



Contracting Policies and Procedures

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Chapter 1 - Procurement and Contract Services

Section 1.1 - Introduction and Responsibilities

Policy

Under the authority of the Texas Water Development Board (TWDB), the Procurement & Contract Services (PCS) Division is charged with defining and implementing policies and procedures that relate to contracting and purchasing matters.

Purpose

The purpose of this document is to describe the policies, procedures and processes used by the PCS Division to assist in the management of the TWDB contracting projects. This document also outlines contracting roles, responsibilities, and guiding principles.

Procedure

The PCS Division is a component of Finance. Major responsibilities and objectives include:

- 1) Providing physical custody and security over all the TWDB contractual documents.
- 2) Ensuring consistent and compliant coordination, tracking and administration of all contracts and purchasing activities.
- 3) Providing guidance and training to the TWDB contract and program managers.
- 4) Providing oversight for contractual compliance with the TWDB financial assistance programs.
- 5) The PCS Division exists for the purpose of assisting and serving the TWDB and its contractors, customers, and stakeholders with procurement-related business.
- 6) The Division mission is to provide exceptional assistance to agency customers and the TWDB staff. Our first-rate customer service will foster effective and compliant contract management that will secure quality and timely deliverables for the agency.

The policies and procedures set forth in this manual are based on statute, regulation, policy, and common business practices. As appropriate, the TWDB staff are expected to adhere to these procedures in the day-to-day administration and management of agency contracts. Contract Managers should reference the Texas Comptroller's Procurement and Contract Management Guide to ensure alignment with statewide procurement standards and best practices. Additionally, the TWDB Records Retention Policy as well as the TWDB Employee Handbook must be

adhered to at all times. This document does not replace, amend, or supersede the Records Retention Policy or the TWDB Employee Handbook.

Section 1.2 - Contract Management and Monitoring

Policy

Contract Managers must ensure their contracts contain a clear scope of work that defines performance and deliverable requirements. Contract Managers must also manage and document ongoing day-to-day contract issues and monitor the progress of the work performed by a contractor.

Purpose

To ensure high-quality, cost-effective services for the State of Texas, while reducing risk to the TWDB and the State.

Procedure

The Contract Manager is the designated contact and lead for any TWDB contract and is responsible for the timely initiation and execution of assigned contracts. For each contract that is executed, participation and approval is required from the PCS Division staff, the Division Director, Budget Officer, General Counsel, Accounting, Deputy Executive Administrator, Assistant Executive Administrator, and Executive Administrator (as needed, based on delegation of signature authority).

Contract Manager Roles and Responsibilities

As defined by the [State of Texas Procurement and Contract Management Guide](#) the primary responsibilities of the contract manager are:

- 1) Participating with the procurement team in solicitation development and review of contract documents.
- 2) Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract.
- 3) Managing any state property used in contract performance.
- 4) Implementing a process for quality control and contract monitoring.
- 5) Monitoring the contractor's progress and performance to ensure products and services procured conform to the contract requirements and keeping timely records of findings.
- 6) Consulting with General Counsel in a timely manner to address any legal concerns and/or issues.
- 7) Managing, approving, and documenting any changes to the contract through the amendment process authorized by the terms of the contract.
- 8) Inspecting and approving products and/or services by submitting a written document accepting the deliverables or obtaining documentation from the end users responsible for receipt, confirming that inspection and approval have been completed.

- 9) Verifying accuracy of invoices and authorizing payments consistent with the contract terms.
- 10) Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract.
- 11) Identifying and resolving disputes with the contractor in a timely manner.
- 12) Exercising state remedies, as appropriate, where a contractor's performance is deficient.
- 13) Maintaining appropriate records in accordance with the records retention schedule.
- 14) Confirming that all products and/or services have been delivered, and delivery is completed prior to the expiration date of the contract.
- 15) Performing contract closeout processes by ensuring the contract file contains all necessary contract documentation, reporting vendor performance to the Vendor Performance Tracking System (VPTS), and documenting lessons learned.

Contract Managers [and other agency staff] are not authorized to:

- 1) Allow the contractor to commence work before the contract is fully executed.
- 2) Change the scope or extend the term of the contract without complying with the formal amendment process prescribed by the contract.
- 3) Authorize the contractor to perform work that is not specifically described in and funded by the express terms of the contract.
- 4) Allow the contractor to recover costs incurred prior to the effective date of the contract or recover costs above the budget limit set by the contract.

The following areas present a high degree of risk in contracting. Contract Managers should focus attention on these factors to reduce risk to the agency:

1) Fundamental Contract Management

Once a contract is executed, the TWDB's designated Contract Manager should immediately communicate with the new contractor and confirm expectations. The Contract Manager should verify the obligations of the parties and timelines for performance. At a minimum, the Contract Manager should review contracts monthly to ensure requirements are met. Contract Managers should also be familiar with all the terms and conditions of the agreement.

2) Monitoring the Terms of Contracts

It is critical that contract timelines and expirations are closely monitored. If it is determined that a time extension is required on a contract, the Contract Manager must notify PCS at least **90 days prior to the expiration date**. This advance notice will ensure that amendments are appropriately executed. Timely amendments mitigate risks associated with service lapses.

PCS recommends time extensions be a minimum of six additional months, to ensure sufficient time is available to complete the remaining contract requirements and to reduce the likelihood of additional amendments.

3) Acceptance of Deliverables

All contract deliverables (including Draft and Final Reports) should be delivered directly to the PCS Division, with a copy provided to the Contract Manager. This ensures that deliverables are properly logged and processed in conformance with the contract.

Most TWDB contracts involve deliverables in the form of draft and final reports. The Contract Manager must compile all report comments and submit them to the PCS staff, who will issue a draft report comments letter via DocuSign to the contractor, under the signature of the Deputy Executive Administrator. Contract Managers are welcome to correspond with their contractors during this process, but the acceptance of any deliverables and reports must be formally transmitted through the PCS Division.

4) Payment Terms

It is important that Contract Managers thoroughly review each invoice that is submitted for their contracts. Invoicing packages are prepared for approval by PCS staff, but the Contract Manager plays a critical role in the authorization process due to their subject matter expertise.

Contract managers must ensure that:

- 1) Payment requests are appropriate, eligible for reimbursement, and relevant to the work performed.
- 2) Progress reporting is submitted with each invoice. Contract managers should also make certain all necessary duties have been performed and/or any deliverables have been produced.
- 3) Invoices conform to contract terms, conditions, and time periods.

5) Prompt Payment

The Texas prompt payment law establishes that payments for goods and services are due 30 calendar days after the goods are provided, the services completed, or a correct invoice is received. In many instances, the TWDB is subject to paying interest if payment is not fully processed within the 30-day period. Participants in payment processing include the PCS staff, the Contract Manager, the Accounts Payable and/or Accounts Receivable staff. Each area should take no more than 10 days to complete their review requirements for any contract payments to ensure that the TWDB meets the 30-day requirement.

6) Conflicts of Interest

Contract Managers have a responsibility to ensure that the contractor does not engage in activities that present a conflict of interest to the TWDB. In executing an agreement with the TWDB, the contractor must represent that they have no actual or potential conflicts of interest in providing the deliverables. The TWDB staff members are also required not to engage in activities that could present a conflict of interest to the agency.

Chapter 2 - Contracting Ethics in the Workplace

Section 2.1 - General Contracting Principles

Policy

All TWDB employees and Board members must follow a code of ethics. Contract management functions and activities should be conducted in accordance with the ethical standards as published by the State Ethics Commission, the TWDB Ethics Policy, and this manual.

Purpose

Ethics and integrity are the foundation of the competitive procurement process and PCS policies and procedures. All TWDB staff with PCS and contract management roles must carry out their duties in accordance with the highest ethical standards.

Procedure

The TWDB staff shall perform their roles and responsibilities regarding contracting in accordance with the standards in this manual and in accordance with applicable TWDB policies, processes, and procedures.

- 1) The acquisition of goods and services shall comply with all applicable federal and state statutes and regulations and the [State of Texas Procurement and Contract Management Guide](#).
- 2) The TWDB staff should promote competition, to the extent appropriate and allowable by federal and state laws and regulations, to secure the best value for the State and to provide opportunities for all qualified entities to apply to do business with the TWDB.
- 3) Contracting decisions shall be based upon appropriately documented good business practices and judgments.
- 4) The TWDB staff shall act ethically and consider the best interests of the public, TWDB, and TWDB's customers.
- 5) The TWDB staff shall take all reasonable steps to provide potential contractors with fair and impartial treatment.
- 6) The TWDB staff shall ensure that all necessary grant and contract terms and conditions are in writing and are incorporated into the contract or grant agreement.
- 7) Each TWDB grant or contract shall be assigned to an individual who will act as Contract Manager. The Contract Manager will be responsible and accountable for administrative oversight of the contract and the business relationship with the selected contractor.
- 8) The TWDB staff shall take all reasonable steps to ensure purchases of goods and services are allowable, reasonable, and necessary considering price, quantity, and quality.

- 9) By participating in the TWDB procurement(s), staff members acknowledge and agree to adhere to the Post-Employment Restrictions outlined in Appendix 4 of the Texas Procurement and Contract Management Guide. Additionally, as per [Texas Government 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.”
- 10) Vendor performance reviews must be conducted at least annually and at contract milestones for contracts for more than \$5 million under [Texas Government Code § 2155.089](#). The TWDB shall comply with these requirements as documented in the [State of Texas Procurement and Contract Management Guide](#).

Section 2.2 - Contracting with Former Staff

Policy

The TWDB shall comply with the provisions of [Texas Government Code § 572](#) and [Texas Government Code § 2252.901](#) related to contracting with former staff of the TWDB.

Purpose

State ethics law generally prohibits state agencies from entering into a contract for consulting professional services or into an employment contract with any individual who has been previously employed by the agency within the past 12 months. The term "employment contract" includes any personal services contract regardless of whether the performance of such a contract involves the traditional relationship between employer and employee.

Procedure

The TWDB personnel shall document, in the procurement file, the facts and nature of the relationship when a potential contractor is a former TWDB employee or is related to a current TWDB employee or Board member.

If a potential contractor is related to a current TWDB employee or Board member, documentation by memorandum must indicate what specific steps have been taken, or will be taken, to eliminate any real, apparent, or potential conflict of interest. This documentation must be maintained in procurement files managed by PCS.

Certain Employment for Former State Officers or Employee Restricted.

A former state officer or employee of a state agency who, during their period of service, participated on behalf of the 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.

State Ethics Commission rules are documented through "Revolving Door Provisions" (<http://www.ethics.state.tx.us>) as follows:

The First Revolving Door Rule

Two-year Prohibition Applicable to Former State Officers and Employees. The first revolving door rule applies to all former state officers and employees of a state agency. If a state officer or employee of a state agency participated on behalf of the agency in a procurement or contract negotiation involving any person, then he or she may not accept employment from that person for two years after the date he or she leaves the agency. This revolving door rule applies only to a state officer or employee whose service or employment ceases on or after September 1, 2015.

The Second Revolving Door Rule

Two-year Prohibition Applicable to Former Board Members and Executive Directors. The second revolving door rule applies to all former board members and former executive heads of regulatory agencies. For two years after a board member or executive head leaves a regulatory agency, he or she may not appear before or communicate with officers or employees of the agency with the intent to influence the board on behalf of any person in connection with any matter on which the person seeks official action.

The law is not an absolute prohibition on communications to an agency by a former board member or former executive head of the agency. The restriction applies only to communications and appearances intended to influence agency action. If, for example, a current board member calls a former board member to get information about past board activities, the former board member is free to provide information—as long as the former board member does not try to influence the actions of the current board.

The restriction applies regardless of who initiated the contract and even if a former board member or executive head is communicating on their own behalf with the intent to influence agency action, subject to any constitutional due process right to be heard by the agency.

The Third Revolving Door Rule

Continual Prohibition Applicable to Former Board Members and Upper-level Employees. The third revolving door rule deals with work on specific "matters" and applies to all former officers and certain former employees of regulatory agencies (*the TWDB is non-regulatory*).

Former Officers: The provision applies to a former "officer" of a regulatory agency. Board members of state agencies are officers. An individual elected or appointed as the head of an agency that does not have a board is an officer. For example, the Agriculture Commissioner and the Insurance Commissioner are state officers.

Former Employees Paid at or Above Certain Level: The provision applies to a former employee of a regulatory agency whose ending pay was at or above the amount prescribed for step 1, salary group A17, of the state position classification salary schedule. A former employee who received that amount or more at the time of leaving state employment is subject to the third revolving door rule, regardless of whether the former employee held a classified position, or a position exempt from the classification schedule.

An officer or employee subject to the third revolving door prohibition may never represent a person or receive compensation for services rendered on behalf of any person regarding a "particular matter" in which he or she "participated" while serving with the agency, either through personal involvement, or because the matter was within his or her official responsibility. In this context, "participated" means to have acted as an officer or employee

through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

The most common question raised about the third revolving door rule is whether proposed future employment would involve work on a "particular matter" that a person participated in as a state officer or employee.

A "particular matter" is defined narrowly to mean something quite specific, such as an investigation, application, contract, rulemaking, or other administrative proceeding.

This means a person subject to the third revolving door prohibition may work on matters similar to matters he or she worked on as a state employee, but not on the same matters. For example, a former employee of a regulatory agency who worked on Permit Application X at the agency could not leave the agency and work on Permit Application X on behalf of the applicant. The former employee could, however, work on Permit Application Z, even if Permit Application Z involved issues similar to the issues raised in connection with Permit Application X.

Any questions related to this policy should be referred to the Director of Procurement and Contract Services, Office of General Counsel, and the Director of Human Resources.

Section 2.3 - Identifying, Avoiding, and Reporting Conflicts of Interest

Policy

The TWDB staff shall carry out any roles, responsibilities, and activities related to PCS in a manner that identifies and avoids real, apparent, or potential conflicts of interest. The TWDB staff involved in contract decision making shall report in writing any real, apparent, or potential conflicts of interest that may come to their attention during any phase of the PCS life cycle.

Purpose

Taking all reasonable actions to ensure that staff are not placed in a position that causes or results in a real, apparent, or potential conflict of interest or that violates appropriate separation of duties.

Procedure

Identification of Conflicts of Interest

A conflict of interest exists when an individual has a real, apparent, or potential financial or other beneficial interest in an entity selected for contract award or in the outcome of a transaction.

Financial or other beneficial interest includes, but is not limited to the following:

- 1) Employment with a grantee, contractor, or offeror.
- 2) Pending employment with a grantee, contractor, or offeror.
- 3) Paid consultation with a grantee, contractor, or offeror.
- 4) Membership on a grantee's, contractor's, or offeror's board of directors, officer, or partner of the offeror, or its parent or subsidiary organization; and/or
- 5) Ownership of stock, partnership or other beneficial interest in a grantee's, contractor's, or offeror's organization, within the meaning of 18 U.S. Code §208.

Avoiding Conflicts of Interest

TWDB employees and Board members must adhere to all requirements under [Texas Government Code, Section § 2261.252](#), and disclose:

- 1) Any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.
- 2) Any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during the

procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed final delivery of the goods or services, or the term of a contract with a private vendor.

A state agency may not enter into a contract for the purchase of goods or services with a private vendor if any of the following agency employees or officials have a financial interest:

- 1) A member of the agency's governing body.
- 2) The governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency.
- 3) A family member related to those aforementioned employees or officials, or within the second degree by affinity or consanguinity.

To avoid even the appearance of a conflict of interest, TWDB employees must abide by the following rules:

1) No Monetary Benefit

A contract may not be awarded (no matter how objective the process) to an entity that is owned, in whole or in part, by any TWDB employee or their dependents. Neither the TWDB employees nor their dependent family members (spouse or children) may financially benefit from a TWDB contract.

2) No Appearance of Impropriety

Employees should not negotiate, make, accept, or approve a contract or perform any duty in connection with a contract or subcontract with a relative, close friend, or outside business partner.

3) No Acceptance of Gifts, Favors, or Benefits

Employees may not accept for themselves or for others a gift, benefit, or favor (gifts of cash, loans, lodging, transportation, tickets to entertainment and sports events, hunting and fishing trips, etc.) from any entity doing business with the state or who could be expected to do business with the state in the future.

4) Token Items

The TWDB Ethics Policy does not prohibit employees from receiving token items valued at less than \$50.00 when there is no connection between the donor and the employee's job assignment.

5) Business Lunches

The TWDB does not prohibit going to lunch with a performing entity. However, common sense and contracting ethics suggest that frequent

lunches can present the appearance of favoritism or other ethical conflicts. Employees should not attend business lunches if doing so makes or appears to make it more difficult to perform their duties in an objective and impartial manner.

Under no circumstances should a TWDB employee allow a performing entity to pay for their lunch/meal. For additional information on the Employee Code of Ethics, please reference the TWDB Employee Handbook, Chapter 2.

6) Reporting Conflicts of Interest

Documentation of conflict-of-interest reports and resolutions shall be maintained in procurement or contract files, as appropriate. Reports regarding potential conflicts of interest should be made to the employee's Division Director through the proper chain of command and include all pertinent information regarding the incident.

Please note that all TWDB contractors are required to disclose conflicts of interest to the agency and required to notify the TWDB, in writing, of any potential conflict of interest that could adversely affect the TWDB by creating the appearance of a conflict of interest.

7) Purchasing Personnel

Agency purchasing personnel must annually sign a conflict-of-interest statement, which is retained in purchasing plan files. By signing, personnel certify that they have no direct or indirect interest in any procurement and acknowledge that any discovered conflict may result in dismissal.

Chapter 3 - Contracting Practices and Contract Management

Section 3.1 - Contracting Needs Assessment

Policy

Any TWDB staff member that needs to obtain goods, services or other contractual arrangements must identify, establish, and document the needs when initiating contracts and other procurements.

Purpose

A needs assessment is conducted to determine the necessity, nature, and scope of the acquisition. "Needs" should be aimed at the achievement of the agency's goals, objectives, legislative mandates, funding requirements, and approved Board plans. The business need should also be aligned with the TWDB Strategic Plan.

Procedure

The TWDB staff member initiating the request should document the need. The supporting documentation regarding the needs assessment should be retained in the Contract Manager's procurement files. Staff may consult PCS for assistance and guidance in assessing contractual needs. The [State of Texas Procurement and Contract Management Guide](#) contains useful resources for conducting a Needs Assessment in the chapter on Procurement Planning. The Guide also contains an Acquisition Plan that staff may utilize to ensure all requirements are documented and the business need is adequately justified.

Documenting the requirement/need:

Once the need is identified, a variety of factors must be considered in determining how best to meet and document that need:

- 1) Does the Agency have the legal authority to acquire this good or service?
- 2) Is Board approval required?
- 3) Who are the potential vendors and what procurement methodology would best be used?
- 4) What is the specific description of the goods or services to be provided, or what are the expectations in terms of goals, outputs, and measurable outcomes?
- 5) Where are the goods or services needed, (delivery location within a town, county, region, and address)?
- 6) What is the time period (beginning and ending dates) during which the goods or services are needed?

- 7) How much or what quantities of the goods or services are needed and how much might those goods or services cost? How much of what is needed is already available under existing contracts?
- 8) How much funding is available to meet the need and what might be an appropriate basis for payment?
- 9) Is this an administrative or program service or goods need?
- 10) Are there any prerequisite actions that must be taken, approvals that must be sought, or conditions that must be met?
- 11) What are the risks in contracting, and will the risks be assumed by the contractor?

Determination of a need to contract for a work function:

Factors to be considered in determining the need to outsource a function include:

- 1) Work which has historically been contracted for by the agency.
- 2) Contracts involving consulting services.
- 3) Expertise and equipment included in the contract that is not normally employed or purchased by the agency.
- 4) Third party objectivity and credibility that are essential to the service provided.
- 5) Day-to-day activities are managed by the contractor; and responsibility/risk is assumed by the contractor.

Concerning Contracts for Major Information Resources Projects:

Consistent with requirements under [Texas Government Code § 2054.160](#), any proposed contract or amendment for a major information resources project with a value of at least \$10 million, must be submitted to the Quality Assurance Team under the purview of the State Comptroller, State Auditor, Legislative Budget Board, and the Department of Information Resources for review and approval to proceed. This approval process must be coordinated through the Contracting and Purchasing team. Under Government Code § 2054.303, each project must include a business case justifying the project.

Section 3.2 - Procurement Process Determination

Policy

The TWDB staff must consult with the PCS staff before initiating any procurement-related actions beyond the initial needs assessment.

Purpose

The PCS staff are responsible for leading efforts associated with developing and publishing agency solicitations and assisting program areas with determining the appropriate procurement and contracting method.

Procedure

PCS will advise the TWDB staff on available procurement processes based on contract types, funding, and current business circumstances.

Procurement Method Determination

Before publishing a solicitation for goods and services, agency staff must determine if the good or service is available through either the Comptroller of Public Accounts' or Department of Information Resources' state cooperative contract or if another state agency or university system can meet the specifications associated with the proposed procurement. The state cooperative contract determination will be based upon the specifications and National Institute of Governmental Purchasing (NIGP) class and item codes, along with the program area's specifications.

For more information about procurement methods, refer to the [State of Texas Procurement and Contract Management Guide](#), located at:

<https://comptroller.texas.gov/purchasing/publications/>

Procurement Planning

The recommended timeline for the procurement process is six months. This process may be expedited, where necessary, but program staff must consider that expedited procurements impact and delay other contracting activities. The 180-day lead time recommendation is based on the following timeline, as further supported by the [Texas Procurement and Contract Management Guide](#):

60-days	Solicitation development and approval [may require CPA or DIR approval]
30-days	Solicitation, advertising of the funding opportunity, question and answer period, and receipt of responses
10-days	PCS administrative review
20-days	Evaluation Committee scoring

30-days	Board approval of funding recommendations, if applicable
30-days	Contract initiation, negotiations, development, and execution

Goods and Services—Centralized State Procurement

For Goods and Services contracts—including but not limited to Professional Services—where the estimated award value exceeds \$25,000, following the needs assessment and procurement method determination, the procurement process begins with the posting of either an Invitation for Bids (IFB), Request for Qualifications (RFQ), Request for Proposals (RFP), or Request for Offers (RFO) on the Statewide Procurement Division's Electronic State Business Daily (ESBD), at <https://www.txsmartbuy.gov/esbd>. For Information Technology related procurements, the TWDB must coordinate with the Department of Information Resources (DIR) to determine if the product or service is on the DIR cooperative contract. If it is not on the DIR contract, PCS will work with the program area to submit an exemption request to DIR. If approved, PCS will publish the RFO procurement opportunity to ESBD.

PCS publishes solicitations on ESBD and subsequently notifies all relevant vendors. The notification is sent to vendors on the Centralized Master Bidders List (CMBL) who are associated with the appropriate NIGP class/item code. Additionally, all registered and valid Historically Underutilized Businesses (HUBs) that have indicated their ability to provide the specific goods or services referenced by the NIGP code will also receive the notification.

The ESBD posting, as required by statute, ensures broad visibility of the solicitation to potential vendors, and considers both the Centralized Master Bidders List and registered HUBs for appropriate outreach. Program areas may augment the CMBL distribution list with other vendors whom they believe may also meet their specifications but may not communicate with any vendors during the solicitation process.

PCS notifies the Webmaster to advertise the active solicitation on the Contracting Opportunities webpage. Program area staff are encouraged to verify both the ESBD posting and the advertisement on the agency's website. Program area staff may also consider coordinating with Communications staff to expand upon the reach of the funding opportunity by advertising it via social media accounts, news releases, and email blasts to eligible entities and other interested stakeholders. Program area staff, however, may not communicate directly with any potential vendors about active solicitation during the development, advertisement, or evaluation period.

Grant Programs

In coordination with PCS and OGC, program areas develop their RFAs. OGC posts the notice of funding opportunities through the Secretary of State's *Texas Register*. PCS notifies the Webmaster to advertise grant funding

opportunities on TWDB's Contracting Opportunities webpage. Program area staff are encouraged to verify both the *Texas Register* postings and the advertisements on the agency's website. Additionally, program areas are encouraged to coordinate with Communications staff to expand upon the reach of the funding opportunity by advertising it via social media accounts, news releases, and email blasts to eligible entities and other interested stakeholders.

Statute for agency grant programs may dictate a different process than that which is described above. In those instances, program areas administer the development, posting, advertising, application, and grant recipient selection process. For the areas following the standard agency RFA process, however, PCS receives the applications, completes an administrative review, populates the scoresheet with the administratively complete RFA responses received by the application deadline, and hosts a kick-off meeting with the Evaluation Committee. Upon completion of the scoring process, the PCS Director and Review Team Chair certify the final scoring summary and funding recommendations. This process is further described below in the Evaluation Process section of this chapter.

Once the selection and award process for the grantee or subgrantee is completed, the program area seeks Board approval, where applicable, submits a requisition in CAPPs, and emails a Contract Information Form (CIF) and the project specifications to the Contracts email inbox to initiate the contract development process. The program area must provide either the Board approval or other form of certification that PCS has the contracting authority to award the grant to the recipient indicated on the CIF, prior to the agency routing a final contract for execution. The Board minutes or other form of written certification, where applicable, affirms that the grantee or subgrantee was duly selected under the appropriate grant program and received any necessary Board approvals. PCS saves a copy of the Board minutes, Board memo, or other form of certification in the procurement file associated with the contract.

Interagency and Interlocal Contracts

Partnerships with other governmental agencies are one of the first methods which the agency must consider for obtaining needed services and resources and sharing knowledge and costs. Chapter 771 of the Texas Government Code is the Interagency Cooperation Act. This Act authorizes state agencies to contract with each other for necessary and authorized services and resources. The Act also governs the contractual relationships between state agencies. Chapter 791 is the Interlocal Cooperation Act and similarly authorizes state agencies to contract with other political subdivisions of the State of Texas or Institutions of Higher Education or University Systems.

When Program staff request contract initiation under [Texas Government Code § 771](#) or [Texas Government Code § 791](#), they should first:

- 1) Determine whether the contract is a 'Pass Through' grant.
- 2) Obtain the 10-digit vendor number associated with the counterparty as a payable entity of the State of Texas.
- 3) The specific contact person and contract signatory should also be identified.
- 4) The address of the specific campus associated with the contract should be provided to PCS.

Solicitation Methods

- **Request for Qualifications (RFQ)** – Generally used for Professional Services wherein the respondents are evaluated based solely on their qualifications. Price is not considered until after selection is made by the agency based on qualifications. Professional Services are covered under [Texas Government Code § 2254](#).
- **Request for Offer (RFO)** – Used for IT Commodity Purchases exempt from the DIR IT Commodity Program. The process is similar to the Request for Proposal (RFP) process. RFO purchases include the purchase of automated information systems and are covered under Texas Administrative Code, Title 34, § 20.391.
- **Request for Proposal (RFP)** – Used when competitive sealed bidding is not practicable or advantageous. Factors other than price are considered or objective criteria cannot be defined. One of the key differences between an Invitation for Bids (IFB) and an RFP is that negotiations are allowed in an RFP. Discussions are allowed with the respondents and best and final offers are solicited. Unless otherwise exempted, agencies must submit their RFPs to the State Comptroller's Office for review prior to solicitation.
- **Invitation for Bids (IFB)** - IFBs use the competitive sealed bid method. This method is used when the requirements are clearly defined, negotiations are not necessary, and price is the major determining factor for selection. Best value considerations can also be used with the IFB method.
- **Request for Applications (RFA)** – RFAs are used to accept applications for state grant opportunities, which is described in more detail throughout this chapter.

Question and Answer Period

Solicitations must include a Question-and-Answer Period, generally at least one week prior to the application deadline. Questions received from potential respondents on an open solicitation must be sent to the Bid-Room email inbox. Program area staff must not communicate directly with potential respondents about active procurements during the open solicitation period, unless explicit approval is granted by the PCS Director and the Contracts Attorney within the Office of General counsel.

PCS will compile the questions and coordinate with staff in the respective program area(s), as well as the Contracts Attorney in the Office of General Counsel, in answering questions and posting as an addendum in ESBD or distributing to all potential respondents.

Evaluation Process

Upon receiving responses to any solicitation, regardless of type, each response will be timestamped and securely stored in a restricted-access directory. The email with which the response was enclosed serves as the official timestamp of the receipt of the response. These responses may only be accessed by evaluators after the response period ends, and PCS completes an administrative check.

PCS will host an evaluation review kick-off meeting with the review team to distribute the files via the restricted-access directory and provide the Evaluation Committee Guidelines. Evaluators will assess and score the responses and return them to PCS staff via email upon completion of their scoring. This email transmission will serve as evidence that each reviewer scored the responses individually and independently, without bias or influence from others on the Review Team / Evaluation Committee.

Prior to closing the solicitation, the PCS Director and Review Team Chair will sign and date the Final Scoring Certification and funding recommendation(s), as evidence that final scoring tabulation is accurate, and the procurement was conducted in accordance with the applicable statutes.

Once a vendor is selected and upon execution of the contract, PCS will mark the solicitation as “awarded” on ESBD, if applicable, and notify the Webmaster to mark it as “closed” on TWBD’s website.

After vendor or grantee selection and the closure of the solicitation, PCS will upload each timestamped response to Contract Administration System (CAS) as a Proposal. Some of these Proposals may also have corresponding CAS Contract Records. Those that do not are “unselected vendor” responses and will be noted as such in CAS. PCS does not upload the contract or any other required documents in CAPPS, until the Purchase Order is issued following contract execution.

Section 3.3 - Historically Underutilized Business (HUB) Requirements

Policy

State law requires vendor contracts with a value of \$100,000 or more to create a Historically Underutilized Business (HUB) subcontracting plan. HUB subcontracting plans are required for all TWDB contracts with a value of \$100,000 or more, with the exception of interagency contracts, interlocal contracts, and grant agreements. The TWDB further seeks to increase the agency's use of historically underutilized businesses in purchasing and contracting opportunities.

Purpose

The TWDB is required by statute, [Texas Government Code § 2161](#), to comply with provisions of the HUB Program.

Procedure

A HUB is a specific type of business in Texas that has received certification from the Comptroller of Public Accounts. To receive certification, the following requirements must be met:

- 1) Principal place of business in Texas.
- 2) The owner(s) must have a proportionate interest and demonstrate active participation in control, operation, and management.
- 3) The owner(s) must be economically disadvantaged because of their identification as a member of any of the following groups:
 - a) Black Americans--which includes persons having origins in any of the Black racial groups of Africa.
 - b) Hispanic Americans--which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
 - c) Asian Pacific Americans--which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal.
 - d) Native Americans--which includes American Indians, Eskimos, Aleuts, and Native Hawaiians.
 - e) American Women--which includes all women of any ethnicity except those specified in the above sub-bullets.
 - f) Service-Disabled Veteran.
 - g) A HUB must be a for-profit business entity that is at least 51% owned by one or more persons described above.

HUB Subcontracting Plans

A HUB Subcontracting Plan (HSP) is a record that describes what tasks the contractor will subcontract. The plan identifies the HUBs receiving the subcontracts, and the estimated dollar amount of the subcontracts. The State of Texas has the following HUB participation goals:

- Heavy construction 11.2%
- Building construction 21.1%
- Special trade construction 32.9%
- Professional services 23.7%
- All other services 26.0%
- Commodities 21.1%

The TWDB maintains the same goals as those established for the state but seldom procures items under Heavy Construction or Building Construction categories.

State Agencies

The Contract Manager must determine if a potential contract will be for \$100,000 or more and if subcontracting opportunities are likely to exist. If the answer is “yes,” any associated RFO, RFP or RFQ must include a statement that proposals will be required to include a HSP for the proposal to be considered. If subcontracting opportunities are not probable, the RFO, RFP or RFQ must include a “Declaration of Subcontracting Opportunities” attesting that the TWDB has determined that subcontracting opportunities are not available under the contract.

Potential Contractors

State law requires that vendors do more than just complete the HSP forms. Contractors must make a good faith effort to divide the proposed contract work into appropriate units, locate HUBs that can perform the work, and subcontract with those HUBs.

Showing Good Faith

Vendors are able to demonstrate the good faith effort required by the law by dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.

Vendors should provide written notification to at least three HUBs of work that the vendor intends to subcontract, for each lot or portion of the work. The notice must include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. Notices must be provided to potential HUB subcontractors prior to submission of responses to RFOs and RFPs. The vendor must provide potential HUB subcontractors with reasonable time to respond to the notice, which should be no less than five

working days from receipt of notice, unless documented circumstances require a different time period. Notice must be directed to HUBs that perform the type of work required. Upon request by the TWDB, a potential vendor must provide official written documentation (i.e. phone logs, fax transmittals, etc.) to demonstrate compliance with the notice requirements.

Mentor-Protégé Program

[Texas Government Code § 2161.065](#) requires all state agencies to implement a Mentor-Protégé Program. The TWDB does this through:

- 1) Partnering with other agencies and private companies to coordinate the Mentor-Protégé Program to increase HUB opportunities and participation in agency procurements.
- 2) Identifying and recruiting mentors from entities that frequently contract with the TWDB to assist in expanding upon HUB subcontracting opportunities.

Section 3.4 - Preparation of the Contract Information Form (CIF)

Policy

Once procurement and contracting needs are determined and documented by the Contract Manager, a requisition must be entered into the Centralized Accounting and Payroll/Personnel System (CAPPS) for all payable contracts. The Contract Manager will then include the requisition number on the Contract Information Form (CIF), which must then be forwarded to contracts@twdb.texas.gov for contract drafting and execution.

Purpose

A Contract Information Form is a document created for the convenience of summarizing the purpose of the contract, vendor contact information, contract budget, and documented agency approvals of the final contract, upon routing for execution in DocuSign.

Procedure

The Contract Manager submits their contracting requests by sending the CIF to contracts@twdb.texas.gov, with a reference to the requisition number, if applicable. The CIF is located on the TWDB's iWEB and contains instructions on what is required for completion. The Contract Manager should populate the form to the best of their abilities before submitting it to the Contracts email inbox.

Upon receipt of the CIF, PCS staff will add the contracting request to the Worklog and assign a contract specialist to the item. PCS strives to add these items to the Worklog queue and assign them to a staff member within 48-72 hours. Contract Managers should communicate and coordinate directly with the assigned contract specialist for guidance throughout the contract development process, as the Contracts inbox is intended for contracting request submittals, rather than general correspondence.

In accordance with the requirements of [Texas Government Code § 2155.0755](#), PCS staff will update the CIF with the procurement method used and will document and verify the best value standard utilized (typically, though not necessarily, one of the following):

- Section 2155.074 - Best Value for General Goods and Services
- Section 2156.007 – Best Value for Competitive Sealed Bids
- Section 2157.003 – Best Value for Automated Information Systems
- Section 2254.003 – Best Value for Professional Services (e.g., Architects, Engineers)
- Section 2254.027 – Best Value for Consulting Services

During contract execution, the CIF is signed by PCS Manager and Director, signifying assent to the assertion contained within the CIF that the signature is 'Confirmation of Compliance with Agency Policy & the State of Texas Contract Management Guide'. Upon execution of the contract, PCS staff will issue a purchase order (PO) in CAPPs to formally encumber the funds, using this same information from the requisition, CIF, and contract documents. The information on the CIF must be verified during the Internal Review process, prior to contract execution in DocuSign and PO issuance in CAPPs.

Section 3.5 - Risk Analysis and Enhanced Contract Monitoring

Policy

In accordance with [Texas Government Code § 2261.256](#), all Contract Managers, with the support of Procurement and Contract Services, will perform a risk analysis prior to the execution of any contracts. This should be included as an attachment to the CAPPs Requisition and as part of the request to contracts@twdb.texas.gov.

Purpose

State agencies are required to develop and comply with a risk analysis procedure that provides for the following:

- 1) Assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for each type of goods and services for which the agency contracts.
- 2) Identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff, establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

Procedure

The Contract Manager is responsible for completing the risk assessment, prior to contract execution, via the following procedure:

1) Identifying Risk Evaluation Attributes

The Contract Manager must evaluate the key elements of risk that may occur on a contract. The impact and probability of each risk attribute will be assessed as part of this process. The risk attributes to be considered include the following:

- a) Risk of fraud, waste, or abuse.
- b) Cost, duration, and scope of the contract.
- c) Responsibilities and accountability of agency and vendor staff.
- d) Vendor experience and past performance.
- e) Data security protocols.
- f) Legislative or statutory requirements, potential impact on agency operations or programs, and external stakeholder impacts.

The Contract Risk Assessment must include a narrative description of each Risk Factor, with a description of the possible consequences and a description of how each risk factor might be mitigated. The Contract Risk Assessment Tool can be found at on the TWDB's iWEB.

2) Evaluating the Consequence of the Risk Exposure

The Contract Manager will assign a value from 1 to 5 to each attribute, with the highest value indicating the most severe consequence.

Consequence	The severity of a negative outcome	
5	Catastrophic	Unable to function, security breach, inability to fulfill contract obligation(s)
4	Severe	Significant impact on fulfilling contract obligation(s)
3	Moderate	Fulfilling contract obligation(s) is/are partially achievable
2	Minor	Low impact on fulfilling contract obligation(s)
1	Minimal	Insignificant impact in fulfilling contract obligation(s)

3) Evaluating the Likelihood of Risk Exposure

The Contract Manager will assign a value from 1 to 5 to each attribute, with the highest value indicating the most severe likelihood of the negative outcome occurring.

Likelihood	The likelihood of a negative outcome	
5	Almost Certain	Will undoubtedly happen
4	Likely	Will probably happen
3	Even Chance	An equal likelihood of occurrence or not
2	Unlikely	Not expected to happen
1	Remote	Very unlikely this will ever happen

4) Overall Contract Risk

If any attribute has a risk score of 'High' then the contract has a risk score of high. If any attribute has a risk score of 'Medium' then the contract has a risk score of at least Medium. The results of the risk analysis will be included in the contract routing file and maintained as part of the permanent contract record. Contract Managers should formally reassess the contract risk once a year, at a minimum, or upon issuance of each task order, for master service agreement contracts.

- 5) **Enhanced Monitoring Approach** – Any contract that receives an overall rating of 'High' will receive enhanced contract monitoring to be performed by

the assigned contract manager. The enhanced contract monitoring may include, but is not limited to the following activities:

- a) Weekly/monthly progress reports
- b) Documented controlled correspondence
- c) Regular site visits
- d) Project team meetings
- e) Documentation of corrective actions

6) Enhanced Monitoring Reporting

Contract monitoring activities must be documented and reported to the Board on a quarterly basis. Contracts identified as high-risk and subject to enhanced contract monitoring must immediately be reported to the Board by the Procurement Director.

Section 3.6 - Preparation, Routing, and Execution of a New Contract

Policy

The PCS Division manages the preparation, routing, and execution of new contracts.

Purpose

To ensure that each administrative step of the contract development cycle is properly conducted.

Procedure

The following steps are taken in the preparation, routing, and execution of a contract:

- 1) Based on the information provided in the Contract Initiation Form and the scope of work/specifications developed by the Contract Manager, a draft contract is prepared by PCS staff within the Contract Development Team.
- 2) The contract is developed based upon the most recent applicable boilerplate contract templates developed in conjunction with the Office of General Counsel, maintained within the PCS Contract Template Library.
- 3) The Contract Manager must provide a copy of the Board memo and minutes verifying contracting authority, along with the final scoring certification award recommendation resulting from the solicitation process, where applicable.
- 4) PCS staff sends the draft contract and other supporting documentation via an "Action Requested" email to the Contract Manager. During this Internal Review process, the Contract Manager and PCS staff work together to ensure timely processing, development, negotiations, and contract execution.
- 5) The Contract Manager is responsible for conducting negotiations with the Contractor and must verify that the contract is acceptable to the Contractor, and that the scope of work and budgets are acceptable to both parties. The Contract Manager and Contractor should specifically review the deliverables requirements, due dates, scope of work, and contract budgets. Any proposed changes to the standard state clauses are discouraged, are considered on a case-by-case basis, require review by General Counsel, and may delay contract execution and potentially put the funding at risk. The TWDB reserves the right to negotiate with the next highest-ranked respondent or applicant, should the Contractor refuse to agree to the terms and conditions of the contract.
- 6) Once the internal review of the draft contract is complete and the draft contract is finalized, PCS staff will route the contract package for final approval and execution. Final contract packets are routed through the following: Director of Procurement and Contract Services, Contract Manager, Program Manager, Division Director, General Counsel, Budget, Financial Operations, the Deputy Executive Administrator, Assistant Executive Administrator, and Executive Administrator (depending upon the contract value and associated delegation of authority thresholds).
- 7) Upon receipt of the completed DocuSign packet, PCS staff save the executed contract packet and associated files to the procurement folder, upload the

contract documents to CAS, source the requisition, and issue a Purchase Order in CAPPs.

- 8) In accordance with [Texas Government Code § 2261.253](#), PCS staff must coordinate with the Webmaster to update the agency web site for each contract for the purchase of goods and services from a private vendor.

Section 3.7 - Preparation, Routing, and Execution of a Contract Amendment

Policy

The PCS Division is responsible for the preparation, routing, and execution of contract amendments. Contract amendments, task order issuance, change orders, or any revisions to the terms and conditions, budget, timeline, scope of work, or any other provisions or exhibits contained within the contract must be provided in writing and issued by PCS.

Purpose

To ensure that each administrative step of the amendment process is properly conducted, to mitigate agency risk, and to ensure compliance with governing statutes.

Procedure

In accordance with [Texas Government Code § 2155](#) of the Texas Government Code, certain contract amendments that (a) extend the length of a contract for six months or more or (b) increase the total consideration to be paid under the contract by at least 10 percent, may require the consideration of the material change by the Board.

Any major information resources project with a value of more than \$10 million requires that the TWDB perform cost-benefit analysis that must be submitted to the Quality Assurance Team before any amendment that would result in the project being at least 10 percent over budget or at least 10 percent behind schedule, according to [Texas Government Code § 2054](#).

The following steps are taken in the preparation, routing, and execution of a contract amendment:

- 1) Prior to initiating a contract amendment request, the Contract Manager must review the proposed changes to the budget or schedule, ensure that the justification is adequate, appropriate, and necessary, and the approved scope of work can still be performed satisfactorily before the funds expire. If the requested revisions from the contractor are not satisfactory, the Contract Manager should notify the contractor in writing and identify any problems or deficiencies.
- 2) The Contract Manager, in consultation with PCS staff, should determine if the requested amendment needs the attention of the Board, in accordance with [Board Resolution 02-95](#). If so, this step should be completed prior to the contracting request being submitted to PCS for processing.
- 3) Once the Contract Manager confirms the request meets these requirements, they should email an updated CIF and the requested revisions to the Contracts inbox along with any other relevant documentation to support the request. The Contract Manager should be prepared to provide additional information to assist with final preparation of the contract amendment as needed by PCS.

- 4) Once PCS prepares the draft amendment, it is sent to the Contract Manager and others via the same “Action Requested” email Internal Review process utilized for developing new contracts.
- 5) Once the Internal Review is complete, the item is routed by PCS via DocuSign for final approval and execution by the Procurement Director, Contract Manager, Budget Officer, Appropriate Division Director, Office of General Counsel, Financial Operations, Deputy Executive Administrator, Assistant Executive Administrator and Executive Administrator (if applicable, depending upon contract value) for approval and signature.
- 6) Once the DocuSign packet is completed and both parties have executed the agreement, PCS staff will save the documentation to the contract folder, upload it to CAS, and issue any POCNs in CAPPs, if the amendment involved a funding increase associated with an approved requisition.

Approved Budget Memorandums (ABM)

In an effort to simplify the amendment process where budgetary changes are needed that do not impact the overall contract value, an approved budget memorandum (ABM) may be processed to redistribute funding across task and expense budget categories.

- 1) Requests for an ABM should similarly be submitted by the Contract Manager to the Contracts inbox for PCS processing via the same Internal Review and DocuSign procedures.
- 2) An ABM only routes through the Procurement Director, Manager or Team Lead, Contract Manager, Program Manager, Division Director, and DEA. The Contract Manager and DEA sign the ABM.
- 3) The Contract Manager then notifies the Contractor of the budget revisions. PCS staff upload the documents to the contracts folder and CAS, upon completion of the DocuSign routing.

This simplified budget revision process helps to ensure the agency can meet prompt payment requirements when minor overages occur within task or expense budget categories.

Section 3.8 - Responsibilities when Reviewing Contracts and Amendments

Policy

To effectively process contracts, the TWDB has assigned specific staff members to be responsible for various tasks in the routing and reviewing of contracts and amendments.

Purpose

To ensure that each step of the contract and amendment approval process is properly processed.

Procedure

The roles and responsibilities of the stakeholders involved in the process are as follows:

Procurement and Contract Services

PCS is responsible for leading the process and providing administrative support in the development, routing, and execution of contract documents. PCS staff issue purchase orders to encumber the funds associated with contracts and maintain the agency contracting records in CAS and CAPPS Financials.

Contract Managers, Program Managers, and Division Directors

Contract Managers are responsible for assisting PCS with ensuring timely execution and addressing any delays in the contracting process that are external to PCS. When routing a contract or amendment for approvals, the Contract Manager, Program Manager, and Division Director must **verify** the following criteria have been met:

- 1) Transmission Letters:
 - a) Documents are properly addressed and dated
 - b) Contract numbers
 - c) Letters are from proper DEA (or EA)
- 2) Contract Initiation Form:
 - a) Start and end dates are correct
 - b) Contract numbers
 - c) Budgets
- 3) Contract Documents:
 - a) Contract numbering
 - b) Contractor names
 - c) Any Task and Expense Budgets
 - d) Standard provisions - included but not limited to:

- i. Termination clauses
- ii. Contact information
- iii. Scope of work
- iv. Reporting requirements
- v. Deliverable requirements (including number required)
- e) Sufficient time is given for reports and deliverables
- f) Appropriate number of copies
- g) Signatories and titles accurate

The Contract Manager or director should typically require no more than two (2) days to review and comment on a contract or amendment.

Budget, Accounting, and Financial Operations

When routing a contract or amendment for approvals at the TWDB, the Budget, Accounting, and Financial Operations division staff must ensure the accuracy of the following items:

- 1) Contract Initiation Form and CAPPs Requisition:
 - a) Verify budgets:
 - i. Local share and Board Share
 - ii. Fund
 - iii. [Comptroller Objects](#) (COBJ)
 - iv. Method of Finance (MOF)
 - v. Department (DEPT)
 - vi. Program Cost Account (PCA)
 - vii. Work Number
 - viii. Fiscal Year
 - b) Receivable contract relationships (where applicable)
- 2) Contract Documents:
 - a) Payment Terms
 - b) Task and Expense Budgets reviewed and calculated
 - c) Terms for Travel and other Expenses

Budget, Accounting, and Financial Operations staff should typically require no more than two (2) days to review and comment on a contract or amendment.

Contract Attorneys

When routing a contract or amendment for approvals at the TWDB, the Contract Attorney should ensure the following criteria have been met:

- 1) Contracting Authority and Board authorization or delegation.

- 2) Contract Documents:
 - a) Party/Contractor names verified
 - b) Terms and Conditions
 - c) Standard provisions are included and properly referenced – pay specific attention to contact information for both parties, review for:
 - d) Termination clauses
 - e) Ownership (if needed)
 - f) Severance
 - g) Force majeure
 - h) Verification of any required state and federal clauses
- 3) Signatories and titles accurate.

General Counsel may require up to three (3) days to review and comment on a contract or amendment.

Executive Management

While members of Executive Leadership should be able to rely considerably upon the certification and signatures of subordinate staff as guidance to the acceptability of the contract or amendment, the Executive Administrator, Assistant Executive Administrator and Deputy Executive Administrator should review each contract or amendment for any legislative, Board, or executive-level concerns that may not be common knowledge to agency staff. Additionally, if the dollar value of the contract exceeds the delegated threshold, the DEA should ensure their staff has received Board approval and delegated authority for the Executive Administrator to execute the contract or amendment.

Section 3.9 - Review and Confirmation of Subcontracts

Policy

The TWDB requires the review and confirmation of subcontracts as part of its routine contracting practices.

Purpose

To protect the contracting interests of the TWDB and the State of Texas. This process is limited to confirming that the subcontract is consistent with the TWDB prime contract requirements and contains the requisite level of detail to properly enter the budget information into CAS.

Procedure

The following steps are taken in the successful review and approval of subcontracts:

- 1) The Contract Manager is responsible for ensuring their contractors provide the TWDB with a copy of every subcontract agreement. Signed subcontracts must be submitted to the TWDB in a timely manner for review and written approval prior to the contractor invoicing for subcontractor services.
- 2) Each subcontract must be consistent with the terms of the prime contract between the TWDB and the contractor.
- 3) Each subcontract should include a scope of work, task and expense budgets, and a work schedule that are consistent with the prime contract between the TWDB and the contractor. It is important to make the contractor aware that the terms of the Board's prime contract with the contractor take precedence over all subcontracts.
- 4) The Contract Manager should contact the contractor in the early stages of the project to clarify the TWDB subcontract requirements and should review each subcontract for compliance with all portions of the Board's contract.
- 5) If there are any deficiencies in the subcontract, PCS will notify the Contract Manager so they may communicate these deficiencies to the Contractor.
- 6) If the subcontract is judged to be satisfactory and consistent with the terms of the main contract, PCS will prepare a letter to the contractor for the appropriate Deputy Executive Administrator's signature.

The subcontract approval process is similar to the routing process for other contracting items, whereby the Contract Manager must submit the signed subcontract to the Contracts inbox, PCS staff compile the documents in an Internal Review folder and send out an "Action Requested" email, and then a subcontract acceptance letter along with the subcontract is routed for final approval and delivery via DocuSign.

Section 3.10 - Review and Approval of Contract Payments

Policy

The TWDB PCS staff provide administrative support for the processing of contract payment approvals.

Purpose

To ensure that all contract-related payment requests are properly processed and paid in accordance with the Texas Prompt Payment Act.

Procedure

The TWDB is required to adhere to the requirements of [Texas Government Code § 2251](#) pertaining to timely payment of contracts for goods and services. Under this provision, a payment is considered overdue on the 31st day after the latest of the following:

- 1) The date the agency receives the goods.
- 2) Services are completed.
- 3) The date the agency receives a correct invoice for the goods and/or service.

Payable Contract Payments

All contract payment requests and invoices must be received by Finance for tracking purposes. Contractors must submit all payment requests and invoices to invoice@twdb.texas.gov. If the Contract Manager or other agency staff receives an invoice, they must immediately forward it to Finance, as the date the agency receives the invoice is the date applicable under the Prompt Payment Act.

- 1) Finance staff logs invoices as received and coordinates contract payment processing in collaboration with PCS staff.
- 2) PCS assists Contract Managers by providing an administrative review of invoices against the contract provisions and applicable governing statutes contained in the General Appropriations Act.
- 3) The Contract Manager is responsible for ensuring invoiced expenses are applicable to the scope of work, eligible under the statutes governing their programs/projects, and are supported by satisfactory progress performance reports and acceptable deliverables.
- 4) PCS maintains additional desk aids and guidance documents with detailed step-by-step instructions on payment processing and database procedures.

Contracts with federal, state, and local governmental agencies and public universities are not subject to payment of interest in association with the Prompt Payment Act.

Consistent with [Texas Government Code § 402.0212](#), invoices for Legal Services must be submitted to the OAG's office by the 25th day of receipt

along with written certification by the state agency's Office of General Counsel.

Subcontractor Payments

Contractors must either pay their subcontractors before requesting reimbursement by TWDB for subcontracted services or within ten (10) days of receipt of payment by TWDB.

Payment Holds

- 1) If an invoice is received while a contract amendment is pending execution, the contractor may be notified that the payment will be denied. The contractor may need to resubmit the invoice after the approval of the contract amendment. This is determined at the discretion of PCS staff in consultation with the Contract Manager, on a case-by-case basis, with consideration given to the anticipated amendment processing time and whether the invoice is subject to the Prompt Payment Act.
- 2) If an invoice is received where approval of a subcontractor agreement or internal budget memorandum is pending, the payment may be placed "on hold" for up to eight (8) calendar days. If the agreement and/or memorandum are not approved within the eight (8) days, the TWDB may deduct any expenses associated with the budget memorandum and/or affected subcontractor and pay the remaining balance.
- 3) Rejected or disputed invoices must be provided to the contractor by the 21st day after receipt. If this is not possible because the payment is placed on hold by the program area, a written justification with the reason for the hold must be maintained in the file.

Partial Payment

In cases where revisions cannot be made by the contractor in a timely fashion to meet the requirements of the Prompt Payment Act, or a disputed invoice resolution cannot be reached, PCS staff shall process partial payment of the eligible expenses and notify the contractor of the disallowed expenses. This will be documented in the contract file and CAS, for reference with subsequent payment requests.

Receivable Contract Payments

- 1) There are two types of billing requests that can be initiated by a Contract Manager:
 - a) Receivable requests where a certain associated "payable" contract payment is reliant upon the receipt of incoming funds. In these instances, a receivable request is prepared in conjunction with the payable routing package.

- b) Standalone receivable contracts where there is a scheduled monthly or quarterly invoice requirement that typically funds TWDB expenses and/or salary reimbursement.
- 2) Contract Managers are responsible for requesting Accounts Receivable staff to generate receivable contract billing packages as required by the terms of their contract.
- 3) The Contract Manager, Accounts Receivable, and PCS staff will coordinate to process the approvals for the billing request.
- 4) PCS maintains desk aids and guidance documents with detailed instructions on this coordination process, approvals, and data entry procedures.

Section 3.11 - Draft Report Reviews and Comments

Policy

Draft Final Report Comment Letters must be issued by Procurement and Contract Services, following the technical review by the appropriate program area staff. The transmittal letters must be signed by the appropriate Deputy Executive Administrator, following their review and approval of the comments.

Purpose

To ensure contract deliverables are acceptable according to the terms of the contract and consistency in the draft report review process.

Procedure

The following steps are taken in the successful review and approval of draft reports:

- 1) Upon completion of a Draft Final Report, the Contractor shall submit the document to the agency Contract Manager with a cc to contracts@twdb.texas.gov.
- 2) PCS staff will add the item to the Contracts Worklog, create an Internal Review folder containing a copy of the draft report(s), scope of work, and review guidelines.
- 3) PCS staff send an "Action Requested: email to the Contract Manager and each designated reviewer, stating the due date of reviewer comments, which is normally two weeks, unless otherwise specified by the Contract Manager. PCS staff will follow-up by contacting reviewers in order to get their timely responses. Reviewers are to notify the Contract Manager and PCS if they are unable to complete their review by the due date.
- 4) The Contract Manager will compile the Reviewer comments and work with PCS to ensure the comments are appropriate, action-oriented, clearly articulated, professional, factual, and applicable to the scope of work. The formatting must be consistent with the agency style guide. *If applicable, any review comments that are included from external stakeholders, such as those from other state agencies, should be listed and referenced in a separate attachment since they are not Board staff comments.*
- 5) PCS will prepare a transmission letter addressed to the contractor, including an attachment with review comments, for the Deputy Executive Administrator's signature. This is routed via DocuSign through the PCS Director, Contracts Attorney, Contract Manager, Program Manager, and Division Director. The letter must include a reminder to the contractor to send the Final Report to PCS and must meet the Accessibility requirements and adhere to the associated process referenced in the letter.
- 6) Comments should not be sent directly to the contractor by the Contract Manager, although the Contract Manager should follow-up with their primary point of contact to ensure the appropriate parties have received the draft report comments and transmission letter.

Section 3.12 - Final Report Acceptance

Policy

Final Report Acceptance Letters must be issued by Procurement and Contract Services, following technical review by program area staff, the Office of General Counsel, the Accessibility Coordinator, and the associated Deputy Executive Administrator.

Purpose

To ensure final deliverables are consistent with the terms of the contract, meet accessibility requirements, do not present any homeland security concerns, and adhere to the appropriate records retention policies and procedures.

Procedure

The following steps are taken in the successful review and approval of draft reports:

- 1) Upon completion of a Final Report, the Contractor shall submit the document to the agency Contract Manager with a Cc to contracts@twdb.texas.gov.
- 2) PCS staff will add the item to the Contracts Worklog, create an Internal Review notification and route the item to the Contract Manager, Program Manager, Division Director, Contracts Attorney, and Accessibility Coordinator.
- 3) The Contract Manager must review the Final Report to ensure the Draft Report Review comments are satisfactorily addressed and that the content of the report is acceptable.
- 4) If the Final Report is satisfactory to the Contract Manager and Accessibility Coordinator, PCS will prepare the Acceptance Letter for signature by the Deputy Executive Administrator to notify the contractor that the Final Report is acceptable and in conformance with the terms of the contract. The letter will also note that the contractor may request payment of retainage that may have been held on the contract.
- 5) Once the letter is signed accepting the Final Report, PCS staff will confirm with the Office of General Counsel the report may be posted to the agency website and coordinate with the Webmaster for posting to the Contracted Reports page. If there are any Homeland Security concerns under the Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 671-67 the Office of General Counsel will assist with redacting the content presenting the concerns or write a memorandum to the procurement file stating the rationale for not posting the report to the agency webpage. [This is common for projects that involve community water system information, for example.]
- 6) PCS will also send the Final Report to the Coordinator of the Texas State Publications Clearinghouse at the Texas State Library. See Texas Government Code § 441.101
- 7) Data associated with the Final Report will not be posted to the Web site as part of this process. Any data apart from the Final Report that is submitted to the TWDB by the Contractor will be maintained by program area staff.

- 8) PCS staff will change the contract status in CAS to Retainage Pending, as appropriate.
- 9) If the Final Report and any associated software are not acceptable for some reason, the Contract Manager will coordinate with PCS to prepare a letter for the Deputy Executive Administrator's signature notifying the contractor of any deficiencies that still need to be corrected prior to the TWDB acceptance of the report. The routing will be the same as that for transmitting the written review comments of the Draft Final Report.

Section 3.13 - Delegation of Signature Authority

Policy

Pursuant to [Board Resolution 02-95](#), the Executive Administrator may enter contracts, without prior Board approval, if the contract amount is \$250,000 or less. Contracts that exceed \$250,000 require Board approval prior to execution.

PCS will further ensure agency compliance with [Texas Government Code § 2261.254 and § 2261.255](#).

Purpose

The delegation of signature authority ensures that proper controls are in place for procurement and contracting.

Procedure

The Executive Administrator has delegated limited signature authority to the Assistant Executive Administrators. The Assistant Executive Administrators have further delegated to each Deputy Executive Administrator (DEA) or Acting DEA for final approval and execution of contracts and expenditure requisitions for their respective offices as follows:

- 1) Receivable contracts up to \$25,000.00
- 2) Payable contracts and CAPPs requisitions up to \$25,000.00. Please note that financial assistance contracts such as grants and/or loans (which require Board action) and any other contract that by law requires Board action must be signed and executed by the Executive Administrator. All contracts and expenditure requisitions exceeding \$25,000.00 must be signed and executed by the Executive Administrator – even those approved by the Board.
- 3) Amendments of payable contracts that do not increase the Board's monetary obligation beyond a total contract amount of \$25,000.00.
- 4) All amendments to change the expiration date of an agreement and Memorandums of Agreement between the Board and another government agency provided there is no financial cost to the Board.

Please note that **Memorandums of Understanding** are exclusively reserved for consideration and execution by the Board and the Executive Administrator, in accordance with [Texas Water Code, Section § 6.104](#).

For contracts with a value that exceeds \$1 million, regular reporting must be provided to the Executive Administrator, which includes information 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.
- 3) Any liquidated damages assessed or collected under the contract.

- 4) For contracts with a value that exceeds \$5 million, PCS must:
- 5) Verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and submit to the Board information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

Section 3.14 - Contract Reporting

Policy

The TWDB is required to report certain contracting activities in accordance with the Texas Government Code. PCS will carry out these reporting functions

Purpose

To ensure that the TWDB provides the public with access to contracting information and to comply with provisions of the Texas Government Code

Procedure

Legislative Budget Board

In accordance with [Texas Government Code § 322.020](#), the Texas Legislature requires state agencies, with certain exceptions, to report major contracts awarded on or after October 1, 2007, to the Legislative Budget Board (LBB). State agencies must report all contracts, as well as requests for proposals, invitations to bid, and comparable bid solicitations related to major contracts, and amendments, to the LBB using the State Contracts application. PCS maintains this reporting for the TWDB.

State Agency Reporting of Contracts

[Texas Government Code § 2101.041](#) requires all state agencies to report contract data effective September 1, 2015. CAPPs purchase orders that meet the criteria for LBB reporting, as defined in the Chief Financial Officer's (CFO) [Operational Framework](#), should include a comment. The comment must be accompanied by the fully executed contract package and marked with the 'LBB' flag so that CAPPs will automatically submit, but not finalize the report to the [LBB Contract Reporting Database](#). PCS will check the LBB Contract Reporting Tool at least monthly, finalizing and submitting any contract reports uploaded into 'pending' status by CAPPs since the previous check.

FFATA

The Federal Funding Accountability and Transparency Act (FFATA) was enacted to track contract accountability and to reduce and eliminate wasteful government spending. Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 as of October 1, 2010, are subject to FFATA subaward reporting requirements as outlined in the Office of Management and Budget's guidance issued August 27, 2010.

The reporting system for capturing FFATA reports is the Federal Subaward Reporting System (FSRS) which authorized users can log on to at <https://sam.gov/fsrs> and use according to instructions provided in the FSRS

Awardee Guide found at the same location. The prime awardee is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than \$25,000. To comply with FFATA requirements, the TWDB must report subgrants associated with the FEMA Flood Mitigation Assistance Program and any other Federally Funded subgrant meeting the criteria specified in the [Operational Framework](#).

PCS maintains this reporting for the TWDB. The TWDB Program staff assigned to manage any given grant program is responsible for communicating receivable grant awards to PCS for FFATA reporting, where required according to the [Operational Framework](#); within 5 business days after the award to allow PCS time to prepare and submit the appropriate report in the FSRS. TWDB Grant Programs requiring FFATA reporting are identified in the [Operational Framework](#).

Grant Reporting - Transparency

[Texas Government Code § 403.0245](#) requires a state agency that awards state grants in an amount greater than \$25,000 to make available to the public on their website the purpose for which the grant was awarded. PCS maintains this reporting for the TWDB which can be found on the agency web site through the Texas Senate Bill 20 Expenditure Disclosure page.

Required Posting of Certain Contracts

In accordance with [Texas Government Code § 2261.253](#), all state agencies are required to post on its Internet website each contract the agency enters into for the purchase of goods or services from a private vendor, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires. All state agencies must redact from the posted contract information that is confidential under law, information that the Attorney General determines is excepted from disclosure and/or the social security number of any individual. PCS maintains this reporting for the TWDB which can be found on the agency web site through the Transparency Portal.

Historically Underutilized Businesses

The Historically Underutilized Business (HUB) Program at the Texas Comptroller's Office is tasked with the reporting of expenditures made by state agencies and institutions of higher education. To accomplish this task, state agency HUB Coordinators must provide semi-annual reports to CPA for the periods of September through February and September through August, each fiscal year. The TWDB HUB Coordinator collaborates with appropriate staff to compile supplemental data and a supplemental letter in conformance with the requirements of [Texas Government Code § 2161](#).

Quarterly Reporting of Contract and Purchase Order Amendments

In accordance with [Texas Government Code § 2155.088](#), after a contract for goods or services is awarded under chapter 2155, the governing body of a state agency must consider the material change to the contract and why that change is necessary when (1) extending the length of or postponing the completion of a contract for six months or more; or (2) increasing the total consideration to be paid under a contract by at least 10 percent. To satisfy this requirement, PCS provides quarterly reports to the Board for discussion and consideration.

Section 3.15 - Indirect Costs

Policy

The Texas Water Development Board will not compensate overhead and indirect costs for public university or state agency contracts that are executed through a non-competitive process. If indirect or overhead costs are billed against such a contract without a duly executed waiver or exception memo on file, payment requests including those costs will be rejected.

Purpose

Universities and state agencies are not required to dedicate funds to the TWDB contracts/projects that are non-competitive. This policy exists because the affected contracts are fully funded by the TWDB. This practice allows the TWDB to extend research dollars further and increases the value of the agency's investment in these contracts.

Procedure

- 1) PCS is responsible for drafting all interagency contracts with state agencies and public universities.
- 2) Each contract is required to contain a task and expense budget.
- 3) The PCS staff is responsible for ensuring overhead and indirect costs are not included in the Expense Budget unless a duly executed waiver or exception memo is provided prior to contract execution.
- 4) PCS and the Contract Manager will negotiate with universities and state agencies if there are any issues or matters related to overhead and indirect costs. Exceptions to fund indirect and/or overhead costs will be made only when PCS is instructed to do so by the responsible Deputy Executive Administrator.

Exception requests must include both indirect costs percentage rates and total amount to be authorized and must be documented via memorandum to PCS and must be signed by the Deputy Executive Administrator (DEA) and General Counsel. The memorandum will be filed with contract working documents.

Section 3.16 - Board Approval for Procurements and Contracts

Policy

In accordance with [Texas Water Code § 6.190](#), the Executive Administrator may enter into contracts with the federal government, state and local agencies, or any other entity to conduct the activities of the agency. The Board must consider and approve any contract valued at \$1 million or more, in accordance with [Texas Government Code § 2261](#). The Executive Administrator must seek delegated authority before entering into *payable* contracts valued at \$250,000 or more, as of the date of this document, according to [Board Resolution 02-95](#). The Executive Administrator must also seek Board approval before entering into any master agreements or joint funding agreements with the United States Government, concerning financial participation in facilities [i.e., infrastructure projects].

Purpose

To ensure compliance with governing statutes regarding contracting authority and to provide the Board with opportunities to consider proposed procurement and contracting activities, prior to contract execution.

Procedure

Board memoranda for procurement and contract-related activities should route through the Director of PCS and the Chief Financial Officer, prior to the agenda meeting where staff present the item for the Executive Administrator's consideration. Consultation with the PCS Director helps to ensure that proposed time frames are appropriate and adheres to proper procurement planning requirements.

The Board memorandum must refer to the governing statutes that authorize the program, project, procurement, or contracting authority, and must specify the maximum value of the procurement or contract, including any optional extensions.

The memo should specify the expiration date of the proposed agreement and any optional extensions, for either future Board consideration or delegation of authority to the Executive Administrator.

Recommended language for the requested Board action is as follows:

“Authorize the Executive Administrator to conduct a solicitation for *[business need activity]* and negotiate and execute resulting contract(s) with selected vendors, for a maximum value not to exceed *[total value of procurement, including any potential contract extensions]*.”

Section 3.17 - Training Requirements

Policy

The TWDB staff involved in procurement, purchasing, contracting, solicitations, and vendor selection processes must attend training provided by Procurement and Contract Services, the Office of General Counsel, and the Comptroller of Public Accounts (CPA).

Purpose

To ensure consistency with agency contracting and purchasing policies and compliance with requirements specified in statute, [Texas Government Code § 2262](#) and [Texas Government Code § 656](#).

Procedure

PCS and OGC periodically provide training on contract policies and procedures, procurement and purchasing related processes and requirements, as well as best practices in contract management and ethics. It is vital that staff involved in the development of procurements, solicitation documents, the evaluation process, vendor selections, communication with potential vendors, or other contracting and purchasing related activities attend these internal and external training opportunities.

The registration process for attending the external training provided by CPA is as follows:

- 1) Contract Managers must coordinate with their offices to register for training provided through the CPA. A requisition must be routed to register for any class, after the employee creates an account within CPA's system.
- 2) Upon receipt of the approved requisition, PCS Purchasing staff will coordinate with the employee to register for a course, based on the available training dates offered by CPA. <https://comptroller.texas.gov/purchasing/training/>.
- 3) Budget and class availability permitting, all Contract Managers should attend the CPA provided class and complete the certification as soon as possible.
- 4) An additional requisition is required to complete registration for the required exam. An applicant must complete registration for the examination within 90 days of finishing the applicable course and within 60 days of submitting the purchase order to the testing center.

This policy applies to all agency staff, including front-line and middle management staff that are actively involved in the process, as well as Executive Leadership. This ensures compliance with state procurement laws and helps mitigate contracting risks.

Contract Worker Certification Policy

Contracted workers (including temporary staff) retained by a state agency to perform contract related functions are generally not eligible for state-paid certifications. However, there are exceptions:

1) State Payment for Certified Texas Contract Developer (CTCD):

To engage in contract development functions on behalf of a state agency, a contractor **must** obtain certification as a CTCD. This certification is required for issuing solicitations or contract awards that must be posted to the Electronic State Business Daily (ESBD) or the Texas Register. In such cases, the state agency **may** cover the cost of the CTCD course and examination as part of the worker's official job responsibilities.

2) Certified Texas Contract Manager (CTCM) Certification:

The CTCM certification is typically limited to state employees who meet specific criteria—such as holding the title of “Contract Manager” or managing contracts valued at \$5 million or more. Contractors are generally not eligible for the CTCM unless they meet these criteria and are classified as state employees.

Section 3.18 - Contract Close Out Procedure

Policy

The TWDB contract documentation will be maintained in accordance with requirements under [Texas Government Code Section § 441.1855](#) and vendor performance tracking will be completed consistent with [Sections § 2155.0755 and § 2155.089](#).

Purpose

[Texas Government Code § 441.1855](#) requires all State agencies to retain records of each contract entered into and all solicitation documents related to the contract through the seventh anniversary of the date:

- 1) The contracts are completed or expires.
- 2) All issues that arise from any litigation claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

[Texas Government Code Sections § 2155.0755 and § 2155.089](#) requires each state agency to review a vendor's performance under a contract through the Comptroller's Vendor Performance Tracking System (VPTS) to ensure quality work is being delivered to the agency and to the State.

Procedure

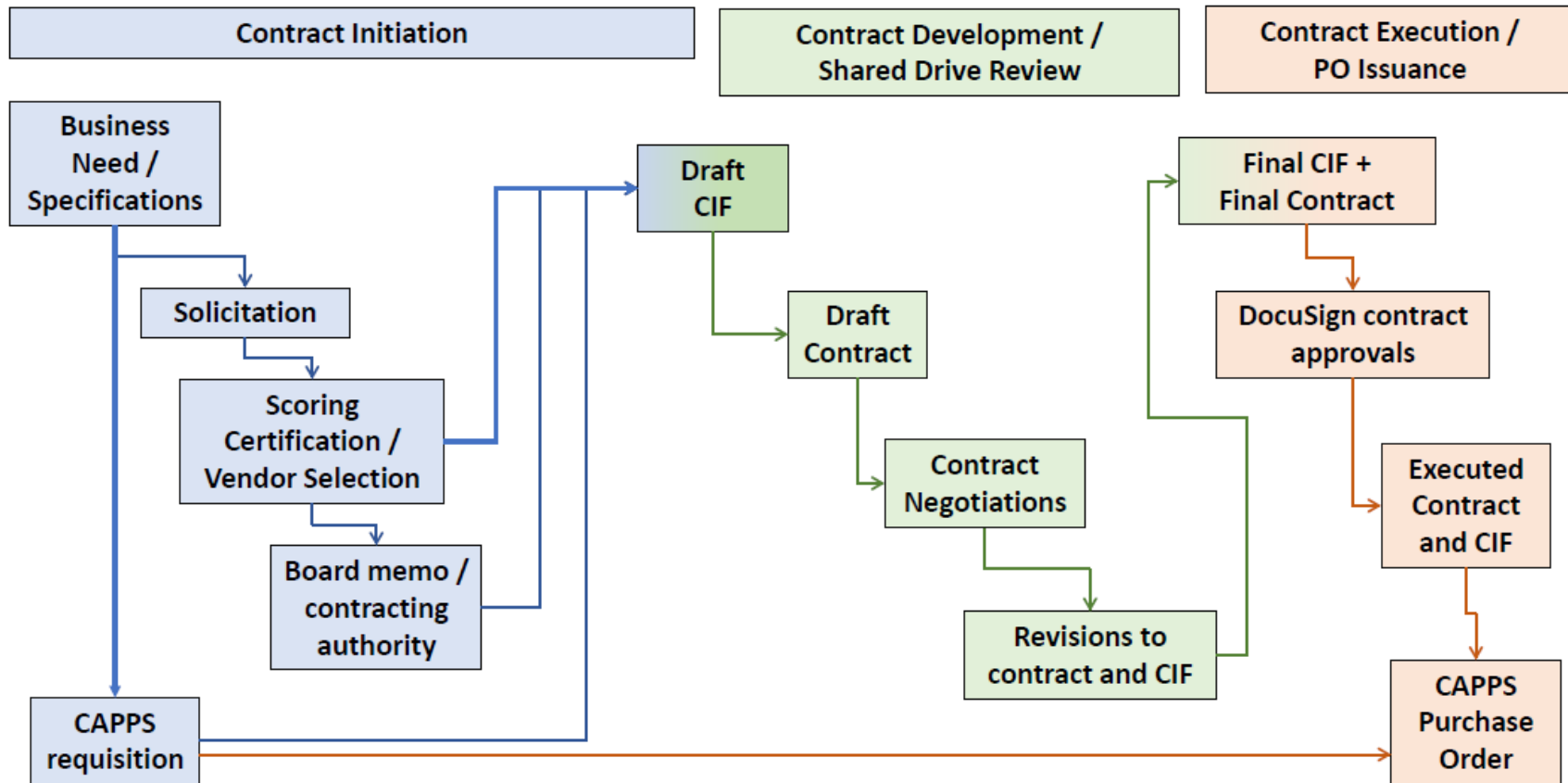
- 1) Upon contract completion, PCS staff will follow detailed desktop procedures for closure of all records.
- 2) PCS will obtain from the assigned Contract Manager a written confirmation that the contract is complete and that all deliverables and payment requirements have been satisfactorily completed.
- 3) All physical file documentation for the contract will be collected for archives and storage and the contract status in the PCS System will be updated to 'complete' status.
- 4) Contract documentation will be retained in accordance with the agency Records Retention Schedule, Records Series Item No. 5.1.001, Agency Item No. O&A-CP – 417, and consistent with all requirements under [Texas Government Code § 441.1855](#), to include any electronic contract solicitation documentation.
- 5) PCS staff will utilize the Comptroller's Vendor Performance Tracking System to determine if the contractor satisfied the standards of the agreement and will maintain documentation of the report in the contract files as part of the close out process.

Chapter 4 - Grant Programs

The TWDB Contracting Policies and Procedures provide guidance and direction for procurement and contracting activities subject to public procurement requirements specified in Texas Government Code. For agency grant programs, the TWDB must adhere to the statutory requirements contained in the applicable governing statutes in the Texas Water Code. The CFO's [Operational Framework](#) is available to staff for additional guidance in administering these programs.

Appendix – TWDB Contract Lifecycle

CONTRACT DEVELOPMENT OVERVIEW



This flowchart contains the steps involving a CIF [Contract Information Form] that applies to contracts and certain agency grant agreements that are managed in CAS, the TWDB legacy Contract Administration System database. There is no explicit requirement in statute or agency policy to manage a contract in CAS, however, nor to develop a CIF. Thus, some contracts are managed solely within the CAPPS-Financials Purchasing module.