

# Texas Board of Professional Engineers and Land Surveyors

## Purchasing and Contract Procedures

### A. Purchasing Process –

#### 1. Purchasing Responsibilities: Gov Code 2261.256

The TBPELS Purchaser is the primary resource responsible for all agency purchases of goods and services. Within the agency purchasing process, there are built-in separation of duties and additional authorizations. The Purchaser works independently to procure routine agency needs and consults with the CFO, Executive Director, and other agency personnel with relevant expertise for more complex purchases.

Broadly, the Purchaser plans, organizes, coordinates, and prepares specifications for procurement documents. Maintains records of items purchased, received, prepared and issued. Purchases supplies and equipment of a highly technical nature as needed within assigned classifications. Reviews requests for completeness and compliance with applicable requirements prior to processing of invitations for bid. Makes recommendations for annual contract awards, awards contracts, and suggests additional items to contract. Rejects items that do not meet specifications. Submits complaint reports on questionable merchandise or services. Monitors legal and regulatory requirements pertaining to purchasing. Initiates local and emergency purchases.

Purchase orders are prepared by the Purchaser and authorized by the CFO. The CFO is responsible for funding and coding instructions for each purchase. All purchases of \$500 or more are also approved by the agency Executive Director.

The agency follows Texas Comptroller purchasing and contract management guidelines.

#### 2. Requisition of goods or services- When goods or services are needed, the department or staff member requests the Purchaser to initiate the purchase including a description of the good or service, quantity, and cost. The request must be approved by the Purchaser, the CFO, and the Executive Director when the amount exceeds \$500.

The Purchaser follows Comptroller and TBPELS regulations in contacting a vendor to purchase the item. The CFO verifies funds are available and assists the Purchaser in coding the Purchase Order to the correct PCA and Comp Object.

#### 3. Purchase Orders- Purchase Orders are created in CAPPs after a request is approved. Blanket purchase orders for services of repeated frequencies and/or large amounts and for Contracted Services may also be created. Goods or services are then ordered and delivery or pickup coordinated by Purchaser. Contracts and Blanket PO's are tracked by using PO's in CAPPs which show remaining balances.

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Types of Purchase Orders (information pulled from the State of Texas Procurement Manual):

- **Emergency purchase** - Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. The purchase follows the procedure in *Section 2.18 Emergency Purchases*.
  - **Professional and consulting services** - Texas Government Code Section 2254 specifically empowers governmental entities to purchase professional services and consulting services. These procurements are exempt from Comptroller of Public Accounts (CPA) review authority. Each agency is responsible for following procurement requirements and resolving any complaints or protests. CPA recommends agencies consult their legal counsel for guidance in procuring professional or consulting services. Purchase using instructions from *Section 2.20 Professional and Consultant Services*.
  - **CCG (Council on Competitive Government) contracts**.<sup>1</sup> If the commodity or service is available on a CCG contract, purchase it according to the instructions in the CCG contract. See *Section 2.21.2 Council on Competitive Government Contracts* for more information.
  - **TIBH Industries, Inc. Catalog** - If a TIBH Industries, Inc. commodity or service meets the specification and other requirements, purchase it from TIBH Industries, Inc. See *Section 2.5.1 The Texas Council on Purchasing from People with Disabilities* for more information.
  - **TCI (Texas Correctional Industries) Catalog** - If a TCI commodity or service meets the specification and other requirements, purchase it from TCI. See *Section 2.5.2 Texas Correctional Industries* for more information.
  - **DIR's (Department of Information Resources) IT Commodity List**<sup>2</sup> . If the specification or SOW is for commodity items, purchase items from GoDIRect Program contracts. See *Section 2.21.1 Department of Information Resources Contracts* for more information.
  - **CPA Term Contracts** - If a CPA Term Contract commodity or service meets the specification, note its price for your best value determination. See *Section 2.7 Term Contracts* for more information on CPA Term Contracts.
  - **CPA TXMAS Contracts** - If the specified commodity or service is available on TXMAS Contract, obtain a price quote from as many TXMAS vendors as are necessary to provide a best value determination. See *Section 2.9.1 Texas Multiple Award Schedule Contracts* for more information on CPA TXMAS Contracts.
  - **Delegated purchase** - A procurement in which the authority to manage the competitive process is delegated to an agency by CPA Rule or by statutory exemption. The delegated purchase procedure does not apply to mandatory State use purchasing programs or requirements that can be satisfied by other purchasing methods specifically authorized by state statutes.
4. **Supply Ordering**- If a purchase requisition is approved by the division director, CFO, or ED when necessary, supplies are ordered by the Purchaser. Items are generally purchased at TIBH Central Store. Should TIBH not carry the requested item, then the purchase is attempted from a HUB vendor off of the CMBL, should a HUB vendor not be available, other state contracted vendors will be contacted.

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5. Receiving- When goods are delivered with a packing slip, they are inspected and signed for by the person actually delivered to or by the purchaser or other agency staff. Each packing slip and/or invoice is marked "received".

### B. Purchasing/Contracting Initiatives-

#### 1. Transparency in State Agency Contracting and Procurement:

Governor Abbott requested in January 2015 that state agencies utilize a competitive bid process to purchase goods and services whenever possible. The following requirements are included in SB 353, 84 Leg RS:

- Require public disclosure of all no-bid contracts and a public justification for using such a procurement method;
- Require that all agency employees involved in procurement or contract management disclose any possible conflicts of interest;
- Prohibit contracts with business entities with which high-level agency leadership or staff have a financial interest;
- Require that the agency's Board chair sign any contract valued at more than \$1 million or delegate signature authority to the agency head;
- For procurements of more than \$5 million, require the agency's central contracting office or procurement director to sign off on the procurement method and to indicate, in writing, to the Board and agency head any potential issue that could arise in the contract solicitation.

#### 2. Training for Governing Bodies: Gov Code 2262.0535

\* All members of the governing body of a state agency shall complete at least one course of the training provided under this section. This subsection does not apply to a state agency that does not enter into any contracts.

TBPE Board members will complete the online training offered by the Comptroller's Office.

#### 3. Executive Order RP-80 Contractors must use E-Verify system

TBPE will include the following language in all state contracts:

Dec. 3, 2014, Gov. Perry issued Executive Order RP 80. This Executive Order requires state agencies, under the direction of the Governor, to require state contractors to use the federal E - Verify system for state contracts.

U.S. Department of Homeland Security's E-Verify System

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By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- a. All persons employed to perform duties within Texas, during the term of the Contract; and
- b. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of The Texas Board of Professional Engineers an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

**If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.**

#### 4. Disclosure of Interested Parties: Gov Code 2252.908

For agency contracts requiring a vote by the Board before the contract is signed or a contract of at least \$1 million (not including interagency contracts), the business entity must submit a disclosure of interested parties to the agency at the time the signed contract is submitted to the agency. The disclosure form is then submitted to the Texas Ethics Commission by the agency.

#### 5. Best Value Standard: Gov Code 2155.0755

The agency will follow best value standards for purchasing goods and services recommended in the State of Texas Contract Management Guide:

[http://comptroller.texas.gov/procurement/pub/contractguide/CMG\\_Version\\_1\\_6.pdf](http://comptroller.texas.gov/procurement/pub/contractguide/CMG_Version_1_6.pdf)

The purchaser or director shall document the best value standard used to contract for goods or services through the competitive bid process.

#### 6. DIR Commodity Purchases: Gov Code 2157.068

The agency shall use the DIR commodity list for lower priced commodities and for a contract of \$50,000 or less the agency may directly award the contract to a vendor; for a contract with a value of more than \$50,000 but not more than \$1 million, the agency must submit a request for pricing to at least three vendors on the list; for a contract with a value of more than \$1 million but not more than \$10 million, the agency must submit a request for pricing to at least six

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vendors on the list; an agency may not enter into a contract to purchase a commodity item if the value of the contract exceeds \$10 million.

### 7. Disclosure of Potential Conflict of Interest: Gov Code 2261.252

Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency. A state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom 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; or (3) a family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity. (c) a state agency employee or official has a financial interest in a person if the employee or official: (1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or (2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official. (d) a financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

### 8. Posting of Certain Contracts: Gov Code 2261.253

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website: (1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed; (2) the statutory or other authority under which a contract that is not competitively bid under Subdivision (1) is entered into without compliance with competitive bidding procedures; and (3) the request for proposals related to a competitively bid contract included under Subdivision (1) until the contract expires or is completed. (b) A state agency monthly may post contracts described by Subsection (a) that are valued at less than \$15,000. (c) Each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency. The agency's contract management office or procurement director shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection. (d) This section does not apply to a memorandum of understanding, interagency contract, inter-local agreement, or contract for which there is not a cost.

### 9. Enhanced Contract or Performance Monitoring: Gov Code 2261.253

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Effective 9/1/2015, the agency shall establish procedures to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. The agency's contract management or procurement director shall immediately notify the agency's governing body, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

TBPELS shall consider a contract which is valued at \$90,000 or more in a fiscal year to be a contract requiring enhanced monitoring. The Board shall be informed of the contract inception at the board meeting nearest the contract start date. A contract of this amount would be considered a high value or resource intense purchase of goods or services that could have a business impact on the agency if not performed according to the terms of the contract.

The agency Purchaser and CFO shall monitor the contract and payments for goods or services to ensure the terms are fulfilled by the contracted vendor. Should a serious issue or risk arise during the contract term, the Executive Director and the Board shall be informed.

### 10. Risk Analysis Procedure and Contract Management Handbook: Gov Code 2261.256

The agency utilizes the State of Texas Contract Management Guide risk management plan to assess risks and identify contracts which may be more critical to agency functions. This guide also serves as the official handbook for the agency to follow in the purchasing and contracting process.

[http://comptroller.texas.gov/procurement/pub/contractguide/CMG\\_Version\\_1\\_6.pdf](http://comptroller.texas.gov/procurement/pub/contractguide/CMG_Version_1_6.pdf)

(a) Each state agency shall develop and comply with a purchasing accountability and risk analysis procedure. The procedure must provide for: (1) assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types 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; and (3) establishing clear levels of purchasing accountability and staff responsibilities related to purchasing. (b) Each state agency shall publish a contract management handbook that establishes consistent contracting policies and practices to be followed by the agency and that is consistent with the comptroller's contract management guide. The agency's handbook may include standard contract provisions and formats for the agency to incorporate in contracts. (c) Each state agency shall post on the agency's Internet website the procedures described by Subsections (a)(2) and (3) and submit to the comptroller a link to the web page that includes the procedures. The comptroller shall post on the comptroller's Internet website the web page link submitted by each state agency.

### 11. Vendor Performance Tracking System: Gov Code 2262.055 (d)

The agency shall use the comptroller's vendor performance tracking system to determine whether to award a contract to a vendor reviewed in the tracking system.

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Governor's Executive Order GA-48 Compliance:

Any company that submits a bid or proposal with respect to a contract for goods or services to the agency or institution of higher education to certify that the company, and, if applicable, any of its holding companies or subsidiaries, is not:

- a. Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
  - b. Listed in Section 1260H of the 2021 NDAA; or
  - c. Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or
  - d. Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.
- Additionally, TBPELS cannot enter into a new contract, contract extension, or contract renewal for a good or service with any company that meets the criteria above.