FVA) program awards reimbursement grants to eligible charitable organizations, local government agencies, and Veterans Service Organizations that provide direct services to Texas Veterans and their families. FVA oversees and manages all aspects of the solicitation, selection, awarding, monitoring and closeout for the grants.

Contract Manager Responsibilities:

- Participates in developing the solicitation and writing the draft specifications, vendor qualifications and evaluation criteria.
- Assists in conducting contract risk assessments.
- Consults with agency General Counsel to address any potential legal concerns.
- Knowledgeable on all aspects of the contract.
- Receives and responds to communications between the agency and the contractor.
- Manages approval process for contracts and documenting any changes to the contract.
- Assists with identifying and resolving disputes with the contractor in a timely manner.
- Maintains appropriate records and documents significant events.
- Assists with monitoring contractor's progress and performance to ensure goods and services conform to the contract requirements.
- Assists with validating accuracy of invoices and authorizing payments consistent with the contract terms.
- Assist with the contract closeout process and ensure the contract file contains all necessary contract documentation, lessons learned, and contractor evaluation for completing the required Vendor Performance Reports per Tex. Gov't Code §2155.089.
- Ensures contract reporting requirements are met.

Contract Managers are not authorized to:

- Instruct the contractor to start work before the contract is fully executed.
- Change the scope of the contract without doing so through the formal Contract Approval Form amendment process.
- Direct the contractor to perform work that is not specifically described in and funded by the contract.
- Extend the time period of the contract without execution of an approved amendment.
- Allow the contractor to incur any additional costs over the limit set by the contract.

6. ENHANCED MONITORING OF CONTRACTS

As required by Tex. Gov't Code §2261.253, TVC has designated an internal committee of executive level staff to determine which contracts require enhanced monitoring. In making the determination, the committee will use factors such as:

- Contract amount
- Risk
- Special circumstances of the project
- Scope of goods or services provided

Enhanced contract monitoring reports will be provided to the Director of Resource Management (DRM), Executive Director, and when applicable, the Commission.

This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

Contracts over \$1 million

Under Tex. Gov't Code §2261.254, all contracts over \$1 million must be awarded by the Commission. The agency shall develop and implement contract reporting requirements that provide information on:

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

The agency will verify the accuracy of any information reported by a contractor and the delivery time of goods and services.

As discussed in section 3 of this Handbook, prior to entering into contracts over \$1 million with a final signature, the business entity must submit a **Disclosure of Interested Parties Form** (Appendix C) to the agency at the time the business entity submits the signed contract.

Notice to LBB

TVC must provide 10 business days' notice to the Legislative Budget Board (LBB) before payment can be made on any contract that is over \$1 million that was awarded outside of the competitive process. This notice will include a certification, in the form prescribed by the LBB (Attestation Letter), from the TVC Executive Director that the purchase complied with the State of Texas Contract Management Guide, Procurement Manual, applicable statutes or the alternative process used and the name of the person directing that process (General Appropriations Act, Article IX, Section 7.12).

Contracts over \$5 million

In addition to the requirements applicable to contracts exceeding \$1 million, the following also applies to contracts over \$5 million:

Under Tex. Gov't Code §2262.101, all solicitations expected to result in contracts valued at \$5 million or more must be submitted to the State of Texas Contract Advisory Team for review prior to the solicitation being posted. This requirement is without regard to source of funds.

Contracts over \$10 million

In addition to the requirements applicable to contracts exceeding \$1 million and \$5 million, the following also applies to contracts over \$10 million:

Notice to LBB

TVC must provide 10 business days' notice to the LBB before payment can be made on any contract that is over \$10 million. This notice will include a certification, in the form prescribed by the LBB (Attestation Letter), from the TVC Executive Director that the purchase complies with the State of Texas Contract Management Guide, Procurement Manual, applicable statutes or what alternative process was used and the name of the person directing that process (General Appropriations Act, Article IX, Section 7.12).

7. CONTRACT RISK MANAGEMENT

Under Tex. Gov't Code §2261.256, each state agency must develop and comply with a purchasing accountability and risk analysis procedure that provides for:

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

Contracts identified as high risk will receive enhanced monitoring and additional attention from the contract manager and purchaser.

The purpose of the risk assessment process is to help focus limited monitoring resources on contractors with the highest risk for noncompliance.

The risk management process includes 1) risk identification, 2) risk analysis, 3) risk evaluation, 4) risk treatment and contingency planning and 4) risk monitoring. Contract management risks are as varied as the types of contracts. Risk categories common to contract management include product risk, process risk, financial risk and schedule risk.

There is not an objective or mathematical formula that can be used to identify or quantify the risk imposed by a contract. Risk determination is based on subjective experience. Several factors that may be useful in identifying the level of risk include:

- Type of procurement process used to contract - competitive/non-competitive
- Payment type/structure
- Contract dollar amount
- Impact on essential agency functions
- Stability and experience of contractor's key management staff
- Percentage of services performed by subcontractors
- Past performance
- Audit outcomes
- Contractor number of years in business
- Performance Measures in contract
- Deliverables
- Experience of agency contract manager with contract subject matter/type of procurement

Additional risk factors can be added as appropriate for each contract.

A preliminary risk assessment will be conducted to make an initial determination about the level, type and amount of management, oversight and resources required to plan and implement the contract from beginning to end. Routine purchases of goods and services are considered low risk contracts.

Purchasing accountability procedures are currently in place and detailed in the TVC Finance Division Standard Operating Procedures Manual. See **Risk Assessment Matrix (Appendix D)**.

8. CONTRACT FILES

The contract manager will be responsible for maintaining an official contract file for all contracts. The contract manager is responsible for keeping a complete working contract administration file and providing copies of all critical documents upon request. Throughout the life of the contract, the contract administrative file should contain such things as:

- A copy of the contract and all amendments
- A copy of the completed Contract Approval Form (CAF)
- A copy of all documents incorporated into the contract by reference (bid documents, etc.)
- A list of contractor submittal requirements
- A copy of the post award meeting summary, if conducted
- A copy of all correspondence related to the contract
- All contractor submittals/reports
- A copy of all notices to proceed, to stop work, or to correct deficiencies
- A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules
- The records/minutes of all meetings, both internal and external
- A copy of all backup documentation for contractor payment or progress payment, and copies of any audits
- Documentation detailing the monitoring process

Records Retention

As required by Tex. Gov't Code §441.1855, for contracts and purchase orders entered into after 9/1/2015, state agencies are required to retain each contract and related documents entered into for a period of seven (7) years after the contract expires, terminates, or is completed, after all issues have been resolved. Along with the contract, all solicitation documents shall also be retained.

For all contracts and purchase orders entered into prior to 9/1/2015, the records retention period is four (4) years.

9. POSTING OF CERTAIN CONTRACTS

Tex. Gov't Code §2261.253 requires state agencies at least monthly to post contracts for purchases of goods or services from a private vendor to its website. TVC must post:

- All contracts the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed;
- The statutory or other authority under which a contract, that is not competitively bid, is entered into without compliance with competitive bidding procedures; and
- The request for proposals (RFPs) related to a competitively bid contract until the contract expires or is completed.
- Contracts \$15,000 or more are to be posted after execution, within a reasonable time.
- Contracts less than \$15,000 may be posted monthly.
- Definition of "contracts" under this section includes grant agreements.
- The following information shall be redacted from contracts posted on the agency's website:
 - Information that is confidential under law;
 - Information the attorney general determines is excepted from public disclosure under Tex. Gov't Code Chapter 552; and
 - The social security number of any individual.

APPENDIX A: CONFLICT OF INTEREST

Texas Veterans Commission Conflict of Interest

Contract/RFA # _____

Contractor Name _____

Under Texas Government Code §2155.003, a Texas Veterans Commission (TVC) employee may not have an interest in or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.

Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business.

By signing this document, I certify that:

- 1) I have read and understand the above statement, and
- 2) Regarding the above-listed Contractor/vendor, I have disclosed any possible conflicts of interest that exist now and will immediately disclose any future possible conflicts of interest to the TVC Executive Director.

Printed Name

Signature

Date

APPENDIX B: NEPOTISM DISCLOSURE/DISCLOSURES FOR PURCHASING PERSONNEL

Purchasing personnel of a state agency must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a major contract with the state agency prior to the award of a major contract.

Download the most current version of the **Nepotism Disclosure Form** on the Texas State Auditor's website:

<http://www.sao.texas.gov/forms/nepotism>

APPENDIX C: DISCLOSURE OF INTERESTED PARTIES FORM

Prior to entering into contracts over \$1 million, the business entity must submit a Disclosure of Interested Parties Form to the agency at the time the business entity submits the signed contract.

Download the most current version of **FORM 1295 – Certificate of Interested Parties** on the Texas Ethics Commission website:

<https://www.ethics.state.tx.us/forms/1295.pdf>

APPENDIX D: RISK ASSESSMENT MATRIX

The Risk Assessment Matrix is a tool to be used by the purchasing department and contract manager to analyze a contract to identify areas of risk (the potential for loss, harm, or damage to occur due to errors or problems associated with the contractor's performance). This tool also allows agency staff to identify specific areas that may need accelerated monitoring.

This tool should be used prior to: 1) awarding contracts from competitive solicitations; 2) entering into new contracts with vendors; and 3) renewing existing contracts.

	Risk Factor	Risk Level - LOW Score 1-3	Risk Level - Medium Score 4-7	Risk Level - High Score 8-10	Justification/ Comments	Assessed Risk Score
1	Type of Procurement Process/Contract	Interagency, MOU	Informal bid solicitation	Consulting, Emergency, Sole Source, Construction, Formal bid		
2	Payment Type/Structure	Fixed price	Rate or fee for services	Cost reimbursement		
3	Contract \$ amount	Less than \$100K	\$100K to \$1 million	Over \$1 million		
4	Essential Agency Function	Contract services are not critical for TVC mission	Contract services are moderately essential to TVC mission	Contract services are essential to TVC mission		
5	Stability & Experience of Contractor key management staff	No recent change and significant experience	No recent change, but not significant experience; or recent change but significant experience	Recent change and not significant experience		
6	Percentage of services performed by subcontractors	No subcontractor involvement	Subcontractors account for 50% or less of contract work performed	Subcontractors account for more than 50% of contract work performed		
7	Past Performance	Met or exceeded expectations	Met or exceeded the majority of expectations	Did not meet Owner expectations		

	Risk Factor	Risk Level - LOW Score 1-3	Risk Level - Medium Score 4-7	Risk Level - High Score 8-10	Justification/ Comments	Assessed Risk Score
8	Audit Outcomes	No audit required or no issues or findings in audit(s)	Moderate issues or findings in audit(s)	Substantial issues or findings in audit(s)		
9	Number of years in business	More than 5 years	1 - 5 years	Less than 1 year		
10	Performance Measures	Contract contains multiple defined and measurable performance measures	Contract contains at least one clearly defined or measurable performance measure	No performance measures included in contract		
11	Deliverables	Contract contains multiple deliverables that are clearly defined	Contract contains at least one clearly defined deliverable	No deliverables included in contract		
12	Contract Manager experience with contract type/subject matter	Extensive experience with contract type/subject matter	Limited experience with contract type/subject matter	No experience with contract subject matter		
OVERALL RISK SCORE						

LOW RISK procurement: 0-36

MEDIUM RISK procurement: 37-84

HIGH RISK procurement: 85-120

Summary of Risk Assessment:

Risk Mitigation Plan:

Approved Rejected

Approved Rejected

Purchaser (Print/Sign)

Contract Manager (Print/Sign)