

# **THE TEXAS STATE UNIVERSITY SYSTEM**



## **Contract Management Handbook**

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Version 3

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## Version History

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# Section 1 – Introduction

## 1.1 Purpose

The Texas State University System (“TSUS”) contracting policy is established pursuant to Texas Education Code, §51.9335, which grants authority to acquire goods or services to institutions of higher education (“IHEs”). To exercise this authority, the governing boards of IHEs must establish certain standards, and in particular, “*a contract management handbook that provides consistent contracting policies and practices and contract review procedures, including a risk analysis procedure.*” In addition, governing boards must establish, by rule, a contract review checklist that must be reviewed and approved by the Office of General Counsel. Accordingly, TSUS has developed this contract management handbook (“Handbook”), and the TSUS Administration Procurement & Contract Processing Checklist (ref. Appendix 1) to comply with statutory requirements and applicable [TSUS Rules and Regulations](#).

For the purposes of this Handbook, Contract Management includes the coordination and administration of the core processes associated with the procurement of goods and services (the “Procurement Cycle”):

- Procurement Planning
- Procurement Method Determination
- Vendor Selection
- Contract Formation
- Contract Management

This Handbook is intended to:

1. Serve as guidance for procurement/contract management for the TSUS administration office (“TSUS Administration”) and its component institutions (collectively, the “Institutions”).
2. Be consistent with sections of the Texas Comptroller of Public Accounts (“Comptroller’s”) Contract Management Guide<sup>1</sup> (“Comptroller’s Guide”) that are applicable to IHEs.
3. Provide consistent procurement/contracting practices and review procedures to Institution personnel.
4. Provide a framework for making procurement/contracting decisions.
5. Provide information on provisions that should be included in procurement contracts.

It is not possible to address all issues that may arise during Contract Management. For complex or unusual circumstances, Institution personnel should seek specific assistance from the TSUS Office of General Counsel (“OGC”) and the TSUS Office of Finance (and others, depending on the circumstances) as early as possible in the procurement process.

This Handbook intentionally contains a minimal number of statutory references, as these are contained in the Comptroller’s Guide and frequently change. Should an individual need to review a statutory requirement, the corresponding section of the Comptroller’s Guide can be used for that purpose. This Handbook, as well as any Institutional operating policies in support

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<sup>1</sup> Version 1.3, published December 2019

of the Handbook, shall be posted on each Institutions' website.

TSUS Administration may, from time to time, make changes to policies, procedures, templates, guides, or other such material that may not be reflected in this Handbook immediately. The TSUS Office of Finance will ensure all material changes are published in the Handbook on an annual basis.

**Note:** *Some of the requirements described in this Handbook may not be applicable to certain contracts that Study Abroad programs may have with foreign vendors. Consult with Institution Procurement Staff and OGC for guidance in these situations.*

## 1.2 Key Definitions & Roles

- A. **Best Value:** Factors to be considered in determining best overall value for Institutions in accordance with [Texas Education Code §51.9335 \(b\)](#).
- B. **Contract Administration Team:** A team of individuals that assists the Contract Manager with overseeing various administrative aspects of the contract (e.g. reporting, receipt of goods, invoice review, etc.).
- C. **Contract Close-out:** The process conducted at the completion of the contract during which the Contract Manager confirms and documents compliance with the terms and conditions of the contract, that final deliverables have been received, and that outstanding payments are made.
- D. **Contract Development:** Actions taken prior to contract execution, including the needs assessment, development of specifications, receipt and processing of requisitions, procurement method identification, solicitation activities, negotiation activities, and contract preparation.
- E. **Contract Management:** The administrative actions taken after a contract is executed, including assessing risks associated with the contract, managing the performance of the contract and ensuring the parties adhere to the provisions contained within the contract. Contract management is the final step in the procurement cycle and concludes with contract close-out.
- F. **Contract Manager:** The department-level individual responsible for performing or coordinating Contract Management activities. (Refer to Appendix 2, Contract Management Responsibilities, for more information.)
- G. **Evaluation Team:** A team of departmental end-users and business experts that will review and evaluate qualified responses to a formal solicitation. Team members work with Procurement Staff to develop a detailed scope of work and the evaluation criteria / list of questions used in the scoring process.
- H. **Institution:** The administrative offices (TSUS Administration) or a component institution of TSUS.
- I. **Procurement Staff:** Institution personnel that work in the Purchasing/Procurement Office, Contract Office, and/or HUB Office. The tasks described in this Handbook, including Contract Development activities, will generally, be performed or overseen by

Procurement Staff.

### 1.3 Exclusions

This Handbook does not apply to:

1. real estate transactions;
2. construction agreements;
3. sponsorship agreements;
4. sponsored research contracts; or
5. intellectual property agreements.

While this Handbook may not be applicable to the agreement types listed above, it does provide useful information about procurement and contract management that could be used in those types of agreements.

Information on TSUS construction policy, procedure, and agreements can be found on the TSUS website.

### 1.4 Training and Certifications

Per statute, to maintain the conditional purchasing authority granted to IHEs, Institutions are required to provide training in ethics, procurement method selection, and information resources purchasing to officers and employees authorized to execute contracts or exercise discretion in awarding contracts.

An Institution official or employee who is required to receive training may not participate in purchases by the Institution unless the employee has received the required training, or the purchase is reviewed and approved by an employee who has received the proper training and certification.

#### 1.4.1 Purchasing & Contract Management Personnel

Institution employees must be certified as a Certified Texas Contract Developer (“CTCD”) to engage in contract development functions if the employee develops, evaluates, negotiates, or awards a contract posted to the Electronic State Business Daily or in the Texas Register. This designation was formerly known as the Certified Texas Procurement Manager (“CTPM”).

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

#### 1.4.2 Other Institution Personnel

Institution employees must complete the Comptrollers’ Basic Texas Purchaser Course to engage in purchasing functions if the employee has the job title of “purchaser”; performs purchasing activities as fifteen percent (15%) or more of their job activities;

or makes a purchase in excess of \$5,000.

Institution personnel directly involved in contract negotiations for the purchase of information resources technologies should also complete the training developed by the Department of Information Resources.

### 1.4.3 Training Programs

The Comptrollers' Statewide Procurement Division ("SPD") administers a training and certification program, including continuing education courses, to meet the training needs of Institution personnel. The program includes the following courses and certifications:

- Basic Texas Purchaser Course
- Certified Texas Contract Developer Course / Certification
- Certified Texas Contract Manager Course / Certification
- Ethics Law & Professional Standards Course

Institutions may also use equivalent training/certifications offered by a nationally recognized procurement association (e.g., National Institute of Government Purchasing, Institute for Supply Management, etc.).

## 1.5 Procurement and Contracting Policies

Each Institution shall maintain any necessary operating policies and procedures to guide procurement and contract management processes consistent with the practices described in this Handbook. This Handbook does not replace an Institution's responsibility to comply with any rules or laws applicable to specific Institution programs or funding sources.

## 1.6 State Contracting Standards and Oversight

Institutions are subject to Texas Government Code, Chapter 2261, Subchapter F, Ethics, Reporting, and Approval Requirements for Certain Contracts, except to the extent that Subchapter F conflicts with Texas Education Code, §51.9337. Institutions are not subject to other Subchapters of Chapter 2261. The requirements described in this subsection are not applicable to memoranda of understanding, interagency/interlocal contracts, or contracts for which there is not a cost.

**Note:** *This Handbook does not attempt to identify all applicable reporting requirements.*

### 1.6.1 Contract / Purchase Order Transparency Reporting

Institutions are required to post on the internet, until the contract is completed or expires, information on each contract / purchase order, regardless of dollar amount, entered into for the procurement of goods or services from a private vendor that is paid for with appropriated funds (General Revenue, General Revenue-Dedicated, Higher Education Funds, statutory tuition, and certain fees) or any contract in excess of \$15,000 paid with non-appropriated funds. Posting a contract on the Major Contracts Database (the Legislative Budget Board's contract database) satisfies this reporting requirement. Refer to Appendix 3, TSUS Procurement Guidelines Summary, for more information on reporting requirements.

The Transparency Report posting shall include:

- Summary information about the contract (e.g. effective date, vendor name, material or service description, contract expiration);
- The statutory or other authority under which the contract was awarded and executed if not competitively bid; and
- Any documents posted in association with a Request for Proposal associated with the contract.

**Note:** Due to increased risk of fraud, Institutions are advised against posting an actual copy of any contract online. Transparency reporting does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

#### 1.6.2 Reporting to the Legislative Budget Board Major Contracts Database

Institutions must provide notice, including the nature of the goods or services, the term, amount, and vendor name, to the Legislative Budget Board (“LBB”) for the contracts described in the table below. Any Institution utilizing a contract executed by TSUS Administration that will use appropriated funds to make payments for goods / services received against that contract, will also be responsible for any applicable reporting requirements. Although this may result in duplicative reporting, it helps ensure compliance with the applicable requirements.

VALUE	CONTRACT TYPE	REPORTING TIMEFRAME
> \$14,000	Professional Services & Construction <i>* physician and optometrist contracts are exempt</i>	10 days after issuance
> \$50,000	All Purchases	30 days after issuance
> \$1,000,000	Major Information Systems	10 days after issuance
	Non-Competitive / Sole Source	Prior to 1 <sup>st</sup> payment, but no later than 30 days after issuance
	Emergency	48 hours after 1 <sup>st</sup> payment
> \$10,000,000	All Purchases	Prior to 1 <sup>st</sup> payment, but no later than 30 days after issuance

**Note:** Institutions should prioritize entry of contracts based on value and funding source, with a goal of reporting all contracts using appropriated funds in the timeframe noted in the table above. The prioritization order for reporting contracts is 1) appropriated funds – large value, 2) appropriated funds – small value, 3) Institutional funds – large value, 4) Institutional funds – small value, and 5) revenue generating.

Institutions must provide an attestation to the LBB, on a form prescribed by the LBB, for contracts valued at \$10 million or more, or \$1 million or more if not competitively procured (i.e. sole source or emergency purchases).

### 1.6.3 Enhanced Contract and Performance Monitoring

Each Institution shall establish a procedure to identify contracts that require enhanced contract or performance monitoring and submit information on identified contracts to TSUS Office of Finance. Procurement Staff shall immediately notify the TSUS Office of Finance or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

- A. Institutions must develop and comply with a purchasing accountability and risk analysis procedure providing, among other things, for (1) assessment of risk of fraud, abuse or waste in the procurement and contracting process, and (2) identification of contracts that require enhanced monitoring.
- B. Institutions must also develop contract reporting requirements for contracts purchasing goods/services with a value exceeding \$1 million. Each Institution must provide information to its Chief Financial Officer (“CFO”) on:
  - 1. compliance with financial provisions and delivery schedules under the contract,
  - 2. corrective action plans required under the contract and the status of any active corrective action plan, and
  - 3. information about any liquidated damages assessed or collected under the contract.
- C. For contracts with a value exceeding \$5 million, the Institution’s contract management office or procurement director must report the following information to the Institution’s CFO and TSUS Administration’s Vice Chancellor and CFO:
  - 1. Verify in writing the solicitation method and vendor selection process comply with state law and Institution policy; and
  - 2. Submit information on any potential issue that may arise in the solicitation, purchasing, or vendor selection process.

**Note:** *TSUS Administration uses the TSUS Administration Procurement & Contract Processing Checklist to assess the risk of fraud, abuse, and waste in the procurement / contracting process and to report information on contracts exceeding \$5 million. The TSUS Administration Contract Risk Assessment & Monitoring Plan form is used, for contracts that have a value of \$500,000 or more, to identify contracts that require enhanced contract monitoring. The form is completed upon full execution of the contract and submitted to the Vice Chancellor and CFO for review and submission to the Regents, if appropriate.*

### 1.6.4 Reports on Interagency Contracts

To the extent that capabilities and resources allow, Institutions shall post on their internet website annual reports during each state fiscal year of the state fiscal biennium

beginning September 1, 2019, providing information on each interagency contract with a value that exceeds or may reasonably be expected to exceed \$10 million. Each report must be made available no later than the 30th day after the end of each fiscal year. Each report must identify:

1. each state agency that is a party to the interagency contract and whether the Institution is disbursing or receiving money under the contract;
2. the amount spent by the disbursing agency for the contract and the method of finance; and
3. the Institution programs for which the agencies entered the contract and the appropriation line items from which funds were spent by the agencies to perform the contract.

**Note:** *TSUS Administration provides information on any applicable interagency contracts with the transparency report information on the TSUS Office of Finance webpage.*

## **1.7 Additional Information and Resources**

Appendix 1: TSUS Administration Procurement & Contract Processing Checklist

Appendix 2: Contractor Management Responsibilities

Appendix 3: TSUS Administration Procurement Guidelines Summary

Appendix 4: TSUS Administration Contract Risk Assessment & Monitoring Plan Form

TSUS Rules and Regulations: <https://www.tsus.edu/tsus-rules-and-regulations.html>

TSUS Planning and Construction Policies and Procedures: <https://www.tsus.edu/about-tsus/policies.html>

LBB information & attestation form: [http://www.lbb.state.tx.us/Contract\\_Reporting.aspx](http://www.lbb.state.tx.us/Contract_Reporting.aspx)

## Section 2 – Ethics & Professional Standards

### 2.1 General

Institution personnel involved with procurement and contract management must adhere to the highest level of professionalism in discharging their official duties. The nature of procurement and contracting functions makes it critical that everyone in the 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 process. Consequently, the credibility of a procurement and contracting program requires that a clear set of guidelines and rules be established. Such guidelines and rules are designed to prevent actual and potential vendors from influencing Institution employees or officials in discharging their official duties. Furthermore, these guidelines and rules will help prevent the Institution employees' or officials' independent judgment from being compromised.

### 2.2 TSUS and Institution Policies

The TSUS Board of Regents (the "Regents") are required to establish a code of ethics for Institution officers and employees, including provisions governing authority to execute contracts or exercise discretion in awarding contracts. The TSUS Ethics policy can be found in Chapter VIII of the TSUS Rules and Regulations. All Institution personnel shall comply with the standards of conduct in the TSUS Rules and Regulations.

Institutions shall have policies governing conflicts of interest, conflicts of commitment, and outside activities ensuring that the primary responsibility of officers and employees is to accomplish the duties and responsibilities assigned to that position. Such policies shall be consistent with Texas Education Code and [TSUS Rules and Regulations](#).

### 2.3 Institution Officers and Employees

An Institution officer or 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 any 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.

Institution officers and employees who have influence over purchasing/contracting decisions should specifically be aware of the following information from Chapter VIII of the [TSUS Rules and Regulations](#):

- **Disclosure of Conflicts of Interest:** Officers and employees involved in procurement or contract management shall promptly disclose any potential conflict of interest specified by state law, TSUS policy, or Institution 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.
- **Gifts:** Officers and employees shall not accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties.
- **Self-Dealing:** Officers and employees may not transact any business in an official capacity with any business entity of which the employee is an officer, agent, or member,

or in which the employee owns a controlling interest unless the Regents have determined no conflict of interest exists.

- **Benefits for Performing Official Duties:** Officers and employees shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed official duties.

#### 2.3.1 Compliance with Policy and Law

All officers and employees authorized to execute contracts for an Institution or to exercise discretion in awarding contracts shall:

- A. Comply with all federal, state, and local laws and are subject to disciplinary action for a violation of those laws. A violation by an officer or employee may subject the individual to disciplinary action and any applicable civil or criminal penalty if the violation constitutes a violation of another statute or rule.
- B. Adhere to all TSUS and Institution policies, handbooks, guidelines, and protocols designed to promote ethical and lawful behavior in the procurement process.

#### 2.3.2 Non-Disclosure and Conflict of Interest Statements

Institution officers and employees who participate in the evaluation of vendor bids and proposals are required to sign and abide by a Non-Disclosure and Conflict of Interest Statement (ref. Appendix 12) that applies specifically to the formal solicitation being evaluated. Evaluation Team members must sign a separate agreement for every solicitation they are asked to evaluate.

#### 2.3.3 Disclosure Statement for Purchasing Personnel (Nepotism Form)

Institutions may not enter into a contract for goods or services  $\geq$  \$1 million unless the purchasing personnel involved in the 1) preparation of the solicitation, 2) evaluation of bids / proposals, or 3) determination of vendor to be awarded the contract have completed the State Auditor's ("SAO") "Disclosure Statement for Purchasing Personnel" form. The form is posted on the SAO website and requires the Institution personnel to disclose any known relationships (within the third degree by consanguinity or the second degree by affinity) the employee has with the selected vendor to the Institution's agency head (i.e. Chancellor, President, or President's delegate). A copy of the completed form shall be retained in the contract file.

#### 2.3.4 Contracts with Former or Retired Employees

The following restrictions apply to potential contracts with former or retired Institution officers and employees:

- A. Institutions may not enter into an employment contract, a professional services contract, 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 Institution if appropriated funds are used to make payments

under the contract. Such contracts may be made with an employer of a former or retired employee within one year if the individual does not perform services on procurements or projects on which the individual worked while employed by the Institution.

- B. A former officer or employee of an Institution employed by the Institution, or other state agency, any time during the prior two years who offers to provide consulting services to the Institution shall disclose the nature of previous employment, the date employment terminated, and annual compensation at the time of termination in the offer for services.
- C. A former officer or employee of an Institution who, during the period of state service or employment, participated on behalf of the Institution in a procurement or contract negotiation with a vendor may not accept employment from that vendor before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

## **2.4 Vendors**

### **2.4.1 Disclosure of Interested Parties (Form 1295)**

Institutions may not enter into a contract for goods or services with a value  $\geq$  \$1 million (or that requires an action by the Regents) with certain vendors, unless the vendor discloses any interested parties to the contract. No interested party disclosure is needed for publicly traded companies as those parties are already public knowledge and can be obtained elsewhere.

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission ("TEC"), currently Form 1295, and include a list of each interested party for the contract of which the contracting vendor is aware and the signature of the authorized agent of the vendor acknowledging that the disclosure is made under oath and under penalty of perjury.

Information on the electronic disclosure process is posted on the TEC's website which currently contains a link to Form 1295 and other related information.

Steps in the disclosure process include:

1. The vendor completes Form 1295 in electronic format on the TEC website.
2. The vendor submits the completed Form 1295 to the Institution (generally when submitting the signed contract).
3. No later than the 30<sup>th</sup> day following the date the contract is signed by all applicable parties, the Institution shall acknowledge receipt of the certificate on the TEC's website.
4. A copy of both the completed and acknowledged forms shall be retained with the contract file.

This requirement does not apply to an interagency contract; a gas or electricity contract; or a contract related to health and human services if the value cannot be determined at time of execution and any qualified vendor is eligible for the contract.

## 2.4.2 Formal Solicitation Disclosures

When responding to formal solicitations issued by an Institution, respondent responses are required to:

- A. Represent and warrant that respondent's provision of services or other performance under the contract will not constitute an actual or potential conflict of interest and represent and warrant that it will not reasonably create even the appearance of impropriety.
- B. Disclose any current or former employees who are current or former employees of the Institution.
- C. Disclose any proposed personnel who are, or are related to, current or former employees of the Institution.
- D. Represent and warrant that respondent has not given and will not give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant or employee or representative of the Institution in connection with the solicitation or any resulting contract.
- E. Verify that it or any of its principals (including, but not limited to, an owner, proprietor, sole or majority shareholder, director, president, or managing partner) are not debarred, suspended, or otherwise excluded from doing business with TSUS. Institutions may also verify that an entity or principals are not debarred, suspended, or otherwise excluded to confirm that no contracts are awarded, extended, or renewed.

## 2.4.3 Subcontractors or Assignees

Vendors are not allowed to assign their duties and obligations under a contract to others, such as subcontractors or assignees, except as expressly provided in the contract with the Institution's consent and if subcontractors or assignees are subject to the same disclosure requirements and restrictions set forth in this Section. Vendors remain responsible for the disclosure requirements and performance of the contract notwithstanding any such assignment or subcontract. This ensures that the evaluated and selected individual or entity will be responsible for performance and that proposed transactions may be reviewed for compliance with the Conflict of Interest and related party provisions.

## 2.5 Financial Advisors

When soliciting and contracting for the services of financial advisors, Institutions should comply with applicable provisions of the TSUS Investment Policy for Operating Funds and Endowment Funds regarding Investment Consultants, Investment Managers, and Investment Custodians.

## 2.6 Additional Information & Resources

SAO website (Nepotism Form): (<https://www.sao.texas.gov/Forms/Nepotism/>

TEC website (Form 1295 information): <https://www.ethics.state.tx.us/filinginfo/1295/>,

## Section 3 – Procurement Planning

Planning, the first step in the procurement process, will assist Institutions in identifying procurement objectives and strategy. General planning can include determining and documenting need, determining which procurement method is appropriate (or whether the procurement is exempt), identifying the levels of approval necessary based on the anticipated dollar value of the procurement, assembling Contract Administration Team and/or an Evaluation Team, developing the scope of work (“SOW”), assessing risk, identifying any external reporting requirements, and evaluating the necessary level of vendor monitoring and oversight.

Pursuant to [TSUS Rules and Regulations](#), OGC is charged with retention, supervision and monitoring of all outside legal counsel. Outside legal services contracts must be approved by the Office of the Attorney General and such approval is secured exclusively through OGC. Any department in need of outside legal services must contact OGC for such services.

Audit services must be approved by the SAO through the TSUS Office of Internal Audit. Contact the TSUS Office of Internal Audit prior to planning any activity with respect to obtaining audit services.

***Note:** The majority of TSUS Administration contracts / purchase orders are for tangible goods and services with simple planning needs that are met by the departmental users recognizing the need for the good / service and internal discussions among TSUS Administration Directors and Vice Chancellors. The Director of Procurement determines the appropriate procurement method for any purchase exceeding \$15,000.*

### 3.1 Contract Manager and Contract Administration Team

For purchases and contracts requiring a competitive procurement method, the requestor of the good or service in the department will generally fill the role of Contract Manager. The Contract Manager will advise Institution Procurement Staff of the proposed purchase and potential risks, perform initial supplier identification / verify competition and provide technical requirements needed for the SOW. The Contract Manager has the primary role in contract management and oversight activities (monitors and enforces the contract terms).

A Contract Administration Team may be needed to assist in the procurement planning process and subsequent contract management / oversight. The team can include various Institution personnel including representatives from the requesting department, executive sponsors, Procurement Staff, or TSUS Administration staff.

### 3.2 Procurement Method Determination

Institutions will first refer to any applicable laws, [TSUS Rules and Regulations](#), and Institution policies and procedures that may direct the use of a specific procurement method. If applicable laws or policies and procedures do not direct a specific method, Procurement Staff and department staff will use the contract value thresholds described in this Section to determine which procurement method should be used.

3.2.1 Cost Estimate / Contract Value

Prior to determining the correct procurement method (i.e. the procurement path) to use to obtain needed goods or services, a reasonable estimate for the value of the contract will need to be determined. Contract value refers to the total potential cost or monetary value of the contract for the life of the contract, including any extensions or renewals. The 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.

**Note:** A large purchase may not be divided into smaller purchases to circumvent the procurement thresholds specified in this Section.

3.2.2 Procurement Thresholds for Direct and Competitive Procurement

Estimated Spend	Procurement Method
<\$15,000	<b>Direct / Open Market Purchase:</b> No competitive procurement is required.
\$15,000.01 to \$50,000	<b>Informal Bid:</b> Requires informal written quotes from three or more potential vendors. Two HUB quotes are strongly encouraged within this dollar range.
>\$50,000	<b>Formal Bid:</b> Requires a formal procurement to be conducted by the Institution’s Procurement Staff, another state agency, or a Group Purchasing Organization.

**Note:** An Institution may set limits that are lower than the TSUS thresholds noted above.

3.2.3 Purchases Exempt from Competitive Bidding

Institutions should describe the types of purchases exempt from competitive procurement in their operating policies and procedures. Examples of exempt purchases include, but are not limited to, the following.

A. Emergency Purchases

An emergency purchase occurs as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impractical or contrary to the public interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the Institution. *Delay or negligence on the part of an Institution does not constitute an emergency.* Emergency purchases of goods or services are performed to restore a system to its original intended functionality and must not exceed the scope or duration of the emergency. The procurement file for an emergency purchase must include a written

determination (basis for the emergency and for the selection of the vendor) provided by the originating department and approved by the Institution's Procurement Staff.

#### B. Sole Source Purchases

A purchase may be justified when an equivalent good or service is not available or not suitable (a *proprietary* purchase) or when it is in the best interest of the Institution to use a particular product or service even if more than one source is available (a *best value* purchase). When a specification requirement limits consideration to one supplier, the procurement file for a sole source purchase must include a written justification provided by the originating department and approved by the Institution's Procurement Staff.

The written justification will include:

- Explanation of why a unique scope of work for a good or service is required;
- Details on the unique features of the good or service;
- Reason that competing goods or services are not satisfactory;
- Any other relevant information to support the sole source documentation; and
- Confirmation that the procurement does not violate conflict of interest and conflict of commitment policies.

**Note:** *Price and personal preferences are not acceptable as determining factors. Procurement Staff reserve the right to require additional quotes when reviewing sole source requests.*

Examples of Sole Source purchases include:

1. **Proprietary:** Equipment maintenance or repair parts from the original equipment manufacturer ("OEM"); software or software maintenance from the OEM; Pharmaceuticals or chemical reagents only available from a single supplier.
2. **Best Value:** Equipment or parts to add to existing equipment (compatibility with existing equipment); specific reagents used in long term experiments (continuity of research).

#### C. Purchases from Persons with Disabilities

Institutions are required to comply with applicable laws (including the best value statutes) related to the Purchases from Persons with Disabilities (or "State Use") program.

The State Use program (1) furthers the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful productive employment activities; and (2) provides state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with

disabilities. Institutions that purchase products or services through the program must report exceptions each month via the SPD's State Use Program Exception reporting tool.

#### D. Direct Purchases

Unless applicable laws direct the use of a specific procurement method, Institutions are authorized to make direct purchases (sometimes called open market or spot purchases) for goods and services with a contract value of \$15,000 or less. A direct purchase does not require a competitive procurement process or the need for multiple quotes.

#### E. Other Exempt Purchases

Certain goods or services are considered exempt from competitive procurement rules and processes, either by statute, if an exemption is in the best interest of the public or by Institution policy. Bids or proposals are not required when procuring exempt goods or services but may be requested to confirm best value for the Institution.

Exempt purchases for TSUS include:

- Direct publications (newspaper, subscriptions, journals/article reprints, software) purchased directly from the publisher;
- Library books, periodicals, subscriptions, educational databases, and other related library materials;
- Subscriptions; allowable membership fees; training or conference registration fees; allowable accreditation or professional license fees;
- Advertisements;
- Goods purchased for retail sale by an Institution auxiliary enterprise;
- Interagency and Interlocal agreements;
- Purchase of original existing artwork; loaned art; artifacts; museum or art exhibits;
- Commissioned artists or musicians; entertainers; theater groups; performers; or speakers;
- Hotel and conference rooms;
- Catering, meals, and food services (not food for resale);
- Freight and postal services;
- Water, electric, or utility services by a regulated public utility; and
- Games, tournaments or related sporting events.

#### 3.2.4 Competitive Bidding – Informal

Informal bidding is a type of competitive procurement method used to procure goods and services when the expected value exceeds \$15,000 but is less than or equal to \$50,000. Institutions must obtain a minimum of three written bids. A good faith effort should be made to obtain bids from certified HUB vendors and the last provider of the good or service. The bidding opportunity is not required to be publicly posted.

### 3.2.5 Competitive Bidding – Formal

Formal bidding is a type of competitive procurement method used to procure goods and services when the value is expected to exceed \$50,000. The Institution's Procurement Staff will determine the appropriate procurement method to use. The bidding opportunity is required to be publicly posted and, if the expected value exceeds \$100,000, may require a HUB subcontracting plan. Commonly used formal solicitation types include:

- A. **Invitation to Bid** ("ITB" or "IFB"): An ITB is used when the decision to award will be made primarily on the basis of price and delivery and when the requirements / SOW is clearly defined (e.g. using manufacturer part numbers). ITBs are posted for a minimum of 14 days and negotiations are not allowed unless there is only one respondent.
- B. **Request for Qualifications** ("RFQ"): An RFQ is used to identify a group of vendors who meet a set of minimum qualifications in order to submit proposals for a planned solicitation. Selection is based solely on demonstrated competence to perform the services and respondents are not asked to provide pricing. RFQs are posted for a minimum of 14 days. Only qualified vendors are asked to respond to any subsequent solicitation.

RFQs are also used, per statute, to select professional service providers (e.g. accountants, architects, engineers, physicians, etc.). Price is not a factor until after a provider is selected based on qualifications. RFQs for professional services should be posted for 30 days.

- C. **Request for Proposal** ("RFP"): An RFP is used when the decision to award will be made based on factors (best value criteria) other than just price and delivery. RFPs are posted for a minimum of 21 days; however, best practice is to post for 30 days. Longer posting times may be needed to accommodate pre-proposal conferences, vendor questions, etc. Negotiations are allowed with respondents and best and final offers can be requested.

### 3.2.6 Request for Information ("RFI")

An RFI is used primarily as a planning tool that may be used to gather information when an Institution does not have the necessary information to prepare a complete and accurate solicitation document. RFIs are used to identify industry standards, best practices, potential performance measures, or to generally ascertain the level of interest of prospective respondents. RFIs add time to the overall procurement process but can be valuable when additional information is needed about a good / service to complete the SOW or potential suppliers for the good / service need to be identified. An RFI is posted for a minimum of 14 days. Institutions are not required to issue a solicitation upon completion of an RFI.

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 suppliers who choose not to participate; consequently, an RFI cannot be used to establish a pre-qualified supplier list

### 3.2.7 Use of Existing Contracts

There are a variety of existing contracts that are available for Institution use for the purchase of goods or services. These contracts have already been competitively solicited by the lead agency and, in many cases, aggregate spend volume with other agencies to achieve contracts with advantageous pricing and services. These contracts are typically accessed by issuing a purchase order that references the specific contract being used. Institution Procurement Staff should review the requirements of a proposed purchase or contract and determine whether an existing contract is the best procurement method for completing the purchase.

- A. **Local Contracts:** Local contracts are contracts that have been competitively solicited for certain goods and services that are useful to multiple departments within an Institution.

Piggyback Clauses: Institutions can utilize another Institution's (or Texas IHE's) local contract if the supplier community was notified of this potential (ref. Appendix 7, Sample Group Purchasing Language) during the originating Institution's solicitation. This practice saves resources (the solicitation does not have to be repeated) and can lower pricing with aggregated spend potential. The "piggybacking" Institution will utilize the originating Institution's solicitation to meet procurement requirements and create its own contract separate from that of the originating Institution.

- B. **System Contracts:** TSUS Administration has a list of competitively procured System-wide contracts on its website that are available for use by all Institutions.

- C. **State Contracts:** There are a variety of contracts available for use by state of Texas agencies through the State's various contracting authorities:

- Texas Multiple Award Schedule ("TXMAS")
- Department of Information Resources ("DIR")
- Term Contracts: TxSmartBuy, Managed Term, Council on Competitive Government ("CCG"), and Green Items on TxSmartBuy

- D. **Group Purchasing Organizations:** Institutions may also use contracts created by or through Group Purchasing Organizations ("GPOs") including other state agencies that act as GPOs (e.g. The UT System Supply Chain Alliance). Institutions may need to become a member of a GPO before utilizing its contracts.

Texas IHEs commonly use existing contracts from the following GPOs:

- Educational & Institutional Cooperative Purchasing ("E&I")
- Texas Association of School Boards ("TASB") / BuyBoard
- UT System Supply Chain Alliance ("Alliance")
- Premier, Inc.
- Education Service Centers – Various Regions
- National Cooperative Purchasing Alliance ("NCPA")

- OMNIA Partners, formerly National IPA / U.S. Communities
- Sourcewell, formerly National Joint Powers Alliance (“NJPA”)
- The Interlocal Purchasing System (“TIPS”)

### 3.2.8 Professional Services

Professional service providers are normally licensed or certified and the scope of their services include:

- architecture
- accounting
- landscape architecture
- land surveying
- medicine
- optometry
- professional engineering
- real estate appraising
- professional nursing

A provider of professional services may not be selected on the basis of competitive bids, but rather on the basis of (1) demonstrated competence and qualifications to perform the service and (2) for a fair and reasonable price. Professional service providers are generally pre-qualified based upon an RFQ with the contract award based upon negotiations with the most qualified provider. When a professional service is required and no pre-qualification has been established, a contract award can be justified if it is established that the selection meets best value criteria. The justification must be in writing and kept in the contract file.

### 3.2.9 Consulting Services

Consulting service refers to the service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee. An 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. Consulting services procurements are usually advertised as an RFP which must include a finding by the chief executive officer of the Institution that the consulting services are necessary and an explanation of that finding.

A consulting services contract is considered a “major consulting services contract” if it is expected that the value of the contract will exceed \$25,000. In selecting a consultant, the agency must base its choice on demonstrated competence, knowledge, qualifications, and on the reasonableness of the proposed fee for the services.

If a contract involves both consulting and other services (mixed services), the services will be procured as consulting services if the primary objective of the contract is the acquisition of consulting services.

### **3.3 Additional Information and Resources**

Appendix 5: Sample Emergency Purchase Justification Form

Appendix 6: Sample Sole Source Justification Form

Appendix 7: Sample Group Purchasing Language

## Section 4 – Formal Solicitations

### 4.1 Planning

The solicitation process begins with planning. Clearly identifying the key business requirements and general contracting objectives (i.e., the needs assessment), assumptions, and constraints is an important step in the process. This step may seem obvious, but when a contract fails, it often fails because the expectations were not met and there was not a true meeting of the minds regarding expectations. Institutions may find that department staff involved hold different views as to the solicitation's objectives. If a contract will be part of a larger organizational project, Institutions may want to consider how the objectives, assumptions, and constraints integrate into the larger organizational project and identify potential integration risks so that a strategy for mitigating or managing those risks can be developed.

As part of the needs assessment, Institutions may conduct market research, study historical spending patterns, use benchmarking, or issue a Request for Information (RFI) to the vendor community.

**Note:** *The TSUS Administration Solicitation Intake Form is the procurement planning tool used by TSUS Administration to facilitate the collection of information that will be used to prepare the solicitation document.*

#### A. Market Research

Department staff and Procurement Staff are encouraged to seek input from Institution personnel and other agencies or IHEs who have developed solicitations, drafted contracts, or engaged in projects similar to the solicitation that is being planned.

Recommended methods of research include:

- Using the internet to search for similar solicitation documents, contracts, and oversight documents;
- Reviewing websites of potential vendors for useful information;
- Checking with universities, trade associations, and professional organizations to identify industry standards; and
- Publishing an RFI.

While researching, Institutions may wish to contact potential vendors to discuss the procurement. This is an acceptable practice as long as the Institution solicits information from more than one vendor and advises the vendor up front that the Institution's interest is strictly for solicitation research purposes and that any formal requests for pricing or other information will be made through a formal solicitation process.

#### B. Cost Estimates

A cost estimate may be developed from a vendor's advertised price list, through online research, or prepared using standardized estimation methods and based on historical spending rates. It is recommended that someone within the Institution who has

knowledge in the subject area assist with determining the cost estimate. However, if unable to find anyone with knowledge in the subject area, Institutions may choose to contact other agencies or vendors to obtain pricing information. Institutions must clearly explain to any vendors contacted that the estimate is sought for informational purposes only and that the request is not a formal solicitation or quote request. When obtaining price estimates from vendors, care must be taken to avoid giving a vendor any competitive advantage in a future procurement initiative. Institutions can ask not only about market rates, but also about cost structure / pricing models for that good or service.

### C. Lead Time

The time it takes to complete the formal solicitation process and get an executed contract in place will vary with each project (ref. Appendix 9, Sample RFP Timeline). A good estimate Institutions can use for lead time is 5 - 7 months to complete an RFP and 1 - 2 months to complete an ITB. Examples of items that can impact lead time include the:

- workload of the parties involved;
- project complexity;
- submittal requirements;
- size of the evaluation team;
- addition of optional processes (e.g. short list presentations);
- number of items requiring negotiation; and
- the approval / signature requirements of the parties.

## 4.2 Preparing the Solicitation Document

If a competitive solicitation is required, Institution Procurement Staff will prepare the solicitation document based on information gathered from the requesting department (typically provided by the person who will be the Contract Manager). Templates containing basic information about the Institution, the solicitation process, and OGC approved clauses should be used as the starting point for solicitation documents.

A solicitation is effective when the Institution's requirements are clearly articulated to the vendor community. A poorly drafted solicitation may prompt responses that are not aligned with the Institution's actual requirements or include unnecessary costs due to vendor confusion. It is imperative that the solicitation be written in a manner that attracts responses that meet the agency's business need.

Care must be taken to identify the Institution's requirements in the solicitation as a vendor cannot be held accountable for performance of a requirement that is not specified in the solicitation or resulting contract.

The key elements of the solicitation document are:

### 4.2.1 Background

To help potential respondents understand the project, the solicitation should provide appropriate background information. Such information could include things like

background data, known dependencies, associated work previously performed, description of existing business processes, if the work is currently being performed by another vendor or is a new project, or any other known factor that could help a vendor decide if they will respond to the solicitation.

#### 4.2.2 Contract Term

A reasonable contract term compliant with applicable laws and Institution rules should be included in the solicitation. Contract terms, including renewal periods, should not exceed 5 years unless compelling business needs exist. Institutions should confer with OGC when contemplating terms longer than 5 years.

#### 4.2.3 Submission Requirements

The solicitation should include one section listing all the required information that respondents must submit with their response. This will assist respondents to confirm that all required documentation is submitted.

#### 4.2.4 Timeline

The solicitation should include a calendar of events, so vendors know how long they have to submit questions, any pre-proposal meeting date, when to submit responses, etc. Procurement Staff are responsible for ensuring that the dates are reasonable in comparison to the complexity and cost of the solicitation.

#### 4.2.5 Evaluation Criteria

The Best Value Statutes require the Institutions to use certain evaluation criteria to evaluate responses for goods / services. The evaluation criteria are used to select the vendor that is awarded the contract and should clearly tie back to the Best Value Statutes. Criteria related to cost and vendor experience (i.e. reputation) must always be used. The solicitation must list each criterion and its scoring weight (up to 100% in total). Only the criterion included in the solicitation may be used to evaluate responses or select a vendor. Examples of additional criterion that can be used include:

- quality of goods / services
- implementation plan / schedule
- technical design elements
- staffing and resources
- training plan
- strategic direction
- licensing
- maintenance / service plan
- financial capability
- agreement with required terms & conditions

**Note:** *The cost evaluation criterion is generally not less than 30% of the total score. All other criterion should have weights that reflect that criterion's relative importance to the Institution.*

Institutions should consider the information / submittals that need to be requested in connection with each evaluation criterion, so the Evaluation Team (ref. Section 4.4.1) has the pertinent information needed to conduct the evaluation. Specific sections of the solicitation should be designed to directly relate to each criterion. Ideally, there will be a list of specific questions related to each non-price criterion for the vendors to complete. All information requested by the solicitation should relate to one of the evaluation criteria to be evaluated; information that does not relate to the evaluation criteria may not be considered in evaluating and ranking responses.

#### 4.2.6 HUB Requirements

HUB requirements are an integral part of the procurement process and are intended to promote full and equal business opportunities for all businesses. Institutions are required to make a good faith effort to utilize certified Texas HUBs in contracts in accordance with Institutional operating policies and procedures. An Institution's HUB goals can be achieved through contracting directly with HUBs or indirectly through subcontracting opportunities.

When an Institution is considering entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals), the Institution's HUB Director shall determine whether subcontracting opportunities are probable under the proposed contract before the Institution publishes the solicitation.

If the Institution has determined that subcontracting opportunities are probable for the contract, then the solicitation must state subcontracting opportunities are probable and respondents will be required to submit a HUB subcontracting plan ("HSP"). If the HSP forms are not submitted with the rest of the solicitation package, the response will be considered non-responsive.

**Note:** *If an Institution determines that subcontracting is not probable, but the respondent intends to subcontract, the respondent would be required to complete the HSP prior to contract execution.*

#### 4.2.7 Specifications

The specifications, or SOW, is the description of the product or services an Institution seeks to procure from a vendor. The SOW will be the basis of the resulting contract and is therefore critical to the success of the project. Procurement Staff should take care to ensure the SOW is clear and concise, logically organized, unbiased, avoids repetition and ambiguity, and is not overly restrictive (allowing for competition).

The most common specification types are:

- A. Design-based: The focus is on how the vendor will perform the services or how the goods are made rather than what the goods will do. The burden is on the Institution to provide accurate specifications that will generate the desired result and to properly test / inspect for compliance with the specifications.
- B. Performance-based: The focus is on outcomes or results rather than the process in which products / services are produced. The burden is on the vendor to choose the best approach to meet the Institution's needs.

- C. Mixed: A commingling of both performance- and design-based specifications

Topics to be considered by the Procurement Staff, Contract Manager, and Evaluation Team when drafting the SOW include, but are not limited to:

- Roles & responsibilities of the Institution and vendor
- Deliverables and milestones
- Required professional licenses or certifications
- Quality and quantity of goods / service
- Established industry standards
- Reporting requirements

#### 4.2.8 Payment Method

As with specification types, there are also various payment types. The payment method should be consistent with the goods / services delivered. Payments should be structured to fairly compensate the vendor and encourage timely and complete performance of work. The following are the most common payment methods used:

- A. Fixed Price: Payment to vendor is a total price for a defined product or service.
- B. Time & Materials: Payment to vendor is a pre-determined amount per unit (e.g. service or item)
- C. Cost reimbursement: Payment to vendor of direct and indirect costs actually incurred.

Generally, payment should be approximately equal to the value of the completed work and early payment discounts should be negotiated with vendors when possible. The solicitation must specify any invoice procedures that will apply to the procurement.

#### 4.2.9 Terms & Conditions

Clearly stated terms and conditions are the most effective means of protecting Institutions from unintended risk. It is common practice for contracts to contain standard or “boiler plate” terms and conditions, including the rights of the Institution, in addition to terms tailored to the specific project to address change control, risk mitigation measures, and remedies. Solicitations should include both types of terms, so vendors are aware of required terms prior to submitting a response.

Examples of project specific terms and conditions include:

- A. Change Control
  - Transition plans
  - Price adjustments based on an index
- B. Risk Mitigation
  - Financial capability
  - Insurance

- Surety bonds
- Warranties
- Extended warranty / maintenance agreement
- Limitation of liability

#### C. Remedies

- Liquidated damages
- Compensatory damages
- Restitution damages
- Nominal damages

If questions regarding the applicability of appropriate terms and conditions to use arise, Institutions should consult with OGC (or the Institution’s Risk Manager for insurance requirements).

#### 4.2.10 Additional Considerations

Listed below are several examples of additional items that should be considered when drafting the SOW. These items may affect pricing, so it is important for the vendors to be aware of these requirements if they are applicable to the project.

- Required permits or licenses
- Use of Institution equipment
- Access to Institution premises
- Storage space contractor material / supplies
- Parking
- Criminal background checks
- Lease conditions
- The frequency, content, format, and recipients of reports that may be required under the procurement
- Trade-in equipment
- Data security and privacy requirements
- Intellectual property, use of marks, etc.
- Record retention period
- Institution security policies
- Bonds
  - Bid Bond (deposit)
  - Performance Bond (contract value is >\$100,000)
  - Payment Bond (contract value is >\$25,000)

### 4.3 Advertising the Solicitation

#### 4.3.1 Publication of the Solicitation

Institutions are required to publicly advertise, or “post,” formal solicitations. Advertising is primarily accomplished by using the Institution’s electronic bidding system or website, the Comptroller’s Electronic State Business Daily (“ESBD”) website, or newspapers. While IHE’s are not required to post solicitations to the ESBD, it is a common practice and some Institutions may have adopted policies or

procedures requiring use of the ESBD.

- A. Posting times will vary depending on the complexity of the solicitation and if the full solicitation package is provided when originally advertised. A 14-day posting time is required, however best practice is to post for a minimum of 30 days for complex solicitations like an RFP.
- B. When determining posting times, the first day the solicitation is posted is excluded and the day the solicitation is due is included. Posting times must be extended as needed so the last day of the posting is not a Saturday, Sunday, or holiday.

#### 4.3.2 Solicitation Announcement

A solicitation announcement is a brief notification, typically an email, sent by the Institution to notify potential respondents of the procurement opportunity and provide key information about the solicitation. The Institution's HUB Coordinator should be notified of solicitations so that announcements can be shared with the HUB community.

#### 4.3.3 Communication with Respondents

All communication with potential respondents should be limited to the designated Institution staff identified in the solicitation. The solicitation should provide only Procurement Staff as points of contact and include the acceptable forms of communication (e.g., email). Although Procurement Staff may not be able to answer technical questions, they will obtain the responses from the appropriate department staff and ensure that the information is communicated to all potential respondents. Department staff, including Evaluation Team Members, should not have contact with potential respondents outside of the pre-proposal conference. If contacted by a potential respondent, department staff should politely decline to discuss the solicitation and forward the inquiry to the Procurement Staff. A potential respondent that contacts someone other than the designated Institution staff listed in the solicitation *regarding that solicitation* may be disqualified so long as the solicitation notifies respondents of this possible penalty.

##### A. Written Questions

The solicitation may invite potential respondents to submit written questions to clarify provisions or SOW requirements. This option may be in addition to or in lieu of a pre-proposal conference / meeting. The solicitation will provide the deadline to submit questions and the method of acceptable submission (e.g. via email, facsimile, etc.). If the solicitation is posted on the Internet or an Institution's electronic bidding system, the questions and answers should be posted with the solicitation as they become available. Potential respondents must be given a minimum of 5-7 days prior to the submission deadline to review questions / answers therefore Institutions may need to extend the original solicitation deadline.

## B. Pre-proposal Conference

Institutions may conduct a pre-proposal or “pre-bid” conference if there is a need for an on-site visit prior to submitting responses. The solicitation must indicate the date, time, and location of the conference and if the conference is optional or a mandatory requirement of the solicitation. Institutions should carefully consider the use of mandatory conferences as requiring vendors to be at a certain place at a given time may limit competition.

Conferences are usually held approximately 10 days after the solicitation is published. All vendors in attendance should be documented through a sign-in sheet that is posted with the other solicitation documents at the conclusion of the conference. A sign-in sheet is required if the conference is mandatory because the sign-in sheet will be used by the Procurement Staff to verify respondent attendance at the conference. Sign-in sheets should be retained in the procurement file.

Conferences are facilitated and conducted by the Procurement Staff in coordination with the Contract Manager and / or select department staff. The Procurement Staff will answer procurement related questions, while the Contract Manager / department staff should respond to the technical questions. If it is not possible to answer questions at the conference, conference attendees should be directed to submit unanswered questions in writing in accordance with the solicitation.

Pre-proposal conferences provide a forum for:

- Procurement Staff to review the solicitation requirements and respond to questions regarding the solicitation process;
- Institution staff to provide additional information, schematics, plans, reports, or other data that is not easily transferable or distributed through hard copy;
- Attendees to address specific questions or concerns with the solicitation, including questions about HUB compliance; and,
- Subcontracting relationships to develop through the contacts established by vendors at the conference.

## C. Written Addenda

Any changes or clarifications to a solicitation must be made through written addenda which is posted on the Internet where it may be accessed by all potential respondents. It is best practice to also email a convenience copy to known vendors, including any pre-proposal conference attendees. When issuing an addendum, consider the amount of time remaining until the opening date of the solicitation. It may be necessary to extend the submission deadline – which must also be done through a written addendum.

#### 4.3.4 Response Submission

The solicitation must indicate the submission deadline (both date and time) and the submission method / location. Responses must be received by the submission deadline to be considered responsive.

##### A. Receipt

Upon receipt by the Institution, the date and time received must be documented and the response kept in a secured location to prevent tampering, opening, or loss until the submission deadline has passed. Proof of receipt documentation should be retained in the procurement file. Each Institution must have procedures in place for the receipt and control of responses received. Such procedures could include having:

- a designated time clock (e.g. email server time, mail room clock, time stamp, etc.) to determine the timeliness of submission;
- a process to document timeliness (e.g. receipt log, time stamp sheets, screenshot of electronic submission, etc.) and method of delivery; and a designated location for submission storage.

Occasionally, Institutions may receive a response that is not properly identified on the outside of the package and inadvertently open it. Procurement Staff may also intentionally open the package so it can be identified and properly marked as received. If this happens, the package should be resealed, dated, and marked with the reason it was opened (e.g. "opened in error").

**Note:** *TSUS Administration uses the email server time and a solicitation receipt log (ref. Appendix 10) to document receipt of vendor responses. The sealed responses are held in the TSUS Office of Finance until the submittal deadline.*

##### B. Late Responses

If a response is not received by the published submission deadline, it is considered late and therefore nonresponsive. Late responses will not be opened, unless for identification purposes, and will be returned at the respondent's expense or securely destroyed.

Late responses will only be permissible if the Institution has written policy that allows the acceptance of late responses under extenuating circumstances (e.g., inclement weather). Any such acceptance should be reviewed by the Institution's Procurement Staff for appropriateness.

**Note:** *TSUS Administration may consider accepting a late response if extenuating circumstances prevent the mail carrier / delivery service from delivering the package on time. Procurement Staff must be able to obtain written proof that the vendor selected a delivery method (e.g. Priority Overnight) that would have otherwise arrived on time.*

### C. Limited Responses

If two or less responses are received for a competitive solicitation, the Institution may elect to accept the responses or reject the responses due to non-competition and reissue the solicitation. In the determination, the Institution should review the specifications for any unduly restrictive requirements and contact known potential respondents to determine why a response was not submitted. The Institution shall include language in the solicitation document which defines the rights of the Institution in this situation (ref. Section 4.2.9). Proper documentation shall be retained in the procurement file to fully support all actions.

If it is determined that there were unduly restrictive requirements in the solicitation, the Institution may decide to cancel the solicitation and re-advertise once revisions to the solicitation requirements have been made. Otherwise, the Institution should consider the reasons that other responses were not received and determine if it is in the best interest of the Institution to:

- evaluate the responses and potentially make an award;
- re-advertise with a revised solicitation; or,
- cancel the project due to lack of competition.

### D. Public Opening Option

Institutions may choose to conduct a public opening on the day of the submittal deadline. The solicitation should indicate whether the Institution will hold a public opening of responses and, if so, provide the information for the public opening (e.g., time, location, etc.) so interested parties may attend. Depending on the solicitation, a public opening may include a reading of the solicitation number and either the respondent names (RFPs) or the respondent names and total bid price (ITBs). All attendees of a public bid opening must be documented through a sign-in sheet / log that is kept in the procurement file.

### E. Administrative Review

Once the responses have been opened, Procurement Staff will conduct an administrative review to determine if the responses submitted are responsive to the solicitation. Only those responses deemed to be responsive will be evaluated. Consultation with OGC may be necessary to assist in determining responsiveness. The Institution should use a checklist to document the results of the administrative review (ref. Appendix 11, Sample Administrative Review Checklist) and retain it in the procurement file.

At a minimum, the administrative review should include an examination of each response to confirm the following:

- Inclusion of the signed and completed HUB subcontracting plan (if applicable),
- Inclusion of the signed and completed Execution of Offer,
- Acknowledgement of any solicitation addenda,

- Minimum qualifications, if any, have been met; and,
- Inclusion of any required forms or documents in accordance with the solicitation.

#### 4.4 Evaluation & Award (Vendor Selection)

Institutions must conduct evaluations in a fair and impartial manner consistent with Texas law governing procurement, purchasing, and contracts. The purpose of an evaluation process is to identify which responses are responsive and to have sufficient and accurate information to make a sound decision.

The solicitation documents will include a general description of the evaluation process, the predetermined evaluation criteria, and the relative weights to be assigned to each evaluation criterion.

##### 4.4.1 Evaluation Team

- A. Composition & Role: The Evaluation Team should be comprised of individuals who are stakeholders in the goods / services being procured and who have the necessary technical or program expertise to competently review and evaluate submittals. The Evaluation Team will be led by a representative from the Procurement Staff (the Contract Developer) who serves as a non-voting member. Evaluation Team members are typically nominated by department staff or the Contract Manager. Some Institutions may have the procurement director or CFO conduct the final review and approval of Evaluation Team member participants. It is important to select members who understand the needs of the department and the Institution, and who understand the desired outcome of the procurement.

Procurement Staff will coordinate with Evaluation Team members so they can participate in preparing the solicitation, especially the evaluation criteria and assigned scoring weights. The members should fully understand the requirements of the solicitation and must be able to critically read and evaluate responses and document their judgments clearly, and concisely in accordance with the evaluation criteria.

- B. Size of Teams: The recommended size of an RFP / RFQ Evaluation Team is three to five members. To avoid potential individual bias, the team should not be less than three members. Complex projects may require more than five members or even additional teams (e.g. technical advisors). Coordination and management of the evaluation process becomes more difficult as the size and number of teams increase. An Evaluation Team for an ITB is generally one to two members.
- C. NDA's: Procurement Staff should collect a signed Non-Disclosure / Conflict of Interest Statement (ref. Appendix 12) from each Evaluation Team member prior to the advertisement of the solicitation when possible. Evaluation Team members will not be able to receive solicitation responses until the NDA has been submitted.

- D. Training: Prior to distributing responses, Procurement Staff will provide guidance to the Evaluation Team members that outlines the team's duties and responsibilities. This may be a separate meeting or may be in the form of written instruction provided with responses. Team members should be instructed on their responsibilities including the critical nature of confidentiality to the integrity of the evaluation process. The Procurement Staff will review the evaluation criteria with the team members and explain how the evaluation process will be conducted. Each response must be evaluated individually against the requirements of the solicitation. Only the information identified in the solicitation may be used to evaluate the response.
- E. Communication: During the evaluation period, Evaluation Team members will limit communication regarding the solicitation to asking questions of the Procurement Staff and, if authorized, obtaining information from technical experts to better understand the response contents and requirements. Communication between Evaluation Team members related to evaluating responses or response content is not permitted outside the presence of the entire team and the Procurement Staff. To protect the integrity of the evaluation process, only the Procurement Staff (generally the Contract Developer) may communicate with respondents.
- F. Scoring Matrix: A scoring matrix is used by the Evaluation Team members to score individual responses based on the evaluation criteria defined in the solicitation. Procurement Staff will provide instructions for completing the scoring matrix to the Evaluation Team.

Once evaluations are complete, the scoring matrix from each team member will be returned to the Procurement Staff who will review the scores and verify the accuracy of calculations for input into the final evaluation summary. If it is apparent that one or more team members' evaluations differ significantly from the majority, the Procurement Staff should verify with the team members that information was not overlooked or misunderstood. If after this discussion, a team member feels that they did not understand the criteria, the requirement, or missed information that was included in the response, the evaluator, at his or her own discretion, may revise their evaluation score.

Under no circumstances shall any team member attempt to pressure other members to influence evaluation scores.

**Note:** *TSUS Administration uses a mathematical formula suggested by SPD to evaluate the pricing criterion. The calculations are completed by the Contract Developer and added to the scores provided by the Evaluation Team for the subjective / non-price criteria. This method awards full points for the price criteria to the lowest bidder and the other vendor's scores are reduced proportionately based on the price gap when compared to the lowest bidder*

*Formula:*

$$\frac{\text{price of lowest response}}{\text{price of response being evaluated}} \times \text{max. points available} = \text{weighted score}$$

#### 4.4.2 Reference Checks

The Evaluation Team may verify any references included in the response and conduct any other reference, credit check, or background check deemed appropriate. The Comptroller's Vendor Performance Tracking System may also be used to evaluate a respondent's past performance. Negative findings could result, after consultation with OGC, in the disqualification of the respondent.

Reference checks may be performed in the following ways:

- **After Evaluation:** A member of the Evaluation Team, or the Procurement Staff, may contact the references of the highest ranked respondent to confirm the Evaluation Team's decision prior to award.
- **During Evaluation:** A member of the Evaluation Team, or the Procurement Staff, may contact the references of each respondent. The Procurement Staff will share the findings with all Evaluation Team members so the information may be incorporated into the evaluation scores related to references.

In both cases, reference checks should be documented in writing. The same script or format of questions should be used when conducting reference checks so that the results are consistent and fair to all respondents.

Sometimes it is difficult to obtain information from references, either because references have a policy of not providing information or because they cannot be reached in a timely manner. Depending on the importance of the procurement, the Institution may want to consider using the following statement in the solicitation in lieu of checking references for respondents:

***"The [insert System / University / etc.] reserves the right to check references, credit, or background information prior to award. It may, at its sole discretion, contact additional clients not presented as references in response to this RFP. Any negative responses received may be grounds for disqualification of the proposal."***

By including this statement, the Institution is not required to check references but may choose to do so. Whether or not to check references as part of the evaluation is at the discretion of the Institution based on the individual procurement.

#### 4.4.3 Oral Presentations / Discussions

The Institution may require oral presentations or discussions (i.e. short list presentations) with respondents as a part of the RFP process. Oral presentations and discussions provide an opportunity for respondents to highlight the strengths and unique aspects of their response and to provide answers to questions the Institution may have regarding the response. Demonstrations of product functionality are recommended when appropriate, such as information technology procurements or solution-based procurements.

Oral presentations and demonstrations can be scheduled for all respondents or limited to the top ranked respondents in the competitive range as determined by the Procurement Staff. The competitive range shall consist of those responses determined

to be reasonably considered for award selection.

Oral presentations and demonstrations should be fair to all parties. The time allowed; the format; the audience, including Evaluation Team members; and the prepared script should be the same for all presenters to ensure consistency. Since some respondents believe there is an advantage to the order in which they present, it is best to draw names for the presentation order. This will ensure impartiality of the process.

#### 4.4.4 Best and Final Offers (“BAFOs”)

Institutions may request BAFOs from the respondents in the RFP process. The BAFO serves as an official revision of the RFP response. A provision for the BAFO process is included in the solicitation document.

Revisions of responses are normally accomplished by formally requesting BAFOs after the initial evaluation process or at the conclusion of oral presentations and discussions, with a deadline set for receipt of BAFOs and including instructions as to exactly what is to be submitted in response to the BAFO. After consideration of all BAFO responses, the Institution may choose to select the best value respondent(s) with which to offer an award and commence negotiations.

#### 4.4.5 Award

Institutions shall award a contract for the purchase of goods or services that provides the best value for the Institution pursuant to the evaluation criteria specified in the solicitation which are based upon the best value criteria established in Texas Education Code. In some cases, Institutions may elect to issue only a Purchase Order that serves as the agreement between the parties. The terms and conditions of the Purchase Order will state that it governs over a response, a quote and any other document provided by a respondent.

Once a decision to award has been made, a written notice (ref. Appendix 15) will be provided by the Institution to all solicitation respondents.

#### 4.4.6 Negotiations

In any contract, there are usually terms or conditions that each party may be willing to relinquish. Once the best value response(s) have been identified, if the solicitation type allows for negotiations, the first step in the negotiation process is to identify those terms and conditions that are essential, desirable, or subject to negotiation.

**Note:** *The ITB method does not allow negotiations unless only 1 respondent submitted a bid, while the RFP method does allow negotiations. A request for a respondent to clarify its proposal is not the same as negotiation of the terms of a respondent’s proposal. However, when seeking clarifications, Institutions should not give any respondent an advantage over another and should extend the same opportunities to each respondent.*

- A. During negotiations, Institutions may not use technical leveling or technical transfusion techniques. Technical leveling means helping a respondent to bring their response up to the level of other responses through successive

rounds of discussion, usually by pointing out response weaknesses. Technical transfusion means disclosing technical information or approaches from one respondent's proposal to other competitors during discussion.

In addition, the following disclosures are prohibited:

- disclosing competing respondents' cost or prices (even if the disclosure is made without identifying the other respondent by name); and
- advising a respondent of its cost or price standing relative to other respondents.

## B. Negotiation Strategies

Negotiation strategy must be tailored to suit the particular facts and circumstances of the specific solicitation. Like other parts of the contract management process, planning is essential to conducting a successful negotiation. The Contract Manager may choose to meet with OGC to identify:

1. The terms and conditions that are essential to the contract. These are the terms or conditions upon which the Institution is either unable or unwilling to compromise.
2. The terms and conditions that are desirable, but not essential to the contract that the Institution is willing to compromise or relinquish.

The Institution can then cooperatively negotiate the contract. Parties involved in negotiations should be prepared to explain why a term or condition is essential or objectionable and place the burden on the respondent to identify an alternative solution that meets the Institution's needs.

Negotiations can reach an impasse over conflicting terms thought to be essential to each party. If the parties cannot reach an agreement, the Institution should consider ending negotiations and moving on to negotiations with the next highest ranked respondent. Institutions may continue with negotiations in this manner until the best interest of the Institution is achieved.

**Note:** *Once the Institution proceeds to negotiate with the next best value respondent, the Institution cannot return to the negotiation process with any of the respondents with which negotiations failed.*

## 4.5 Additional Information and Resources

Appendix 8: Sample Solicitation Intake Form

Appendix 9: Sample RFP Timeline

Appendix 10: Sample Solicitation Receipt Log

Appendix 11: Sample Administrative Review Checklist

Appendix 12: Sample Non-Disclosure / Conflict of Interest Statement for Evaluation Team Members

Appendix 13: Sample Evaluation Team Instructions

Appendix 14: Sample Proposal Score Sheet

Appendix 15: Sample Award & Regret Letters

## Section 5 – Contract Formation

The purpose of this Section is to provide general guidelines regarding contract formation. There can be many variations and exceptions to these general guidelines. Institutions should consult OGC, if necessary, for any questions about applicable statutes, regulations, [TSUS Rules and Regulations](#), TSUS policy, and operating policies and procedures.

### 5.1 Approach to Contract Formation

Fundamentally, the purpose of a written contract is to establish the rights and obligations of the parties to prevent misunderstanding and conflict. It is important that the parties document clear terms and address potential issues as completely as possible. Once signed, it may be difficult to amend unclear terms or add terms to address issues since all parties must agree to any changes.

Institutions need to allow adequate time to prepare the contract and to consult with OGC, if necessary, regarding potential legal issues. Institutions will include a draft of the standard Institution contract in the solicitation document so the respondent can make an offer with knowledge of the required contractual terms and conditions. Should Institutions fail to include a draft of the standard contract, such may be remedied by explaining the reason for such omission. Solicitations will state that responses may be disqualified if modifications to the Institution's terms and conditions are made.

### 5.2 Legal Elements of a Contract

The basic and essential elements necessary to form a binding contract are:

1. An **Offer** (the intent and willingness to enter into a bargain);
2. **Acceptance** of the offer (in compliance with the offer's terms);
3. A **legal purpose** (the objective of the contract must be legal);
4. **Certainty of Subject Matter** (essential terms have been mutually agreed upon);
5. **Consideration** (both parties make promises / receive something or "mutuality of obligation"); and,
6. **Competent Parties** (both parties must be legally competent).

### 5.3 Drafting the Contract

Contracts should have provisions that fully describe the actual agreement of the parties. Provisions that are typically included in contracts include, but are not limited to:

1. Administrative provisions;
2. Financial provisions;
3. Provisions that allocate risk;
4. The Statement of Work;
5. Provisions relating to the contract term, termination, governing law, and dispute resolution; and,
6. Provisions that relate to rights and ownership of work product and intellectual property.

When drafting a contract, Institutions are strongly encouraged to use an OGC approved

template as the starting point as well as a contract processing checklist (approved by OGC) to ensure that all required reviews and approvals have been completed prior to contract issuance.

**Note:** *TSUS Administration uses the TSUS Procurement & Contract Processing Checklist to ensure appropriate reviews and approvals have been completed. The checklist, which is modified from time to time, is maintained by the TSUS Office of Finance.*

### 5.3.1 Form of the Contract

A contract can be in the form of an agreement, with recitals, negotiated terms and signature blocks, or in the form of the Institution's standard Purchase Order.

#### A. Agreement

An agreement offers the greatest opportunity to avoid conflicting provisions, because all the negotiated terms and conditions are contained in one document; however, they require more time to plan, prepare, and review. If an agreement is issued, it is generally a single document which may contain exhibits or attachments that provide additional information. Contract management is sometimes easier when all the provisions regarding the duties, obligations, and responsibilities of each party can be logically organized and easily found. The agreement is signed by both parties and when possible, Institutions should require the vendor to sign the document first.

Examples of common exhibits (if required) include:

- Scope of Work
- Schedule
- Cost
- Service Level Agreements
- FERPA requirements
- HIPPA requirements (Business Associates Agreement)

TSUS Administration may issue master agreements that outline a broad scope of work and associated pricing, but specific "projects" are agreed in separate documents such as order forms or project addenda which is signed by both parties. Institutions can utilize these master agreements and have authority to enter into project addenda for specific services for their Institution.

#### B. Purchase Order

A Purchase Order usually relies on several documents, that in combination, constitute the contract. Applying the formation rules in a simple manner: vendor delivers an offer, in a form of a quote or a solicitation response, and the Institution indicates acceptance of the offer by issuing a Purchase Order with standard terms and conditions attached. Together these various documents comprise the offer and acceptance and evidence of the basis of an agreement.

There is potential for conflicting or additional terms among the various

documents. When used properly, a Purchase Order is quick and efficient, but the Institution's standard terms and conditions need to clarify which document governs in the event of conflicting language. When using a Purchase Order as evidence of a contract, Institutions are advised to use its standard terms and conditions, rather than accepting terms a vendor proposes.

### 5.3.2 Contract Terms

Refer to Appendix 16, Contract Terms, for examples of the types of contract terms / clauses that are required in Institution contracts and those that are recommended. Questions related to specific contract terms and contract term verbiage should be directed to OGC.

### 5.3.3 Legal Review

Institutions may send any contract where the standard terms and conditions originally provided by OGC have been modified to OGC for review prior to contract execution. All agreements that require approval by the Chancellor or the Regents must be submitted to the Vice Chancellor and General Counsel for review prior to being submitted to the Chancellor. Refer to [TSUS Rules and Regulations](#) to determine what contracts and agreements must be approved by the Chancellor or the Regents.

### 5.3.4 Debarment and Vendor Certifications

Not earlier than the seventh day before and not later than the date of entering into the contract, Institutions shall verify the vendor is in good standing and eligible to receive the contract.

- A. **Debarment Check:** Institutions may not award a contract to a vendor that has been debarred by SPD. Procurement Staff shall check the debarred vendor list posted on the SPD website.
- B. **Iran, Sudan, & Foreign Terrorist Organization Check:** Institutions may not contract with a company doing business with Iran, Sudan, or a foreign terrorist organization.
- C. **Boycott Israel Check:** Institutions may not award a contract to a vendor that (1) has 10 or more full-time employees and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds, unless the contract contains a written verification from the vendor that it does not boycott Israel and will not boycott Israel during the term of the contract.

**Note:** *TSUS Administration contracts include language whereby the vendor certifies compliance with these requirements. For contracts with a value of \$15,000 or more, the Director of Procurement or the Director of Capital Projects Administration will review the debarred vendor list on the SPD's website.*

### 5.3.5 Contract Execution

Institutions must follow [TSUS Rules and Regulations](#) and any Institutional policies regarding delegation of authority and contract execution. *It is important to note that*

*the authority to authorize the expenditure of funds does not authorize an employee to sign contracts.* It is recommended that when obtaining contract signatures, Institutions obtain the signature of the vendor first and then fully execute the contract once all required elements of contract formation have been met.

Digital Signatures: TSUS accepts digital signatures that are compliant with the E-SIGN Act of 2000 and the Uniform Electronic Transaction Act (UETA) of 1999 when the signature platform authenticates users by password and the platform produces a time stamp for the digital signature. Compliant digital signatures are considered “original signatures.”

#### 5.3.6 Verification of Complete Procurement File

Prior to contract issuance, the Institution’s contract manager or procurement director must:

1. review the contents of the contract file for the contract, including the checklist, to ensure that all documents required by state law or applicable agency rules are complete and present in the file; and
2. certify in a written document to be included in the contract file that the review required under paragraph (1) was completed.

**Note:** *For TSUS Administration, this is accomplished by the Director of Procurement or the Director of Capital Projects Administration signing and dating approval of the TSUS Administration Procurement & Contract Processing Checklist for any contract that exceeds \$50,000.*

#### 5.4 Additional Information and Resources

Appendix 1: TSUS Administration Procurement & Contract Processing Checklist  
Appendix 16: Contract Terms

## Section 6 – 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 are properly discharged. This Section serves as recommended guidance for the Contract Management process.

Contract Management can include the following processes:

1. Post-award Planning
2. Monitoring Performance
3. Change Management
4. Payment Approval
5. Dispute Resolution
6. Termination
7. Contract Close-out

The primary tasks included in Contract Management include:

- Verifying vendor performance for purposes of payment and for compliance with contract requirements;
- Determining if corrective action is necessary and taking any needed action; and
- Developing a plan/checklist for contract close-out.

The SOW is the roadmap for Contract Management. The goal is for the parties to satisfactorily perform their responsibilities.

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

**Note:** *The majority of TSUS Administration contracts / purchase orders are for tangible goods and services with simple Contract Management needs that are met by the departmental user verifying goods / services were received by approving the related invoice(s) for payment.*

During the solicitation process, a Contract Manager from the department requesting the goods / services should be identified, as well as any other Institution personnel (i.e. the Contract Administration Team) who may assist the Contract Manager with contract administration responsibilities.

### 6.1 Post-Award Planning & Conference

To properly plan, the Contract Manager must understand the components of the solicitation and the contract. The Contract Manager should use template checklists to monitor contract compliance, key components of which may include, but are not limited to:

- Expected costs
- Potential risks
- Timelines for performance
- Options for inspection and acceptance

- Key dates of the contract

The Institution may hold a post-award conference with vendor personnel responsible for administering the contract. A post-award conference is held soon after a contract is awarded or upon contract execution. The meeting should be held with the vendor, prior to beginning performance under the contract, to verify that the vendor fully understands the expectations, will perform accordingly, and can provide the foundation for an effective Contract Management effort. The post-award conference assists those involved directly in the Contract Management process to understand all requirements of contract performance. The post-award conference cannot be used to change the terms of the contract.

Not every contract requires a formal post-award conference. For less complex, low risk, low-dollar value contracts, a post-award conference is not necessary. The Contract Manager will usually decide if a post-award conference is necessary. Factors used to determine the need for a post-award conference include:

- Type of contract;
- Level of risk associated with the contract;
- Value and complexity;
- Length of contract, period of performance, or delivery requirements;
- Procurement history of the goods or services required;
- Institution's prior experience with the vendor;
- Any special or unusual contract requirements; and
- Any special or unusual payment requirements.

## 6.2 Monitoring Performance

Monitoring the performance of a vendor is a key function of proper Contract Management in order to assess whether the vendor is performing all duties in accordance with the contract and to allow the Institution to identify and address any developing issues. Performance monitoring tools (e.g., reporting, testing, etc.) should be specified in the solicitation and included in the contract.

There are different types of monitoring available, including:

- Site Visits (visits to vendor's facility)
- Desk Review (review of reports)
- Expenditure Document Review (analysis of vendor invoices)

Not all contracts require extensive monitoring. The level of monitoring will depend on the dollar value, complexity of goods or services, the level of risk, and the Institution's experience with the vendor.

Each Institution shall develop a procedure to identify contracts that require enhanced contract or performance monitoring and submit information on the contract to the Regents via the TSUS Administration Vice Chancellor and CFO. Institutions shall immediately notify the Regents of any serious issue or risk identified with respect to a monitored contract.

**Note:** *TSUS Administration uses the TSUS Administration Contract Risk Assessment & Monitoring Plan Form to identify contracts that require monitoring. The completed form is submitted to the TSUS Administration Vice Chancellor and CFO for all contracts identified*

*as needing enhanced contract monitoring for disclosure to the Regents as needed.*

### **6.3 Reporting**

Contract reporting obligations include vendor reports to the Institution and Institution reports to other state agencies. Reports can be effective monitoring tools used by the parties to monitor the progress of contract compliance. Reporting requirements should be clearly defined in the SOW providing for the frequency, content, format, and recipients of each report. Common status and activity reports that may be utilized by the parties include, but are not limited to:

- Service Level Reports
- Progress or Milestone Reports
- Subcontractor Reports
- Ordering Activity Reports
- Historical Metrics
- Revenue Reports

### **6.4 Payment Approval**

Payments must be made in accordance with the Texas Prompt Pay Act, which provides for payment of invoices within 30 days unless the contract performance is in dispute. The invoice payment date is determined by the later of the date that a correct invoice is received, or the date goods are received, or the performance of services was completed. If a payment is disputed, payment will be withheld until the Institution is satisfied with the contract performance.

#### **6.4.1 Invoice Review**

Each Institution shall develop and maintain policies and procedures addressing payment approvals. Invoices should be reviewed to ensure:

- The vendor is billing only for goods or services received by the Institution;
- The goods or services have been inspected and accepted;
- The invoice is correct and complies with the pricing, terms and conditions of the contract; and
- The total payments do not exceed the contract limits.

#### **6.4.2 Withholding Payment**

Institution employees must protect the interests of the Institution and, under appropriate circumstances, it may be necessary to withhold payments from vendors. Such circumstances include, but are not limited to:

- A material breach of the contract by the vendor;
- Errors in the invoice;
- Unsupported or undocumented costs;
- To remedy previous overpayments on the same contract; and
- Non-conforming or unacceptable performance by the vendor.

If an invoice issue can't be resolved, the Contract Manager should take the following steps to escalate the issue:

- Notify the office Institution's Accounts Payable Office
- Notify the vendor of the invoice issue; and
- Request assistance, if needed, from OGC to timely send a disputed invoice letter.

## 6.5 Contract Changes

Throughout the term of the contract it may become necessary to make changes to the contract. These changes can be minor, administrative changes such as a change of address, or they can be substantial changes that affect the price, delivery, and other material provisions.

Changes can be by mutual agreement, in which all parties to the contract agree in writing that a modification is necessary to alter a provision of the contract.

The Institution should not verbally authorize the vendor to alter performance under the contract before the formal change management process is complete, including full analysis of the change, written approval of the change, and documentation of the change through a written contract amendment.

**Note:** Changes must be approved by the Institutional signer of the contract unless otherwise authorized by the [TSUS Rules and Regulations](#).

### 6.5.1 Material Contract Changes

Whether or not a change is considered a material change to the contract depends upon the solicitation process and the contract. The contract and any amendments must be consistent with the specifications, the procurement cooperative program requirements, or be allowed by [TSUS Rules and Regulations](#) and Institutional operating policies and procedures. If a change is needed to a contract that was competitively solicited, the change must be within the scope of the solicitation.

Material changes are measured by whether the changes would substantially alter the original specifications. Where there is a need for material changes, Procurement Staff evaluate the changes and determine if there is a need to resolicit to allow for fair competition.

### 6.5.2 Administrative Changes

These are changes that are within the scope of the contract and do not affect or alter the rights of the parties. Examples of administrative changes include:

- Changes in billing or contact information;
- Corrections of typographical errors not affecting the substance of the contract;
- Changes as permitted by the specific contract language; and
- Changes in Institution personnel assigned to the contract.

### 6.5.3 Substantive Changes

These are changes to a contract that affect the rights of both parties. Examples of substantive changes include:

- Change in the price of the contract;
- Change in the delivery schedule;
- Change in the quantity;
- Change in the specifications / deliverable for goods or services;
- Change of key personnel by the vendor; and
- Change of any terms and conditions.

### 6.5.4 Constructive Changes

If a vendor perceives that changes beyond the scope of the contract were ordered by the Institution, the vendor may claim that the contract was “constructively” changed, and the vendor may be entitled to additional compensation for the changes. Constructive changes may occur when Institution personnel:

- Provide suggestions to a vendor;
- Accelerate the delivery schedule;
- Direct the work to be performed differently;
- Change the sequencing of the work;
- Delay accepting or rejecting deliverables;
- Delay reviewing invoices and approving payment; and
- Interfere with or hinders vendor performance.

The Contract Manager is responsible for managing the performance of a contract and is charged with managing the contract in a way to prevent constructive changes.

## 6.6 Dispute Resolution

The goal of dispute resolution is to resolve contract issues before they escalate. To avoid escalation, and to avoid Institution personnel actions exacerbating potential problems, it is imperative that the Contract Manager respond promptly to all vendor inquiries. Initial steps to be taken include:

1. **Identify the problem:** Many times, what may appear to be a problem can be resolved by providing a vendor with information or clarification.
2. **Report:** The Contract Manager can report the issue to the Procurement Staff even in cases where action may not be required from the Procurement Staff.
3. **Research facts:** Obtain information regarding the potential problem from all relevant sources, including members of the Contract Administration Team and the vendor. This resulting information should be maintained in the contract file.
4. **Evaluation:** Review the facts in conjunction with the requirements and terms and conditions of the contract.

## 6.7 Termination

When a contract is terminated, the parties are relieved from further unperformed obligations

in accordance with the agreed terms and conditions. A contract may include language to terminate for the following reasons:

#### 6.7.1 Termination for Convenience

A termination for convenience, also known as no-fault termination (or “without cause”), allows an Institution to terminate a contract, in whole or in part, at any time in its sole discretion, if it is determined that such termination is in the best interest of the Institution.

Procurement Staff shall provide the vendor with written notice specifying whether the Institution is terminating all or part of the contract. The notice of termination shall give the effective date of termination. If the contract is being selectively terminated, the notice shall specify which part(s) of the contract are being terminated.

#### 6.7.2 Termination for Default

A contract may be terminated for default (or “with cause”) when an Institution concludes that a vendor has failed to perform, make progress, or has otherwise breached the contract. An Institution is not required to terminate a contract even though the circumstances permit such action. The Institution may determine that it is in the Institution’s best interest to pursue other alternatives such as extending the delivery or completion date, allowing a vendor to continue performance, or working with a vendor’s surety to complete the outstanding work. The purpose of a termination for default is essentially to protect the interests of the Institution.

Prior to terminating a contract for default, a cure notice should be sent to the vendor if the parties so agreed in the contract. A cure notice letter allows a vendor to have a defined period of time to “cure” the deficiency or violation. If the vendor fails to cure the situation or provide a satisfactory explanation as requested and within the time allowed, the contract may be terminated by sending a notice of termination.

**Note:** *A vendor may also have the right to terminate a contract for default if the Institution fails to perform.*

#### 6.7.3 Force Majeure Termination

Institutions may not be able to terminate a contract for cause when the failure to perform is the result of a force majeure or other excusable causes. In order to qualify as an excusable cause, the cause must be beyond the control, and without the fault or negligence of the vendor. Such excusable causes include, but are not limited to:

- Acts of God or a public enemy;
- Acts of the Institution;
- Fire;
- Floods;
- Epidemics and pandemics;
- Strikes;
- Freight embargos; or
- Unusually severe weather.

## 6.8 Contract Close-out

The purpose of the contract close-out process is to confirm that both parties have fulfilled all contractual obligations. In addition, contract close-out is the time to assess the success of the contract and recognize any process improvements for future contracts.

A contract is ready for close-out when all goods or services have been received and accepted; all administrative actions have been accomplished; and all Institution furnished equipment and materials have been returned. Final payment should not be made to a vendor until all compliance and corrective actions have been successfully completed and the Contract Manager or his or her designee has provided final acceptance.

Each Institution shall determine the appropriate contract threshold that requires a formal contract close-out.

**Note:** *TSUS Administration uses the TSUS Administration Procurement & Contract Processing Checklist (ref. Appendix 1) to document contract close-out activity. Contracts with a value of less than \$250,000 are considered closed with approval and payment of the final invoice.*

While not a statutory requirement for IHE's, as a part of the close-out process, an Institution may choose to report the vendor's performance to the Comptroller using the Vendor Performance Tracking System ("VPTS").

## 6.9 Record Retention

Aside from the responsibility of maintaining the procurement file, the Contract Manager, or designated responsible Institution employee, is also responsible for ensuring that contract documents are retained in the required format for the appropriate amount of time as determined by applicable law and the Institution's records retention schedule. Each Institution should develop a plan for procurement and contracting file contents in accordance with the TSUS Records Retention policy. Refer to Appendix 17 for an example of how to organize electronic files from a formal solicitation.

Each Institution:

- A. shall retain records of each contract (including amendments) entered into by the Institution and any related solicitation documents, including posted solicitation documents, the vendor's response, the evaluation determination, and the notice of award document; and
- B. may destroy the contract and supporting documentation only after the seventh anniversary of the date:
  - the contract is completed or expires; or
  - all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or supporting documentation are resolved.

Documentation may be retained by the Institution's Purchasing, Contract, Accounts Payable Offices, or by the Contract Manager's department.

## **6.10 Additional Information and Resources**

- Appendix 1: TSUS Administration Procurement & Contract Processing Checklist
- Appendix 2: Contract Management Responsibilities
- Appendix 4: TSUS Administration Contract Risk Assessment & Monitoring Plan Form
- Appendix 8: Sample Solicitation Intake Form
- Appendix 17: Sample Electronic File Storage Plan

**Version History:**

<b>Version</b>	<b>Release Date</b>	<b>Summary of Revisions</b>
Version 1	January 2017	Original Publication Date
Version 2	July 2018	Non-substantive clarifications and revisions.
Version 3	September 2020	Substantive reorganization and revision of content.  Updates to existing appendices and creation of new appendices.

**Appendices List:**

***Note:** The information provided in the following Appendices is not meant to be prescriptive, but to provide examples and guidance to Institutions about how certain tasks can be done when performing procurement and contract activities.*

<b>Appendix #</b>	<b>Appendix Title</b>
1	TSUS Administration Procurement & Contract Processing Checklist
2	Contract Management Responsibilities
3	TSUS Administration Procurement Guidelines Summary
4	TSUS Administration Contract Risk Assessment & Monitoring Plan Form
5	Sample Emergency Purchase Justification Form
6	Sample Sole Source Justification Form
7	Sample Group Purchasing Language
8	Sample Solicitation Intake Form
9	Sample RFP Timeline
10	Sample Solicitation Receipt Log
11	Sample Administrative Review Checklist
12	Sample Non-Disclosure / Conflict of Interest Statement for Evaluation Team Members
13	Sample Evaluation Team Instructions
14	Sample Proposal Score Sheet
15	Sample Award & Regret Letters
16	Contract Terms
17	Sample Electronic File Storage Plan

## TSUS Administration Procurement & Contract Processing Checklist

(Complete for all Purchase Orders / Contracts over \$15,000)

Request Date: \_\_\_\_\_ Customer: TSUS only TSUS & Component(s) Component(s) only

Customer Contact Name: \_\_\_\_\_ Component Name: \_\_\_\_\_

Estimated Contract Value: \$ \_\_\_\_\_ Revenue Generating? Yes No

Is this an amendment, renewal, or modification of an existing contract? Yes No

CPA debarment check complete? Yes No

**Transparency Report Information:** Completion Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

Material / Service Description: \_\_\_\_\_

Contract Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**Procurement Justification:**

Competitive Procurement Type: Existing Contract Informal Bid ITB RFP RFQ

Non-competitive Procurement Type: Sole Source Blanket PO Emergency

**Complete this section if LBB reporting is required:** N/A

Reporting Code (select all that apply): LBB Entry Date: \_\_\_\_\_

Construction >\$14K

Professional Services >\$14K NIGP Class / Item Code: \_\_\_\_\_

Purchases >\$50K

Major Information System >\$1M

Emergency Purchase >\$1M

Non-competitive Purchase >\$1M\*

Purchases >\$10M \*

Attestation Letter: N/A \*Yes, completed

Vendor Address: \_\_\_\_\_

Maximum Value (include potential renewal options, amendments & addendums): \$ \_\_\_\_\_

If contract will be for multiple years, including renewal options, provide estimated cost of contract by fiscal year (FY):

FY	Amount								
	\$		\$		\$		\$		\$

**Based on the contracting vehicle, purchasing justification and order details, complete the appropriate boxes below:**

Note: If none of the following information applies to the order, check here:  N/A

**Existing Contract:**  
 Contract Source: \_\_\_\_\_ Contract #: \_\_\_\_\_  
 Is the contract valid to use (not expired, goods/services/vendor is on contract)?  Yes  No  
 Proof of contract has been obtained for procurement file?  Yes  No  
 Notes: \_\_\_\_\_

**Informal Bid:**  
 A minimum of 3 written quotes were collected.  Yes  No  
 Were HUB vendors asked for a quote?  Yes  No Notes: \_\_\_\_\_

**Formal Bid:**  
 Solicitation Type:  ITB  RFP  RFQ  
 Solicitation #: \_\_\_\_\_ ESBID Posting Date: \_\_\_\_\_  
 Solicitation Title: \_\_\_\_\_  
 Number of Bids Received: \_\_\_\_\_ NDAs included in file?  Yes  No  
 Date Awarded: \_\_\_\_\_ Sample Contract included in solicitation?  Yes  No\*  
\*if no, explain why in notes.  
 Contract Value: \$ \_\_\_\_\_ Contract Term: \_\_\_\_\_  
 This is a:  Single Award  Multiple Award (For multiple award, include additional suppliers in notes section below)  
 Was an HSP required?  Yes  No  N/A If required, will vendor subcontract?  Yes  No  
 Notes: \_\_\_\_\_  
 \_\_\_\_\_

**Sole Source / Emergency / Interagency / Interlocal / Other:**  
 Appropriate documentation has been included in the contract file?  Yes  No  
 Is this an interagency contract that will exceed \$10M? If yes, post on website.  Yes  No  
 Purchase Type: \_\_\_\_\_  
 Notes: \_\_\_\_\_

**Potential Contract Clauses / Risk Criteria:**

**Yes No**

General Information

- Will vendor subcontract any of the work in the contract?
- Does the potential contract value exceed \$1M? (If unknown, treat as if over \$1M)
- Will the vendor's employees be placed on a TSUS campus for an extended period of time?
- Does the vendor want to change any of the standard terms & conditions?
- Is the vendor an entity of a foreign government?
- Is the contract for outside counsel, consulting, or audit services?
- Is the level of risk for fraud, abuse, or waste in the procurement / contracting process high?

Purchase of Information Resources (software, web development, etc.)

- Does the contract allow TSUS data to be stored, processed or accessed by the vendor?
- Is the contract for the purchase or development of an electronic system that will use confidential data such as social security numbers, protected health information or sensitive research data (HIPPA or FERPA data)?
- Is the contract for the procurement of software, website, telecommunication products, video/multimedia, information technology hardware or self-contained/closed equipment? If so, the supplier must comply with the EIR requirements of TAC Chapters 206 and 213.

**Complete this section for orders ≥ \$50,000:**

N/A

Requirement	Completed	N/A	Completed By
Contract Repository Entry (*completed after issuance)	<input type="checkbox"/>		
Vice Chancellor & CFO Review	<input type="checkbox"/>		
Office of General Counsel Review (if standard terms not used)	<input type="checkbox"/>	<input type="checkbox"/>	
HUB Subcontracting Form (≥ \$100,000)	<input type="checkbox"/>	<input type="checkbox"/>	
IT Security Review (≥ \$100,000)	<input type="checkbox"/>	<input type="checkbox"/>	
Contract Risk Assessment Form (≥ \$500,000)	<input type="checkbox"/>	<input type="checkbox"/>	
Chancellor's Signature (≥ \$500,000)	<input type="checkbox"/>	<input type="checkbox"/>	

Notes: \_\_\_\_\_  
 \_\_\_\_\_

Name of Contract Manager (Department): \_\_\_\_\_

Name of Contract Developer (Office of Finance): \_\_\_\_\_

Prior to issuance of the PO / fully executed contract to the vendor, review of the contract file, including this checklist, has been completed by the Director of Procurement or Director of Capital Projects Administration:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Complete this section for orders ≥ \$1,000,000:**

N/A

Requirement	Completed	N/A	Completed By
SAO State Agency Uniform Nepotism Disclosure Form	<input type="checkbox"/>		
T.E.C. Certificate of Interested Parties (Form 1295)	<input type="checkbox"/>	<input type="checkbox"/>	
Board of Regents Approval	<input type="checkbox"/>	<input type="checkbox"/>	
Director of Procurement Verification to VC & CFO (≥ \$5,000,000) <ul style="list-style-type: none"> <li>• Solicitation method &amp; vendor selection process is compliant</li> <li>• Identification of potential issues with selection process</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Contract Closeout**

**Complete this section once contract (≥ \$250,000) is completed:**

N/A

The contract has been completed satisfactorily, final payment has been/can be made, any TSUS resources used by for contract have been returned, and vendor permissions/access to TSUS property have been revoked.

Contract Manager: \_\_\_\_\_ Signature: \_\_\_\_\_

Contract Developer: \_\_\_\_\_ Signature: \_\_\_\_\_

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## Appendix 2: Contract Management Responsibilities

A Contract Manager needs to have a proficient understanding of the contract provisions, the ability to communicate about contract obligations to all parties involved and maintain control over the contract performance.

The Contract Manager should monitor that contract requirements are satisfied, that goods or services are delivered in a timely manner, and that the financial interests of the Institution are protected.

### A. Contract Manager Responsibilities

The primary post-award responsibilities of the Contract Manager (from the requesting department) may include, but are not limited to:

- Serving as the point of contact for disseminating instructions regarding the SOW to the vendor.
- Receiving and responding to informal communications between an Institution and a vendor.
- Establishing scope of authority, clear lines of communication and reporting, and specific individuals who will interact directly with a vendor.
- Managing Institution assets used in contract performance.
- Providing access to Institution facilities, equipment, data, personnel, materials, and information.
- Identifying, documenting, and resolving minor disputes with a vendor in a timely manner.
- Implementing a quality control and assurance process.
- Maintaining appropriate documentation as required by the applicable retention guidelines.
- Documenting significant events including deficiencies, deliverables, and milestones.
- Monitoring the vendor's progress and performance to confirm goods or services conform to the contract requirements.
- Inspecting and approving the final goods or services received and providing documentation of acceptance.
- Monitoring budgets to verify sufficient funds are available for the duration of the contract.
- Monitoring default terms and conditions in the contract.
- Authorizing payments consistent with the contract documents and in accordance with Institutional operating policies and procedures.
- Performing the contract close-out responsibilities.

Contract Managers are **not** authorized to:

1. Instruct a vendor to start work prior to a fully executed contract and receipt of any required bonds and insurance or other requirements.
2. Alter the scope or terms of the contract without a formal contract amendment processed through the Procurement Staff.
3. Approve changes to the HUB Subcontracting Plan or approve substitutions or additions of subcontractors without written approval from the Procurement Staff.
4. Extend the term of the contract without execution of formal contract amendment processed through the Procurement Staff.

## **Appendix 2: Contract Management Responsibilities**

5. Allow the vendor to incur any obligations outside of the scope of the contract.

### **B. Procurement Staff Responsibilities**

Certain administrative tasks related to the management of the contract will be performed by designated Procurement Staff, typically the Contract Developer, who will advise and guide the Contract Manager throughout the term of the contract.

The primary post-award responsibilities of the Procurement Staff may include, but are not limited to:

- Providing guidance, as needed, to the Contract Manager throughout the Contract Management process.
- Consulting with OGC to address any legal concerns or issues.
- Receiving and responding to formal contract communications between the Institution and the vendor.
- Managing, approving, and documenting any changes to the contract.
- Documenting and assisting in resolving disputes with the vendor in a timely manner.
- Establishing control of correspondence, data, and reports.
- Coordinating with the Contract Manager to store key contract file documentation for the required retention period.
- Providing notices and exercising remedies, as appropriate, when a vendor's performance is deficient in consultation with OGC.
- Providing oversight of the Contract Close-out process to properly document the contract file.

**TSUS Procurement Guidelines Summary**  
For Purchase of Goods & Services

Contract / PO Amount	Procurement / Solicitation Method <sup>1</sup>	Delegated Authority	Posting <sup>2</sup> & Reporting <sup>3</sup> Requirements
<\$15,000	Open Market – One (1) written quote	Institution	Transparency & LBB* <small>*construction &amp; professional services &gt;\$14K</small>
\$15,000 - \$50,000	Informal Bid – three (3) written quotes	Institution	Transparency & LBB
\$50,000.01 - \$500,000	Formal Bid – ITB or RFP	Institution	Transparency & LBB
\$500,000.01 - \$1M	Formal Bid – ITB or RFP	Chancellor	Transparency & LBB
>\$1M	Formal Bid – ITB or RFP	BOR	Transparency & LBB

<p><b><sup>1</sup> Procurement / Solicitation Method Notes</b></p> <p>Alternate competitive methods include existing contracts from:</p> <ul style="list-style-type: none"> <li>• GPO</li> <li>• Co-op</li> <li>• State (DIR/TxMAS)</li> <li>• Interagency / Interlocal / Texas IHEs</li> </ul> <p>Alternate non-competitive methods: sole source, emergency, exempt purchases</p>	<p><b><sup>3</sup> LBB Reporting Requirement Notes</b></p> <ul style="list-style-type: none"> <li>• Construction &amp; Professional Services &gt; \$14K</li> <li>• All Purchases &gt; \$50K (report within 30 days)</li> <li>• IT Purchases &gt; \$1M</li> <li>• Non-Competitive &gt; \$1M (requires attestation letter)</li> <li>• Emergency &gt; \$1M (requires attestation letter)</li> <li>• All Purchases &gt; \$10M (requires attestation letter)</li> </ul> <p><i>*Refer to TSUS CMHB for information on entry prioritization</i></p> <p>LBB reportable contracts include those purchased through an eCommerce system (e.g. Marketplace, BearKatBuy, etc.) or through an existing contract (e.g. TxMAS, DIR, E&amp;I, etc.), leases, blanket orders, and revenue generating contracts</p> <p>Fee-for-service contracts (i.e., zero dollar contracts) should be reported when actual cumulative expenditures meet reporting requirements.</p> <p>Contracts with periodic payments and no completion date (e.g. telephones, utilities, etc.) should be reported to the LBB each fiscal year, as a new contract, if estimated spend for the year meets reporting requirements.</p> <p>IHEs are exempt from providing contract copies and solicitation documents to the LBB.</p> <p>IHEs are exempt from reporting consulting contracts.</p>
<p><b><sup>2</sup> Transparency Posting Notes</b></p> <p>Orders &lt;\$15K, using appropriated funds, must be posted within 30 days of approval</p> <p>Orders &gt;15K, regardless of funding source, must be posted within 10 days of approval.</p> <p><u>Exemptions:</u> contracts posted in the LBB contracts database, MOUs, interagency and interlocal contracts, contracts with no cost, and contracts &lt;\$15K fully paid for with non-appropriated funds</p> <p>Solicitation documents must be posted for the life of the contract.</p>	

## Office of Finance

### Contract Risk Assessment & Monitoring Plan

Govt. Code 2261.253(c)

(for contracts > \$500,000)

Vendor:

Contract Number:

Vendor Contact:

Name:

Phone:

Email:

Potential Contract Term (Base & Renewal):

Initial Contract Term End Date:

Office:

Office Contact:

### Risk Criteria

Low (L), Medium (M), High (H)

Amount of Agreement

- L= <\$1.0M
- M= \$1.0 - \$5.0M
- H= >\$5.0M
- L= Undetermined

Term of Agreement

- L= <5 years
- M= 5 - 10 years
- H= >10 years

Prepayment/Progress Payments

- L= No
- M= Yes

Personal, Health, Safety Data

- L= No
- M= Yes

Cyber/Data Security Issues

- L= NA or None
- M= Yes

Accessibility Issues

- L= NA or None
- M= Exception

Intellectual Property Issues

- L= NA
- M= Yes

Safety or Security Issues

- L= No
- M= Yes

HUB Subcontracting Plan

- L= No
- M= Yes

SOW Deliverables

- L= NA or None
- M= Specific
- H= Not Specific

*Note: If any single criteria is rated as "High" an Enhanced Monitoring Plan is required.*

Risk Level:

Monitoring Plan:

## Contract Monitoring Plan

Contract Developer:

Contract Manager:

### **Routine Monitoring Plan:**

- Financial Provisions & Delivery Schedules:
  - Review and approve invoices prior to payment
  - Verify receipt of deliverables (correct, undamaged, on time)
  - Verify cost charged is accurate
  - Verify HUB Progress Activity Report (PAR) is included with each invoice, if applicable
- Contract Manager will notify Contract Developer of any contract related issues that cannot be resolved.
- Contract Developer will issue a corrective action plan if vendor's performance is not satisfactory.
- Contract Developer will maintain a file of all key communications with the vendor related to contract performance.
- Contract Developer will issue any renewal letters prior to expiration of contract term.

### **Enhanced Monitoring Plan:**

The items below will be completed in addition to those required by the Routine Monitoring Plan:

- A contract kick-off call/meeting will be conducted to review contract requirements, risk assessment and contract monitoring plan.
- Quarterly review of contract:
  - Vendor will provide progress reports/updates to Contract Manager
  - Contract Developer will verify the Contract Manager is satisfied with performance
  - Contract Developer will verify total contract spend is within contract limits
- Contract Developer will conduct a contract closeout review at the conclusion of the contract.

Contract Specific Requirements:



## TSUS Administration Emergency Purchase Justification Form

(For Purchases over \$15,000)

An emergency purchase may be required due to the occurrence of unforeseen circumstances (e.g. storm, broken pipe, equipment failure, power loss, etc.). In these cases, following the normal procurement process may be impractical if a delay would create a hazard to life, health, safety, welfare, or property. It is the responsibility of the Office of Finance to document the basis of the emergency.

This form is designed to assist TSUS Administration staff in communicating the circumstances of the event, and risks associated with the procurement of the good or service, to the Office of Finance. Please answer the questions below as completely as possible. Additional pages may be attached if more space or additional documentation is needed. Any supporting documentation (quotes, research documentation, etc.) should be attached.

Emergency procurements should be made as competitively as possible under the circumstances. The emergency purchase of goods or services should not exceed the scope or duration of the emergency.

<b>GENERAL INFORMATION</b>			
Requestor Name:		Vendor Name:	
Today's Date:		Vendor Email:	
Estimated Cost:		Vendor Phone:	

1. Provide high level description of the goods or services to be procured:
  
  
  
  
  
  
  
  
  
  
2. **Basis of Emergency** – Briefly describe the circumstances that created the emergency; include the financial or operational damage / loss that will occur if the goods / services are not procured immediately:
  
  
  
  
  
  
  
  
  
  
3. **Supplier Selection** – Describe the reasoning and process used to select the vendor (attach quotes received from other sources, if applicable):

Appendix 5: Sample Emergency Purchase Justification Form

4. In order to provide the required goods / services, the vendor (check one):

**Requires a physical PO**

**Requires a verbal PO**

**Requires verbal approval from requesting department (no PO)**

*In the case where there is an immediate threat to The Texas State University System and a vendor is on hand or can quickly mobilize to perform needed repairs (or the emergency occurs after normal business hours), the requesting department can give the go ahead for the vendor to start work and submit an Emergency Purchase Justification Form to the Office of Finance for review as soon as possible.*

---

**CONFLICT OF INTEREST AND COMMITMENT STATEMENT**

I hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein. I am acting on my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with this vendor in return for favorable consideration of this request. I also certify that I am not participating in activities outside of my employment which interfere with my official duties and responsibilities.

Name: \_\_\_\_\_  
*(Requestor / Primary User)*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*(Note: Government Code Chapter 572, Subchapter C, Sec. 572.069 – CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.)*

---

**PROCUREMENT APPROVAL – TO BE COMPLETED BY THE OFFICE OF FINANCE**

Emergency Purchase Procurement Method Determination: \_\_\_\_ Approved \_\_\_\_ Not Approved

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
*(Director of Procurement)*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
*(Vice Chancellor and Chief Financial Officer)*



**CONFLICT OF INTEREST AND CONFLICT OF COMMITMENT STATEMENT**

I hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein. I am acting on my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with this vendor in return for favorable consideration of this request. I also certify that I am not participating in activities outside of my employment which interfere with my official duties and responsibilities.

Name: \_\_\_\_\_  
(Requestor / Primary User)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*(Note: Government Code Chapter 572, Subchapter C, Sec. 572.069 – CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.)*

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**PROCUREMENT APPROVAL – TO BE COMPLETED BY THE OFFICE OF FINANCE**

Determination: \_\_\_\_\_ Approved      \_\_\_\_\_ Not Approved

Justification:

\_\_\_\_\_ Proprietary (i.e. Proprietary, OEM, Unique Specification, Direct Publication)

\_\_\_\_\_ Best Value (i.e. Compatibility, Continuity, Best Value)

Rationale for determination/comments:

Signature: \_\_\_\_\_  
(Director of Procurement)

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Vice Chancellor and Chief Financial Officer)

Date: \_\_\_\_\_

## Appendix 7: Sample Group Purchasing Language

This Appendix provides an example of the type of language that should be included in every ITB or RFP issued by an Institution to assist other Texas IHE's by reducing duplicate solicitations.

**GROUP PURCHASING AUTHORITY:** Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Section 51.9335, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP.

Texas institutions of higher education (“**IHEs**”) routinely evaluate whether a contract resulting from a procurement conducted by another IHE might be suitable for use, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that consider the higher volumes and other expanded opportunities that could result from the eventual inclusion of other IHEs in the purchase contemplated by this RFP. Any purchases made by other IHEs based on this RFP will be the sole responsibility of those IHEs.

## Appendix 8: Sample Solicitation Intake Form

This Appendix provides a sample of an intake form that can be used by Procurement Staff to collect information about potential solicitations from department staff.

### REQUEST FOR PROPOSAL INTAKE FORM

#### Introduction / Submittal Instructions

The Request for Proposal (RFP) solicitation method is used when best value criteria, in addition to price and delivery, are considered in determining award. The RFP process generally takes 5-7 months to complete and requires the active participation of an evaluation team. The team, which is made up of end users and business experts, work together to develop a scope of work and a list of questions for vendors that will assist the evaluation team in the scoring process. Each team member will review qualified proposals and score them based on the RFP criteria.

#### **Submittal Instructions:**

The evaluation team lead for the project must review and complete this form in its entirety. **Completed forms and additional information requested below should be sent to the Purchasing Office by email.** Incomplete forms may be returned to the department.

Purchasing management will review and address immediate questions with the team lead and then assign a Purchasing Office Contract Developer to the project. The Contract Developer will organize and format all information provided into the RFP template and will work with the team to finalize the draft, schedule required team meetings, collect signed Non-Disclosure Agreements, and guide the evaluation team through the RFP process.

For more information about the RFP process, go to the appropriate section of the CMHB.

#### Evaluation Team Leader (Primary contact for Purchasing Contract Developer)

Name:		Department:	
Campus Phone:		Email Address:	

**Provide a brief description of the goods or services required:**

#### Department Approval (Must be senior to Evaluation Team Leader)

By signing below, the department certifies that the information submitted with this form has been reviewed, the department approves moving forward with the project and that appropriate funding is available.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(business officer, department chairman, or dean)

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Appendix 8: Sample Solicitation Intake Form

**Project Information Questionnaire**

Check the appropriate box for each question below:

**General Information:**

Is this a request for a good or service?  Good  Service

If service, will this be a one-time or ongoing service?  One-time  Ongoing

Do you anticipate that the award will result in a purchase order or contract?  PO  Contract  Unknown

Do you anticipate the need for a Pre-Proposal Conference?  Yes  No  Unknown  
(Typically held only if vendors would need to view a space, take measurements, etc. in order to respond to the RFP)

Do you have a copy of a current or former PO / contract for this good / service? If yes, submit the copy with this form.  Yes  No

Are there any existing contracts for the good/service or that relate to the good / service that the vendors need to be aware of?  Yes  No

Does the team anticipate the need for on-site demos / presentations by vendors?  Yes  No

Does the team anticipate making one award or multiple awards?  One  Multiple  Unknown

**Budgetary Information:**

Will the university pay for the good/service or receive a payment?  Pay  Receive Payment  Neither

What is the estimated total cost/payment (include any extensions/renewals)? \$ \_\_\_\_\_

How was the estimated total determined?  Current Cost / Received Payment  Budgeted Amt.  
 Polled Market  Guess

Will the good/service be funded by a Federally-assisted Department of Transportation Program?  Yes  No

**Project Timing and Length:**

When do the goods or services need to be in place / started by vendor? \_\_\_\_\_

Are there any special considerations for when (e.g., only in summer, normal business hours, etc.) work can be performed by vendor?  Yes  No

\*\*If yes, note special considerations in scope of work.

If ongoing service, what is the desired contract term (length)? \_\_\_\_\_

If one-time service, enter the date that work must be completed by: \_\_\_\_\_

## Appendix 8: Sample Solicitation Intake Form

### Additional Information Required for RFP Preparation

There are several items that the evaluation team is responsible for providing so the Purchasing Office Contract Developer can prepare the RFP bid document. The team lead will work with the proposed evaluation team members and other project stakeholders to address these items. **The following information must be submitted via email to the Purchasing Office along with this form in a separate Word document and be clearly identified as belonging to one of the seven headings listed below.** Failure to submit all required information will result in the return of the form to the department.

Contact the Purchasing Office if you have questions about the information required or to request a meeting with a member of the Purchasing Office to discuss your project prior to submitting this form.

#### 1. Background Information and Special Circumstances

Provide information about the project or the department that the vendors will need to know in order to determine if they want to respond to the RFP. Information provided must be relevant and concise. This is not the place to put scope of work (SOW) requirements. Examples of things to consider include:

- What is the purpose of the RFP? What is the team trying to accomplish?
- Current environment description: How do things work today, and do they need to be maintained or changed? What is the current volume of activity? Is it expected to hold or change?
- Are there special considerations involved? Any dependencies on other groups or projects?

#### 2. Detailed SOW

Provide the detailed SOW. The SOW is the most important part of any RFP and must be written and reviewed carefully. The SOW will become the basis of the resulting PO or contract and must contain everything the department wants the vendor to do on the project. It must be clear and concise. It must not use ambiguous or vague language open for interpretation by the reader. For example, don't say "Contractor will submit reports on a regular basis." Instead say "Contractor will provide reports to the university on a monthly basis." The SOW can have many sections, and the Purchasing Office Contract Developer will help the team organize the SOW into appropriate sections, which can include things like:

- Minimum or Preferred Qualifications (vendor location, certifications, years' experience, etc.)
- University Rights and/or Responsibilities (list any items the university would provide that the vendor doesn't need to worry about – parking spaces, electricity, drawings, etc.)
- Contractor Rights and/or Responsibilities (can include items the vendor must provide when performing the work, qualifications of vendor's staff, permits, etc.)
- Scope of Work (detailed description of everything the vendor is expected to do in the performance of the job including but not limited to description of job to be done, work hours, reporting, training, work locations, uniforms, etc.)

The team must consider the current contract, if any, and address items they wish were clearer or have had issues with.

#### 3. Evaluation (Best Value) Criteria

Provide the proposed evaluation criteria for scoring proposals and proposed weight of each (up to 100%).

Evaluation criteria are the criteria, including cost, that are used to decide which vendor is awarded the contract. Each criterion is given a weight, up to 100% in total. Cost and Vendor Experience are two required criteria. Cost is generally not less than 30% of the total. Additional functional and/or technical criteria can include but are not limited to:

## Appendix 8: Sample Solicitation Intake Form

- Quality of Goods/Service
- Implementation plan, operational plan, training plan, service plan, etc.
- Software or technical design, elements, etc.
- Staffing and Resources
- Proposed Products
- Strategic Direction
- Licensing and Maintenance

The team may find that coming up with evaluation criteria questions first (see item #4 below) can help determine what the criteria should be. If the questions the team wants to ask are related to certain topics, those topics can then become the evaluation criteria “buckets.”

### 4. Evaluation Criteria Questions

Provide a list of questions the evaluation team would like to ask the vendors. The team must note the evaluation criteria each question falls under.

The questions are important as they are what the evaluation team will use to decide which vendor is the best fit for the university. The team will score each answer provided to the questions using a predetermined scale. Yes / no type questions should be avoided, if possible. Vendors can be asked to describe how they do things, what their methodologies are, what problems they've encountered on similar projects and the resolution, etc. Questions should be arranged so that broad questions are asked first followed by specific questions. An example of two required questions under the Vendor Experience criteria is below. First vendors are asked about their overall experience and then their specific experience with the university.

- 1) Provide references from three (3) of Proposer's customers from the past five (5) years for services that are similar in scope, size, and complexity to the Services described in this RFP.

Provide the following information for each customer:

- Customer name and address;
  - Contact name with email address and phone number;
  - Time period in which work was performed;
  - Short description of work performed.
- 2) Has Proposer worked with the University in the past five (5) years? If “yes,” state department name, department contact, and provide a brief description of work performed.

The number of questions asked will vary with each RFP and each evaluation criteria. A general rule is to have 3-10 questions per evaluation criteria. It is important to note that all questions within a criterion are weighted the same. A criterion worth 20% that has two questions will make each question worth 10% of the overall RFP score. Another criterion worth 20% with 10 questions will make each question worth 2% of the overall RFP score. After the Purchasing Office Contract Developer reviews the questions submitted, they will suggest the addition, the removal, or general edits to the questions.

### 5. Evaluation Team

Provide the names, titles, and email addresses of the desired evaluation team members (three to five is recommended).

## Appendix 8: Sample Solicitation Intake Form

Evaluation team members must be able to dedicate time to the project. They will be required to review/edit RFP drafts, attend team meetings, be available to answer questions, be available to review and evaluate RFP submissions, etc. Evaluation team members will be required to sign a non-disclosure agreement and will not be able to discuss the project with non-team members. Evaluation team members must be employees of the university.

### 6. Known Vendors

Provide a list (2-3 preferred) of qualified companies the team believes can successfully complete the work described in the RFP. The list must include company name, contact name, and contact email address.

The Purchasing Office Contract Developer will publicly post the completed RFP on the Texas Comptroller's Electronic State Business Daily (ESBD) website so that any vendor may submit a response. In addition to posting on the ESBD website, the Contract Developer will email the opportunity to the vendors identified by the evaluation team.

### 7. Pricing Schedule Ideal

Provide information about the department's preferred/desired pricing schedule. Examples of things to consider include:

- How is the good / service paid for now? Is the same method desired for this project?
- What is the payment norm for the industry?
- Will there be any one-time or start-up costs in addition to ongoing costs?
- Should there be one lump sum payment for the project or multiple payments made over time?
- If multiple payments, when should the vendor be paid? After milestone or phase completions?
- If multiyear project, will payments vary across years?

The RFP's pricing schedule will be reviewed and scored by the Contract Developer; therefore the pricing schedule must be written in a way that leaves no room for interpretation by the Contract Developer during evaluation. The evaluation team will not see the submitted pricing information until after the scoring of the functional and/or technical criteria has been completed. The Contract Developer will create the pricing schedule based on information provided by the evaluation team. Team members will review and approve the pricing schedule prior to posting.

### **PURCHASING OFFICE USE ONLY**

Intake form and RFP information received:

Date: \_\_\_\_\_

Contract Developer assigned to RFP: \_\_\_\_\_

Date: \_\_\_\_\_

Notes:

## Appendix 9: Sample RFP Timeline

This Appendix provides examples of tasks in the RFP process and the timeframe it typically takes to complete the tasks. This is a representative example only, to assist with planning, as tasks and timing will vary with each solicitation.

Tasks & Subtasks	Anticipated Date	Actual Date
<b>Draft RFP (30 + days)</b>		
<ul style="list-style-type: none"> <li>Buyer: Review information submitted by customer, do initial research (3-5 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: Discuss project with customer, determine appropriateness of RFP (3-5 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer &amp; Customer: Determine team members, SOW development review (7-10 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer &amp; Team: Continue to work on RFP draft, review team responsibilities &amp; requirements (14 – 30 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: Submit to mgmt for review, revise as needed (7-10 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: Obtain approval from Team and VC &amp; CFO to post RFP (3-5 days)</li> </ul>		
<b>Issue RFP (posted for 30 days)</b>		
Pre-bid meeting (~ 7-10 days after posting)		
Question deadline (~11-12 days after posting)		
<ul style="list-style-type: none"> <li>Buyer: admin review, compile and distribute (1-2 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Team: review and answer (3-4 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: admin review and format (2-3 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: post addenda and email contacts (1 day)</li> </ul>		
<b>RFP submittal deadline</b>		
<ul style="list-style-type: none"> <li>Buyer: admin review and distribute to team (3-5 days)</li> </ul>		
<b>Evaluation (up to 30 days)</b>		
<ul style="list-style-type: none"> <li>Team: review and score (10-14 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: compile and review (1-2 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer &amp; Team: review results, determine next step (5-7 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: review award recommendation w/mgmt (3-5 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: notify suppliers (1-2 days)</li> </ul>		
<b>Short List – Optional Process (30 + days)</b>		
<ul style="list-style-type: none"> <li>Team: determine agenda and requirements (7-10 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: notify suppliers, compile &amp; issue agenda / instructions (2-3 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Vendors: prepare for presentations (14-21 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer &amp; Team: attend &amp; evaluate short-list presentations (1-3 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: compile and distribute results (1 day)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer &amp; Team: review results, recommend award (1-2 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: review award recommendation w/mgmt (3-5 days)</li> </ul>		
<ul style="list-style-type: none"> <li>Buyer: issue award &amp; regret notices (1 day)</li> </ul>		
<b>Contract Negotiation (30 + days)</b>		
<ul style="list-style-type: none"> <li>Buyer, Team, Vendor negotiate terms and finalize contract (30-90 days)</li> </ul>		

**TSUS ADMINISTRATION  
OFFICE OF FINANCE**

**PROPOSAL RECEIPT LOG**

RFP No. \_\_\_\_\_

Due Date & Time: \_\_\_\_\_

Contract Developer: \_\_\_\_\_

	<b>Name of Company</b>	<b>Delivery Method &amp; # of packages</b>	<b>Date and Time Received</b>
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			



# Administrative Review Checklist

RFP #758-XX-XXXXX

RFP Due Date | Time: X/X/20XX 2:30PM

Supplier Name: \_\_\_\_\_

RFP response received on time? Yes  No

HSP Submitted? Yes  No  N/A

HSP Approved? Yes  No

Notes:

Is firm a TX HUB? Yes  No

Self-Performing? Yes  No

[add notes re: items to follow up on, mandatory pre-bid attendance, etc.]

## Review Items

### Required Submittals

### Notes / Issues / Questions

- Section 6 – Pricing & Delivery Schedule
- Section 7 - Execution of Offer – complete and signed
- Section 7.5 – Acknowledgement of Addenda
- Section 8 – Proposer’s Questionnaire
- Section 9 – Additional Questions
- Section 10 – Statement of Agmt **or** redlined Agmt
- Insert additional items if needed**
- Paper Submittal – **X** copies
- Electronic Submittal – complete and accessible

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Optional Submittals

### Notes / Issues / Questions

- Cover Page / TOC / Executive Summary
- Proposed contracts / forms / etc.
- Supplemental Information

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Determination on Responsiveness

- Yes, submittal **is** responsive       No, submittal **is not** responsive

**The Texas State University System Administration  
Non-Disclosure / Conflict of Interest Statement**

I hereby certify and affirm that the following statements are true and correct. Furthermore, I understand and agree to be bound by the commitments contained herein. I am, at the request of The Texas State University System ("TSUS"), willingly participating as an evaluation team member to evaluate proposals received in response to Request for Proposal (RFP) # [indicate solicitation number and title].

I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any responses to the RFP identified herein or involved with any of the respondent(s) to the RFP identified herein. I have not in the past nor will I receive in the future any economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in return for favorable consideration by me of the RFP identified herein. I do not have any other conflict of interest that may hinder my ability to act in an impartial manner as an evaluator of the potential respondents or RFP described herein. I have no preconceived position on the relative merits of any of the potential respondents, nor have I established a personal preference or position on the worth of standing of any potential or actual respondent participating in this RFP.

By my signature below, I agree, to the extent permitted by law:

- To not discuss any details regarding the solicitation with parties outside the evaluation team or the proposed method of evaluation of any response received during the period of the solicitation unless such discussions are known, conducted or coordinated by the designated TSUS point-of-contact for the solicitation;
- To not disclose, or otherwise divulge to anyone information pertaining to any part of the RFP contents at any time during the draft or solicitation process;
- To not disclose or otherwise divulge any information pertaining to the status or ranking of any submitted responses to anyone other than the designated TSUS point-of-contact or other evaluation team members at any time during the solicitation or evaluation process that occurs prior to execution of a contract. I understand the definition of the terms "disclose or otherwise divulge" include, but are not limited to, reproduction of any part or portion of any responses or removal of same from designated areas without prior authorization from the designated TSUS point-of-contact; and,
- To direct all inquiries from outside sources pertaining to this solicitation to the designated TSUS point-of-contact.

As an employee of TSUS Administration or one of the TSUS Component Institutions, I will adhere to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act, Chapter 552, Texas Government Code. I agree to perform any and all evaluations of submitted responses in an unbiased manner to the best of my ability, and with the best interest of the State of Texas and TSUS paramount in all decisions.

---

(Signature)

(Printed Name)

(Date)

*(Note: Government Code Chapter 572, Subchapter C, Sec. 572.069 – CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.)*

## Evaluation Team Scoring Instructions

Members of the evaluation team will enter evaluation scores into an Excel spreadsheet labeled “Evaluator Score Sheet.” The Evaluator Score Sheet indicates the questions / sections in the vendor submittals the evaluation team is responsible for scoring. Instructions are noted at the top of the Evaluator Score Sheet along with the scoring scale. Evaluators will use the scoring scale to determine the most appropriate score to give each answer. Scores must be between 0 and 5 and do not have to be whole numbers (i.e. 3.25, 3.5, 3.75, etc.). As the scoring is completed, the numbers entered by the evaluator (raw scores) will be tabulated at the bottom of the spreadsheet.

- Evaluators may choose to evaluate all responses question by question or review one complete response at a time.
- As evaluators scroll through the spreadsheet the names of the vendors should always be visible and will help ensure the scores are entered in the correct columns.
- Be consistent with scoring values (a score of “4” on one response is equal to a “4” on another).
- Information contained in, and related to, the submittals must be kept confidential and should not be shared with anyone outside the evaluation team. Evaluators must protect both paper and electronic copies.
- When the final evaluation results are reviewed, evaluators will not be identified by name. This allows scores to remain confidential within the evaluation team if members do not want their scores known to other team members.
- Non-Disclosure / Conflict of Interest statements are in effect until any resulting contracts are fully executed.
- In evaluating proposals, exercise independent judgement and score based on what is in the submittal, including the listed evaluation criteria, and not any other outside influence. Scores should not be shared with anyone other than the procurement official.

When all scoring is complete, save the file and return it via email to the procurement official: **INSERT BUYER NAME (insert buyer email)**. After the Evaluator Score Sheets are received, the procurement official will review and evaluate the pricing for all vendors that have met the minimum functional score. The pricing score will be added to the functional scores provided by the evaluation team and the average total score will be used to rank the suppliers. The results will be shared with the evaluation team members for review and concurrence prior to award.

# Appendix 14: Sample Proposal Score Sheet

## RFX #758-XX-XXXXX INSERT NAME

**SCORE SCALE**

**EVALUATOR INSTRUCTIONS**

0	Response is missing or inadequate	1) Place your name in the "Evaluator" cell B12. 2) Assign a score of 0-5 for each item, in yellow shaded cells based on the SCORESCALE. 3) When done, save Excel file and return via email to the Procurement official.
1	<b>Extremely Poor</b> - Response <u>doesn't meet any</u> requirements / needs	
2	<b>Poor</b> - Response <u>meets some but not all</u> requirements/ needs	
3	<b>Good</b> - Response satisfactorily <u>meets all</u> requirements / needs	
4	<b>Very Good</b> - Response <u>exceeds some</u> requirements/ needs	
5	<b>Excellent</b> - Response <u>exceeds all</u> requirements / needs	

Evaluator:

	INSERT NAME								
--	----------------	----------------	----------------	----------------	----------------	----------------	----------------	----------------	----------------

		V1	V2	V3	V4	V5	V6	V7	V8	V9
<b>A - Vendor Experience</b>		<b>Evaluator Raw Scores</b>								
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
<b>B - Insert Criteria Name</b>		<b>Evaluator Raw Scores</b>								
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
<b>C - Insert Criteria Name</b>		<b>Evaluator Raw Scores</b>								
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
<b>D - Insert Criteria Name</b>		<b>Evaluator Raw Scores</b>								
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									

## Appendix 14: Sample Proposal Score Sheet

#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									

E - Insert Criteria Name		Evaluator Raw Scores								
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									
#	Insert question.									

Raw Scores - Subtotals										
Evaluation Criteria & Maximum Potential Raw Score	V1	V2	V3	V4	V5	V6	V7	V8	V9	
A - Vendor Experience	40	0	0	0	0	0	0	0	0	0
B - Insert Criteria	40	0	0	0	0	0	0	0	0	0
C - Insert Criteria	40	0	0	0	0	0	0	0	0	0
D - Insert Criteria	40	0	0	0	0	0	0	0	0	0
E - Insert Criteria	40	0	0	0	0	0	0	0	0	0

Weighted Scores - Max of XX										
Evaluation Criteria & RFP Weight (%)	V1	V2	V3	V4	V5	V6	V7	V8	V9	
A - Vendor Experience	20	0	0	0	0	0	0	0	0	0
B - Insert Criteria	15	0	0	0	0	0	0	0	0	0
C - Insert Criteria	30	0	0	0	0	0	0	0	0	0
D - Insert Criteria	5	0	0	0	0	0	0	0	0	0
E - Insert Criteria	10	0	0	0	0	0	0	0	0	0
Non Price / Functional Score:	0	0	0	0	0	0	0	0	0	0

**\*\*A minimum Functional Score of XX is needed for Proposer to be considered satisfactory / able to perform work.**

**Delete these instructions prior to sending the score sheet to team.**

- 1) **Delete** all text in **RED** with solicitation specific information then change text color to black.
- 2) **Add** and delete rows as needed depending on the number of questions in each criterion (delete all but 1 if just one lump score will be used).
- 3) **Calculate** the "maximum potential raw score" found in the "Raw Scores - Subtotals" table, multiply the total number of questions in each evaluation criteria by 5. **Example:** A criterion with 4 questions will have a raw score potential of 20. If the criteria will be scored as 1 lump score, use a raw score potential of 5.
- 4) Double check all formulas are correct: Raw scores should be a sum of the correct fields. Weighted scores should be the raw score earned / raw score possible multiplied by the weight of that criterion. Verify with test numbers.
- 5) After bid is opened insert the vendor names in cells D10 – L10, adding or deleting columns as needed for the number of proposers. Adjust text size down or abbreviate names as needed to display correctly.
- 6) **Optional:** Lock down all cells except for B12 (for evaluator name) and the yellow cells where scores will be entered. Hide "Weighted Scores" box.

## Appendix 15: Sample Award & Regret Letters

This Appendix contains examples of wording that can be used by Institutions when notifying solicitation respondents if they are being provided a conditional award of the project (award letter) or not (regret letter).

### A. Award Letter Sample

Dear \_\_\_\_\_:

*After comprehensive review and evaluation of the proposals qualified for The Texas State University System (the System) RFP 758-XX-XXXXX \_\_\_\_\_ I am pleased to inform you that your firm has been selected for the final step in the solicitation process.*

*Before your firm may begin providing the goods and/or services contemplated under the RFP, \_\_\_\_\_ and The System must enter into an agreement setting forth the respective rights and obligations of both parties.*

*Please provide the contact name and email address for the individual at your firm who will coordinate the agreement details. Key items that need to be discussed include:*

- *Insurance requirements*
- *Assignment and subcontracting*
- *EIR accessibility requirements*

*The System reserves the right to evaluate proposals from other entities and award the contract to a different firm, if \_\_\_\_\_ and The System are not able to reach an agreement.*

*Sincerely,*

### B. Regret Letter Sample

Dear \_\_\_\_\_:

*Thank you for your response to The Texas State University System's (The System) RFP 758-XX-XXXXX \_\_\_\_\_. After comprehensive review and evaluation of the qualified proposals, I regret to inform you that your firm has not been selected at this time.*

*The System is currently negotiating and attempting to finalize its contract with the selected vendor. In the event The System is unable to reach an agreement with that vendor, The System may reevaluate your proposal and consider awarding the contract to your firm.*

*We appreciate your interest in doing business with The System and encourage your firm to continue to pursue business with The System in response to future bid opportunities.*

*Sincerely,*

## Appendix 16: Contract Terms

This Appendix contains examples of the types of contract terms, clauses, and affirmations that should be included in contracts used by Institutions when applicable. The information provided in this Appendix is current as of the Handbook publication date but could change with changes to Texas law and revisions by TSUS management. Specific contract language associated with the terms and provisions mentioned in this Appendix are provided in preapproved OGC templates available from TSUS Administration. If preapproved OGC templates and contract language will not be used, or if the vendor has modified the template language, Institutions may send the contract to OGC for review prior to contract execution.

The essential provisions required for the formation of a legally binding contract:

- Identification of the contracting parties
- Scope of work
- Financial provisions (e.g. price and payment terms)
- Contract term and termination provisions

By nature, these terms are transaction specific and therefore, the text will vary for each contract.

Recommended provisions are provisions that are typically included in most contracts but are not required by law. Recommended provisions include, but are not limited to, the following:

- Administrative provisions,
- Provisions that allocate risk and specify remedies,
- Provisions that relate to the identification and safeguarding of confidential information, and
- Provisions that relate to rights and ownership of work product and intellectual property.

### A. Required Contract Terms

The following is a list of provisions required by Texas law or TSUS that must be included in contracts for goods and services, where applicable:

1. Antitrust Affirmation
2. Assignment \*\*
3. Buy Texas Affirmation \*\*
4. Child Support Obligation Affirmation
5. Computer Equipment Recycling Program \*\*
6. Contracting Information Responsibilities \*\*
7. Cybersecurity Training
8. Dealings with Public Servants Affirmation
9. Debts and Delinquencies Affirmation
10. Disaster Recovery Plan \*\*
11. Disclosure of Prior State Employment \*\*
12. Dispute Resolution (general) \*\*
13. Dispute Resolution (engineering, architectural, or construction services) \*\*
14. Entities that Boycott Israel
15. E-Verify Program \*\*
16. Excess Obligations Prohibited \*\*
17. Excluded Parties \*\*

## Appendix 16: Contract Terms

18. Executive Head of a State Agency Affirmation
19. False Statements \*\*
20. Financial Participation Prohibited Affirmation
21. Foreign Terrorist Organizations
22. Former Agency Employees \*\*
23. Governing Law and Venue
24. Human Trafficking Prohibition
25. Indemnification (general) \*\*
26. Indemnification (engineering or architectural services) \*\*
27. Indemnification (IP) \*\*
28. No Conflicts of Interest
29. Prior Disaster Relief Contract Violation
30. Prompt Payment
31. Public Information Act
32. Signature Authority
33. Sovereign Immunity
34. Standard of Care for Architectural and Engineering Contractors \*\*
35. State Auditor's Right to Audit
36. Suspension and Debarment
37. Taxes
38. Technology Access Clause \*\*
39. Television Equipment Recycling Program \*\*
40. Terms and Conditions Attached to Response \*\*
41. Texas Bidder Affirmation \*\*

*\*\* These provisions have exceptions and may not always be required. Institutions should seek guidance from OGC, IT Security and/or the TSUS Office of Finance, as appropriate, to help determine applicability.*

### B. Recommended Contract Terms

The following is a list of provisions / clauses not required by Texas law that should be included in applicable contracts for goods and services:

1. Agencies Right to Audit
2. Americans with Disabilities Act
3. Assignment (for goods)
4. Binding Effect
5. Change in Law and Compliance with Laws
6. Contract Term
7. Damage to Government Property
8. Disclosure of Interested Parties
9. Discounts
10. Drug-Free Workplace
11. Electrical Items
12. Equal Employment Opportunity
13. Federal Occupational Safety and Health Law
14. Force Majeure
15. Immigration
16. Independent Contractor
17. Legal and Regulatory Actions

## Appendix 16: Contract Terms

18. License Grant (simple)
19. Limitation on Authority
20. Lobbying Prohibition
21. Media Releases
22. No Fault Termination
23. No Felony Criminal Convictions
24. No Implied Wavier
25. No Quantity Guarantees
26. No Third-Party Beneficiaries
27. Permits, Certifications, and Licenses
28. Property Rights
29. Records Retention
30. Refund
31. Restricted Employment for Certain State Personnel
32. Secure Erase of Hard Disk Capability
33. Severability
34. Subcontractors
35. Survival
36. Termination for Convenience
37. Trademark License
38. Trademark Ownership
39. Unfair Business Practices
40. Use of State Property
41. Waiver of Consequential Damages

## Appendix 17: Sample Electronic File Storage Plan

Folder Name:	Purpose:	Subfolders / Descriptions:	
<b>1 - Initial Docs</b>	This folder should contain any documents given to start the process (intake form, emails with information, vendor lists, old contracts, old RFPs, etc.)		
<b>2 - Drafts</b>	This folder should contain any draft documents the buyer has created or revised. Drafts should be dated to track versions. Should use for drafts of addendums as well as main RFP documents. Once a final version is ready, move a <u>copy</u> of the last draft to the "posted docs" folder and rename it.	<b>Old Drafts (optional)</b>	Can create subfolder if too many drafts are in the main folder.
<b>3 - Posting</b>	This folder should contain any information related to the public posting of the RFP, including associated emails.	<b>Approval to Post</b>	PDF of emails from team lead and mgmt. that RFP is approved for posting
		<b>Posted Docs</b>	Any file posted on ESBD while RFP is open must be in this folder. If the actual HSP forms were not posted (used a link instead) make sure to download a current version and save a copy here.
		<b>TSUS website Combined PDF</b>	This folder should contain the original PDF file sent to webteam for upload to the website. If addendums are posted, append the file and rename it before sending to webteam for upload. File name format: RFP 758-XX-XXXXX RFP name - close date x.xx.xx
<b>Proof of Posting &amp; Notifications</b>	PDF of ESBD posting notification email and print out of ESBD solicitation. PDF copies of emails sent to team and potential proposers.		
<b>4 - Questions Submitted by Deadline</b>	This folder should contain PDF copies of emails with questions sent to buyer from potential respondents prior to question deadline.		
<b>5 - NDAs</b>	This folder should contain electronic version of the signed NDAs from the team and PDF copy of written instruction given re: NDA/COI.		
<b>6 - Intake Docs &amp; Electronic Proposals</b>	This folder should contain electronic copies of proposals and documents used during the intake process.	<b>RFP Administrative Review</b>	Scanned PDF copies of the completed proposal receipt log and the completed RFP Administrative Review Checklist
		<b>Vendor Submissions</b>	Label subfolders with the name of each Proposer to store documents they submitted
<b>7 - Evaluation</b>	This folder should contain the final version of the bid tab, the blank evaluator score sheet, PDF copy of mgmt. approval to award	<b>Bid Tab</b>	Bid Tab (contains pricing, evaluator score summary and final ranking)
		<b>Evaluator Score Sheets</b>	PDF copy of instructions sent to team re: evaluation. Scanned copy of each team member's score sheet. Ideally, name files as: "evaluator X - RFP number"
<b>8 - Award Notification</b>	This folder should contain copies of award and regret notices sent to proposers. PDF of emails should be named "Award notice - Proposer name and date sent" and the same for regret letters.		
<b>9 - Contract</b>	This folder should contain contract documents.	<b>Agreement Drafts</b>	Draft versions of agreement
		<b>Executed Agmt &amp; Related Docs</b>	Fully executed agreement copy & applicable contract docs (SAO Nepotism Form, Form 1295, insurance, risk assessment & monitoring plan, contract launch brief, related emails, etc.)
<b>Templates</b>	This folder should contain current versions of templates used in the RFP process that will be starting point for the solicitation: RFP/Sample agreement, addenda, NDA, proposal receipt log, RFP Administrative review form, evaluator score sheet, bid tab, various email templates (notifications, award/regret, etc.)		