



# Texas Alcoholic Beverage Commission Procurement and Contract Management Handbook

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Maintained by the Office of General Counsel

## Introduction

The TABC Procurement and Contract Management Handbook (“Handbook”), required by [Texas Government Code § 2261.256\(b\)](#), documents procurement and contract management policies consistent with guidance in the State of Texas [Procurement and Contract Management Guide](#) (the “PCMG”) published by the Texas Comptroller of Public Accounts (“CPA”). Activities described herein will occur as applicable to each specific contract. This Handbook provides global principals for procurement and contract management that are further defined in processes and procedures adopted at the division level. There may be policies and/or procedures found in the PCMG that are not included in this Handbook; it is a supplement to the PCMG and related laws, rules, and regulations. Contract developers are strongly encouraged to consult the PCMG for additional assistance, information, and requirements. Questions concerning interpretation of any of those items should be directed to the TABC Office of General Counsel (“OGC”).

In general, this Handbook applies to the management of contracts to which TABC is a party, including, but not limited to:

- contracts for the purchase of goods and services;
- professional services contracts including consulting services;
- sole source, proprietary, and emergency purchase contracts;
- purchase orders; and
- statewide term contracts (DIR or TXMAS).

This Handbook does not apply to real property transactions, grant agreements, Memoranda of Understanding, Memoranda of Agreement, or Letter Agreements.

All contracts should be initiated using the Contract Drafting Request Form located [here](#).

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**Note:** This Handbook was updated with changes through the 88<sup>th</sup> Texas Legislative Session, based on the CPA’s Procurement and Contract Management Guide located [here](#). Page references are for the convenience of staff, and may change if additional revisions are made by the CPA.

## Ethics and Professional Standards

State of Texas policy dictates that a state officer or employee may not have a direct or indirect interest, financial or otherwise; engage in a business transaction or professional activity; or incur an obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

### Prohibited Financial Interest

[Texas Gov't Code § 2261.252\(b\)\(1\)-\(3\)](#) prohibits a state agency from entering into a contract for the purchase of goods or services from a private vendor with whom any of the following agency employees or officials have a financial interest:

- a commissioner;
- the executive director;
- the general counsel;
- the chief procurement officer;
- the procurement director for the agency; or
- a family member of an employee or official described above, within the second degree by affinity or consanguinity.

A "financial interest" is defined at [Texas Gov't Code § 2261.252\(c\)](#) as a state agency employee or official who:

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

### Prohibited Employment

Per [Texas Gov't Code § 572.069](#), 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.

## Prohibited Involvement in the Contract Process

By statute, any employee involved in the development or approval of a contract in which they have an actual or potential conflict of interest must disclose it and must be removed from involvement in the contract process. All staff involved in the process, including approvers, purchasers, and contract staff must sign a conflict of interest certification statement (PCMG, Page 90).

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# The Life Cycle of a Contract

## Procurement

Procurement involves procurement planning, method determination, solicitation, and vendor selection. This Handbook provides general guidance in each of these areas. However, agency contract developers must also follow the CPA's guidance and specified procedures when using the CAPPs system for purchasing.

### Planning

In planning for a procurement, the agency must first identify a need for the goods or services. The needs assessment may involve market research, a review of historical spending, the use of benchmarking, or issuing a Request for Information to the vendor community.

### Determining the Procurement Method

After it is established that a need exists, the agency must determine the appropriate procurement method, based on factors such as the type of purchase, pricing, complexity of the transaction, and agency authority.

Most purchases made by the agency will fall within the authority of the Comptroller's Statewide Purchasing Division ("SPD") or the Department of Information Resources ("DIR"). Purchasers should follow the guidance in the PCMG (Page 17) when determining the appropriate procurement method and selecting a vendor.

For the purchase of services delegated to the agency, procurement staff should consult with the OGC prior to selecting the procurement method.

### Solicitation Process

Depending on the procurement method selected, a solicitation may be required. If the selected method does not require issuing a solicitation, then the contract developer will proceed to vendor selection (PCMG Page 74). For purchases using informal bidding ("IFB"), refer to the PCMG (Page 33).

If IFB is the selected procurement method, the contract developer is responsible for drafting the notification and solicitation. For other, more formal solicitations, the contract developer will work with the OGC and appropriate staff of affected divisions to draft the solicitation.

The solicitation must contain all information necessary for vendors to be able to respond to the procurement opportunity. The contents of a solicitation will vary based on what is being procured, the complexity of the transaction, and the identified risks associated with the procurement, if any.

Each procurement should include a schedule of events, minimum qualifications, a scope of work with an overview of the work to be performed, and any specifications. Specifications can be performance based, focusing on outcomes rather than prescriptive methods; or design-based, focusing on how the vendor must perform the services. Sometimes mixed specifications are appropriate.

### Required Approvals

Solicitations must be approved by the Business Services Division (“BSD”), the affected Division Director, and the OGC. If a solicitation is above certain monetary thresholds, BSD is responsible for submitting the solicitation to the CPA’s Contract Advisory Team (“CAT”), the DIR’s Quality Assurance Team (“QAT”) or the SPD for further review, as detailed by the PCMG (Page 66).

Additional outside approvals may be required, depending on the type of solicitation. Audit, consulting, and Information Technology (“IT”) contracts all require outside approvals and/or delegations. Please consult the PCMG (Page 87) and the OGC for guidance in obtaining these approvals.

Emergency procurements require the prior approval of the deputy executive director.

### Advertisement

Procurements with an expected contract value over \$25,000 must be posted to the Electronic State Business Daily (“ESBD”) regardless of the procurement method or source of funds used for the contract.

The estimated (or anticipated) contract value means the “estimated dollar amount that an agency may be obligated to pay during the life of the contract and all executed and proposed amendments, extensions, and renewals.”

Full solicitation packages must be posted for a minimum of 14 calendar days. If the entire solicitation package is not posted to the ESBD, a notice that includes all the information necessary to make a successful bid must be posted for a minimum of 21 calendar days.

These are *minimum* posting periods and longer posting periods may be appropriate for complex solicitations. Best practice is to advertise a solicitation for 30 days or longer when time permits.

All original bidders at the time of the original solicitation posting must be notified if addenda are published; and a list of respondents submitting a proposal under a Request for Proposals must be maintained.

Additional advertisement in the Texas Register is required for consulting contracts. For details on this requirement please see the PCMG (Page 41). In addition, IT commodity items over \$1mm that utilize a DIR Cooperative Contract may require additional effort in advertising (PCMG Page 37).

## Responses

Solicitations must clearly indicate submission requirements such as response content, format, and delivery instructions. If applicable, responses must also include a HUB subcontracting plan and Form 1295 Certificate of Interested Parties (PCMG Page 90 and Appendix 4).

Responses must be received on or before the due date listed in the solicitation. BSD must time-stamp responses when received and follow documented internal procedures for receiving and controlling the responses.

## Vendor Selection

### Administrative Review

After responses are opened, the contract developer must determine whether the submissions are responsive to the solicitation. This review is conducted on a pass/fail basis. The contract developer may consult with OGC to determine whether a response is responsive but may not consult with anyone on the evaluation team.

### Evaluation Committee

The contract developer works with the requesting division to determine who should serve on the evaluation committee. Members should include subject matter experts and stakeholders. Evaluation committees of 3 to 5 people are ideal. The contract developer and legal counsel will be at committee meetings but should not be scoring members.

Each member of the evaluation committee must sign a non-disclosure agreement prior to receiving any responses. If the value of the solicitation exceeds \$1 million, members must also submit a Nepotism Disclosure Statement for Purchasing Personnel, provided by the State Auditor's Office.

### Evaluation Bid Tab

If responses to an IFB are to be evaluated solely on objective criteria, the evaluation may be conducted entirely by the contract developer, and no evaluation committee is needed. The developer will then issue a purchase order ("PO") to the winning bidder.

### Evaluation Matrix

For more complex solicitations an evaluation matrix will be used by each member of the evaluation committee. Each member submits the scores to the contract developer at a designated time for tabulation. Committee members are not allowed to consult with each other during the scoring period. They may, however, ask questions of the contract developer or legal counsel.

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## Contract Formation and Award

The fourth step of the procurement process is to enter into a legally enforceable contract. The contract between the agency and the selected vendor may be in the form of a PO or a formal, signed agreement. If a signed agreement is used, the PO serves to document the encumbrance of agency funds for the transaction.

### Negotiations

If the procurement method allows negotiations, the agency may choose to negotiate with one or more respondents. Negotiation should be by an employee or a team of employees familiar with the contract and the negotiation strategies. For complex negotiations, the team should include the contract manager and contract developer, as well as legal counsel.

## Contract Formation

### *Legal Elements of a Contract*

- Offer
- Acceptance
- Legal Purpose
- Consideration
- Certainty of Subject Matter
- Competent Parties

### *Contract Terms*

The OGC maintains contract templates that include each applicable required and recommended clause. In consultation with the contract developer and the contract manager, the OGC is responsible for drafting the initial contract for internal agency approval. The division requesting the contract is required to fill out a Drafting Request Form and submit it to BSD at the time a requisition is entered.

### *Internal Routing and Approvals Required*

After the requisition is approved in CAPPs, either the PO is issued; or the formal contract is drafted and routed through DocuSign®.

POs must be approved in CAPPs, and the CFO is authorized to bind the agency after the PO is approved.

After a formal contract is approved for execution, designated administrative staff will upload it to DocuSign® for execution in the order below, with each signoff indicating full approval of the document:

- 1) the CFO or deputy CFO initials;
- 2) The requesting division director will initial;
- 3) if an IT component is involved, CIO or deputy CIO approval is required;



- 4) the general counsel, deputy general counsel, or a designee will initial;
- 5) at this point, all contracts – other than those with the federal government – are sent to the vendor's authorized representative for first signature, after which;
- 6) contracts under \$250,000 may be executed by the deputy executive director;
- 7) contracts over \$250,000 are executed by the executive director unless delegated at the executive director's request to the deputy executive director; and
- 8) contracts of \$1,000,000 or more may be executed only by the executive director, pursuant to such authority delegated by the commission.

If any of the signoffs above would be duplicative, i.e., if there is an IT component and ITD is the requesting division, only one division approval is required.

## Award

Prior to award, the contract developer must verify that no further outside approvals, certifications, or authorities are required. Transactions requiring the use of best value standards must include a written certification from the contract developer indicating that the requirements of this handbook and the PCMG (Page 88) were observed.

After the contract is awarded, a notification of award must be posted to the ESBD within two business days, if the contract is expected to exceed \$25,000. In the event the action resulting from the ESBD posting is not a contract award, a notice of non-award must be posted within two business days.

## Vendor Compliance Verifications and Monitoring

The contract developer is responsible for performing all compliance checks required by the PCMG (Page 90), including a Debarment check; SAM check; Iran, Sudan, and Foreign Terrorist check; Boycott Israel check; warrant/payment hold check; and Franchise Tax check.

The PCMG (Page 111) requires the contract manager to monitor the HUB Subcontracting Plan throughout the term of the Contract, with certain changes requiring an amendment to the contract.

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## Contract Management

After an award is made, the contract developer will transition the procurement to the contract manager, along with all relevant purchasing documents.

The contract manager is now responsible for ensuring that contract requirements are satisfied, that the goods and services are delivered in a timely manner, and that the financial interests of the agency are protected. The level of contract administration should be consistent with the complexity and level of risk of the contract, the contract term, and the dollar value.

The contract manager is responsible for determining whether a contract is high risk and requires additional monitoring activities.

### Monitoring Methods

Monitoring the contractor's performance is a key function of proper contract administration. The contract manager will use QAP tools in Appendices 7 and 26 of the [PCMG](#) as an aid in determining which monitoring method is appropriate. Small dollar value or less complex contracts normally require little, if any, monitoring. The contract manager should employ the following activities for each contract, as appropriate, including:

- desk reviews – examination of reports submitted by the contractor;
- site visits – more complex contracts may require site visits in addition to desk reviews;
- monitoring by third parties – independent oversight may be required for construction projects or highly technical work of any kind;
- enhanced contract monitoring – is required for all contracts over \$1mm and those otherwise considered high risk, as determined by the contract manager. The contract manager is required to notify the commission of any serious issues or risks associated with contracts subject to enhanced monitoring.

Under [34 TAC Rule 20.166](#), additional monitoring may be required for certain contracts.

### Inspection, Testing, and Acceptance

Agencies must inspect and evaluate all goods or services at the time of receipt to determine whether they comply with contract requirements. All goods are subject to inspection and testing prior to acceptance.

Contract managers should refer to the PCMG (Page 101) for shipping and receiving instructions and troubleshooting.

### Invoice Review and Payment

Accounts Payable will send an email for invoice approval to the contract manager who will review and approve each invoice for payment for goods and services under their assigned contracts.

If a contract is a simple PO or Interagency Transfer voucher, these payments may be approved by BSD staff. Purchases using a commercial charge card must follow the procedures implemented by BSD.

## Change Control

If a change to a contract is necessary, , the contract manager must first determine if the change is consistent with the original method of procurement. If the change is allowed by that method, the contract manager or designee will enter a change order requisition request to CAPPs and, if a formal amendment is required, will notify the OGC using a drafting request form.

Contract managers should follow the PCMG (Page 59) and consult with the OGC in determining the type of amendment needed.

Formal amendments to a contract will be drafted by the OGC and will require the same approvals in DocuSign® as required for the original contract.

## Dispute Resolution

The purpose of the dispute resolution process is to resolve problems before they escalate. All contracts issued by the TABC should have the proper dispute resolution clause included in the terms and conditions. Prior to any formal dispute resolution proceedings, the contract manager must:

- Identify the problem(s)
  - o See if the problem can be resolved by providing the contractor with additional information or clarification. If not, escalate the situation to the affected division director and the OGC. The OGC will include the Office of Attorney General (“OAG”) if appropriate under the circumstances.
- Research facts
  - o The agency must obtain all information regarding the potential problem from all relevant sources.
- Evaluate
  - o The agency will review the facts to determine the appropriate course of action. This could be informal conversations with contractors, cure notices, corrective action plans and, as a last resort, termination of the contract and potential litigation. The contract manager should thoroughly document the dispute and any actions taken, in the contract administration file.

## Termination

Most contracts expire without any affirmative action on part of the agency, However, there may be times when the agency chooses to terminate a contract early. Termination may be accomplished by any method allowed in the contract. Contract managers must always consult the OGC prior to initiating any termination action.

## Contract Closeout

The final phase of contract management is contract closeout. The contract manager must work with the contract developer to accomplish closeout activities.

The contract manager must also ensure that all services required under the contract have been completed and that all payments have been made.

### Vendor Performance Reporting

For contracts over \$25,000, the contract manager must provide information to the contract developer to enter into the Vendor Performance Tracking System. That system provides a letter grade for the vendor's work which then serves to inform other state agencies of the vendor's performance. If negative, the grade could debar a vendor from performing future state work.

### Records Retention

All contracts effective after September 1, 2015, must be retained for seven (7) years from the date of closeout. For contracts executed before that date, the retention period is four (4) years. Formal contract and procurement files should be kept by the BSD; and may be kept in either hard copy or electronic format.

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