



Contract Management Manual

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INTRODUCTION

Contracting for goods or services on behalf of the Public Utility Commission (PUC) is an important task for furthering the mission of the PUC while being good stewards of the agency's resources. The PUC employs experts in the contracting process to help ensure the PUC follows the law and maintains good contracting practices. However, contracting does not happen in a vacuum. Subject matter experts from all areas of the agency are necessary to ensure that the products and services the PUC obtains meet the needs of the agency.

The purposes of this manual are:

- to generally inform PUC employees about contract processes and legal requirements;
- to ensure all employees involved in the contracting process are able to identify the actions they are required to take, the restrictions they must follow, when to ask questions, and who is able to assist with various contracting issues; and
- to describe how the PUC will pursue the values of economy, fair competition, transparency, compliance, and consistency in contracting.

Values

There are five overarching values that inform the PUC's contracting processes: economy, fair competition, transparency, compliance, and consistency. As PUC staff, we will pursue these values in the following ways.

- **Economy** – obtaining the best value for the state. This includes consideration of both price and quality of the goods or services, as well as any ongoing or hidden costs, such as maintenance and replacement.
- **Fair Competition** – facilitating the participation of a variety of vendors in any procurement. We will not create artificial barriers to competing for the PUC's business. Additionally, we seek to promote participation from entities that may face barriers to entry in the market when it is consistent with the PUC's other values.
- **Transparency** – doing business in a way that makes our decision-making process clear and accessible to the public and potential vendors. We must occasionally keep some information confidential in order to promote the values of economy and fair competition (e.g., keeping proposals confidential during the bidding process so that competitors cannot base their proposals on what others have offered), but we ensure PUC records are complete and accurate and we share information about our decision-making whenever possible.
- **Compliance** – We follow applicable laws and comply with the agreements the PUC makes.
- **Consistency** – treating vendors the same in similar circumstances. The PUC has standard processes to ensure that the public and vendors know what to expect from the agency. When we deviate from standard processes, we do so for reasons that

support the other contracting values (economy, fair competition, transparency, and compliance) and document the reasons for that deviation.

Distinction between “Contracting” and “Procurement”

In reality, all purchases involve a contract and these terms can often be used interchangeably. However, the PUC uses two separate, but related, processes for obtaining goods or services based on the laws determining contract and purchasing requirements. Generally, PUC staff use the terms “procurement” and “purchasing” for the process that is used for less expensive, less customized, and less complex agreements. And generally, PUC staff use the term “contracting” for more expensive, more customized, and more complex agreements. **This manual is intended to cover the “contracting” process.** Table 1 describes factors that generally lead to a purchase being executed either through the PUC’s “contracting” or “procurement” processes. Table 1 will help you determine which process you need to obtain the goods or services you are seeking, but not all of the factors in Table 1 always require the use of one specific process or the other. If you have questions about a specific purchase, please ask an agency Contract Manager, Purchaser, or General Counsel.

Table 1

| Contracting | Procurement |
|---|--|
| <ul style="list-style-type: none"> • Factors other than price are under consideration (e.g., qualifications or experience of a service provider). • The PUC expects or desires negotiations before reaching agreement. • Requirements cannot be described by detailed specifications included in a Purchase Order (e.g., the PUC needs proposers to make a plan to complete the work). • The service to be provided is categorized as one of the following: legal services, audit services, accounting, architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing. • The agreement is for “consulting service,” the service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee. | <ul style="list-style-type: none"> • The item or service is standardized and available “off the shelf.” • The item or service will be purchased through one of the Department of Information Resources programs for IT or telecommunications contracting. • The item is surplus property available through the Texas Facilities Commission. • The item or service is available through the Texas Multiple Award Schedule (TXMAS) program. (You may also hear of these as being available through “Smart Buy.”) • The purchase is for goods costing less than \$50,000. • The purchase is for services costing less than \$100,000. |

TERMS AND DEFINITIONS

The following are terms used in this manual.

- **Procurement** – this term is often used synonymously with contract. It refers to the act or process of obtaining goods and services from a person or entity outside of the PUC.
- **Solicitation** – a request for an outside person or entity to propose terms and conditions under which they will provide goods or services. The types of solicitations most often used for contracts by the PUC are Requests for Proposals (RFPs) and Requests for Qualifications (RFQs).
- **Vendor, Proposer, and Contractor** – these terms may refer to the same entity at various stages in the contracting process.
 - A **vendor** is a person or entity who offers goods or services in the marketplace. When discussing who might respond or have an interest in responding to a solicitation, this manual uses the term “vendor.”
 - A **proposer** is a person or entity who has responded to a solicitation for goods or services and is offering to provide the requested goods or services.
 - A **contractor** is a person or entity with whom the PUC has an agreement to provide goods or services.
- **Contract** – an agreement to do something or refrain from doing something that one has a legal right to do in exchange for something of value. Typically, the PUC’s contracts involve an agreement to provide goods or services in exchange for money. Generally, with some exceptions, contracts are not legally required to be written to be valid or enforceable. However, the PUC does not enter into oral contracts, so all PUC contracts are in writing.

ROLES AND DUTIES

The contracting process involves people from throughout the agency. The following are the main roles involved in each contract: the Contract Oversight Team, the Contract Manager, the Contract Administrator, the Evaluation Team, General Counsel, the Contract Signatory, and the Executive Director.

Contract Oversight Team

The Contract Oversight Team includes: the Financial Resources Director (who serves as the agency’s Procurement Director), and the Contract Managers who report to the Financial Resources Director.

The **Procurement Director**’s responsibilities include the following tasks.

- Approve each PUC contract for which the PUC is required to use the “best value”

standard.

- Ensure that the PUC documents the best value standard used for the contract.
- Acknowledge in writing that the PUC complied with the PUC Contract Management Manual and the State of Texas Procurement and Contract Management Guide.
- Ensure that the PUC evaluates each contractor's performance based upon: the stated need of the procurement; the specifications for the good or service; the criteria used to evaluate responses to the procurement; compliance with the material terms of the contract; ability to correct instances of contractual non-compliance; and other evaluation criteria presented in the Vendor Performance Tracking System provided by the Texas Comptroller of Public Accounts.
- Complete a required review and certification of the contract file prior to contract award. The review must include reviewing the contract file checklist and all other contents of the contract file to ensure that all documents required by state law or applicable agency rules are complete and present in the file. When the review is complete, certify in writing that the review was completed.
- For procurements subject to Tex. Gov't Code Ch. 2261, verify the process and all documents used to select a contractor, and complete the required certification before contract award.¹ If there is a change in scoring following the initial assessment and scoring of responses, the Procurement Director must review the written justification of that change and certify the change in scoring was appropriate.
- For contracts of \$5 million or more, the Procurement Director must verify in writing that the solicitation, purchasing methods, and contractor selection process comply with state law and agency policy.
- For contracts requiring enhanced contract or performance monitoring, provide information to the Commissioners on those contracts, and notify the Commissioners immediately of any risk or serious issue with performance of the contract, failure to meet legal obligations, or financial implications of the contract that is identified with respect to those contracts.

The agency has Contract Managers who report to the director of the Financial Resources Division. A Contract Manager will be assigned to each contract. The Contract Manager is responsible for ensuring all contracts go through the appropriate processes, use the appropriate documentation, and achieve what they are intended to achieve for the agency. The **Contract Manager's** responsibilities include the following tasks.

- Initiate and run the solicitation process used to select a contractor.
- Conduct risk assessments on each contract to determine whether enhanced contract monitoring is necessary, in accordance with PUC Admin Rule 27.170.

¹ The required certification must state that the agency assessed each proposer's response to the solicitation using the criteria published in the solicitation, or if applicable, the written evaluation criteria established by the agency. The required certification must also state that the calculation of the scoring of responses was accurate.

- Obtain legal review of solicitations, contracts, and other documents as needed. Confer with General Counsel when necessary to determine legal risks and ensure compliance.
- Ensure appropriate signatures and approvals are obtained for required documentation, including the Needs Assessment Form, Non-Disclosure and Conflict Statement, the State Auditor's Office Disclosure Statement for Purchasing Personnel (when required), and the contract itself.
- Work with the Contract Administrator to ensure that the contract requirements are satisfied, the products and services are delivered in a timely manner, and the financial interests of the agency are protected.
- Explain the agency's rights and responsibilities under each contract.
- Manage and document any changes to the contract through the amendment process authorized by the terms of the contract. The contract signatory must sign any amendment on behalf of the agency, and the Contract Manager will facilitate that process.
- Authorize payment of invoices after the Contract Administrator has verified the goods or services were received and the Contract Manager has verified the invoice meets the invoicing requirements.
- Monitor the contract budget to ensure sufficient funds are available throughout the term of the contract. The Contract Manager may seek assistance from the Contract Administrator in monitoring the budget. Additionally, the contract may include terms that require the contractor to notify when certain budget milestones are met in order to assist with budget monitoring.
- Interpret contract terms to resolve payment disputes.
- Advise the Contract Administrator on possible remedies when a contractor's performance is deficient. General Counsel should also be consulted.
- Communicate with the contractor about any non-compliance issues.
- Maintain contract records in accordance with the State of Texas Records Retention Schedule for the Public Utility Commission.
- Perform contract closeout processes: ensure the contract file contains all necessary documentation, report vendor performance to the Texas Comptroller of Public Accounts' Vendor Performance Tracking System, and document lessons learned.

Contract Administrator

Each contract will have a **Contract Administrator** assigned. The Contract Administrator is not necessarily a person with regular contract-related duties. The employee assigned this role is usually chosen based on familiarity with the subject matter of the contract. For example, if the contract is for a consultant to serve as an expert in a rate case, the Contract Administrator

may be someone from the Rate Regulation Division or someone from the Legal Division. Typically, the person responsible for requesting approval of a new contract will serve as the Contract Administrator or choose someone else to be the Contract Administrator. The Contract Administrator is responsible for the following tasks.

- Consult with the Contract Manager and General Counsel before initiating a contract or solicitation process to ensure the proper steps are taken.
- Develop the **Statement of Work** – the portion of the contract that describes the work a contractor will perform and assigns duties to each party to the contract. The Statement of Work will be used in both the solicitation and the contract itself.
- Know the requirements of the contract. The Contract Administrator must read and understand the terms of the contract. If the Contract Administrator has questions, the Contract Manager and General Counsel can help clarify the meaning of contract terms.
- Ensure other users of the contract are familiar with the terms of the contract, and informing other agency employees if contract terms apply to them (e.g., confidentiality provisions).
- Serve as the primary point of contact for the contractor *after a contract is signed*. Between the time the solicitation is released and the contract is signed, the Contract Administrator must not interact directly with proposers.
- Ensure the PUC receives invoices from the contractor in a timely manner following goods or services provided. If invoices are delayed, the Contract Administrator must remind the contractor. If it is an ongoing problem, the Contract Administrator should seek assistance from the Contract Manager.
- Receive and appropriately handle invoices. These are time-sensitive documents and essential for ensuring the agency obtains the services needed and handles the public's money wisely. Exhibit 2 contains a checklist for Contract Administrators to use when they receive an invoice.
- Seek assistance from the Contract Manager if there are problems with the contractor's performance of the contract, or if the contract needs to be amended, cancelled, or extended. (Note: extension is not always an option and is to be avoided when possible, unless the contract contemplated extension at its inception).
- Provide information to the Contract Manager to enable completion of the vendor performance review in the Vendor Performance Tracking System.

There are some important limits on the authority of Contract Administrators.

- Contract Administrators must not initiate a contract or solicitation process or an amendment without consulting the Contract Manager and General Counsel.
- Contract Administrators must not sign or verbally agree to a contract, a change in contract terms, or the termination of a contract. Contract Administrators cannot bind the agency to an agreement or change the terms of a contract without the signature of

the appropriate signatory authority on the contract, amendment, or termination letter.

Evaluation Team

Before the agency begins considering solicitations, the Contract Administrator will work with the assigned Contract Manager to identify PUC employees who can serve on the evaluation team to review the proposals and choose a contractor. The evaluation team members will be chosen based on their knowledge of the agency's need for the goods or services. Evaluation team members are approved on the needs assessment form.

The evaluation team members read the materials provided to them and may pose questions to proposers through the assigned Contract Manager. Additionally, the evaluation team may engage in negotiations over the goods or services provided. All interactions between the evaluation team members and the contractor must go through the PUC's Contract Manager.

Each member of the evaluation team must base their evaluation on the expected quality of the goods or services to be provided, using the criteria specified in the solicitation. Evaluation team members will not be provided pricing information and do not evaluate based on price. The price quoted in each proposal will be given a score based on the formula described in the solicitation, and that score will be included in the proposal scoring by the Contract Manager based on the formula described in the solicitation.

Evaluation team members must each determine their own scores for each of the proposals without conferring with other evaluation team members about the score.

General Counsel

An attorney from the Agency Counsel Division with contract expertise will be assigned to each contract. That attorney will be referred to as "General Counsel" throughout this manual. The following is a list of the General Counsel's duties.

- Provide advice to ensure compliance with contracting laws, ensure the PUC has the legal authority to enter any proposed contract, and minimize unnecessary risk.
- Review and help draft the solicitation, contract, amendments, cancellation letters, and other major contract documentation.
- Advise PUC employees on the agency's rights and responsibilities related to any contract.
- Assist with determining appropriate corrective action if a contractor is not performing satisfactorily or is otherwise not complying with the requirements of the contract.
- Provide any other contract-related legal advice to anyone acting on behalf of the PUC.

Executive Director and Commission

The only people with the statutory authority to sign a contract on behalf of the agency are the Executive Director, an employee who has been expressly delegated signatory authority by the

Executive Director, or the Commission acting as a body (i.e., through a vote made in accordance with the Open Meetings Act).

As a practice, the Commission does not sign or negotiate contracts, although they have the authority. The Executive Director has made a practice of notifying the Commission and requesting express delegation to choose a contractor, negotiate a contract, and sign the contract and any amendments during the contract solicitation process.

PROCESS

This manual will describe the processes used to initiate, procure, monitor, amend, and close out a contract.

Contract Initiation and Procurement

Image 1 contains a flow chart of the typical process from contract initiation to signature and is intended to give an overview of the process used to get authority to plan for and enter a contract, solicit proposals from potential contractors, choose a contractor, and finalize the agreement. The steps in that process will be described in more detail following the flow chart. The contract procurement process may be stopped at any point in the process if necessary or desired. Some solicitations may be cancelled and re-issued based on changing needs of the agency. Additionally, the Executive Director has the authority to cancel or require changes to a procurement.

Image 1. Contract Initiation to Signature Process Flow.



Identifying the Need for a Contract

When a product or service is needed, first consider whether the PUC has access to the good or service without a new contract or purchase. The following questions will assist in this consideration.

- **Does the agency have staff that can provide the good or service?** Consider both their expertise and their workload.
- **Does the agency have access to this good or service under an existing contract?** If so, is there a reason to solicit for the good or service anyway? For example, a new solicitation may promote competition or transparency, or give the agency the opportunity to consider new perspectives. However, if the agency has an existing contract and staff is considering issuing a solicitation, the Contract Administrator for the existing contract must ensure that contract does not have an exclusivity clause requiring the agency to use the existing contractor for the good or service. (Typically, the agency will not agree to exclusivity clauses.)
- **Can the agency obtain the good or service from another state agency or a state university?** If so, consult the Contract Manager or Purchaser to assist with preparing or reviewing an agreement between the PUC and the other state agency or state university.

Determining Needs for the Contract

All purchases must be made by an individual with the authority and qualifications to handle the purchase. As discussed in the introduction, and illustrated by Table 1, the PUC has separate processes and teams for what the PUC designates as “purchases” or “contracts.” If the solicitation falls into the “purchase” category, contact a Purchaser. If the solicitation falls into the “contracts” category, contact a Contract Manager to discuss needs for the contract. This document describes the contract solicitation process.

In determining the needs for the contract, the employee requesting contract initiation should be prepared to discuss the following with the Contract Manager:

- how a need for the contract was identified, and what options have been considered to obtain the goods or services (as discussed in Identifying the Need for a Contract);
- time-sensitivity of the need, and an estimate of time to completion of the contract;
- requirements for the good or service to be acquired;
- budget for the contract;
- any employees identified as good candidates for Contract Administrator or evaluators for the solicitation;
- any specific legal authority for PUC to contract for the goods or services;
- any political sensitivities or other outside pressures related to the contract;

- potential ramifications if the goods or services are not obtained through a contract;
- potential vendors the employee may be aware of, or potential sources for advertising to a diverse and qualified pool of vendors (other than the standard state contracting market places); and
- any other information the employee is aware of that might be pertinent to the contract or solicitation.

In preparing for this conversation with the Contract Manager, the employee may want to gather information about the contract through internal discussions, discussions with employees from other agencies who contract for similar goods or services, or even discussions with vendors.

Caution: Do not initiate discussions with any vendor regarding a possible future solicitation or contract without obtaining guidance from General Counsel. A vendor who receives payment for assisting in developing a Statement of Work, or the requirements for a contract, is disqualified from participating in the solicitation for that contract, and would not be available as a contractor. Additionally, discussions about future contracts with potential vendors should be handled with care, as they may damage the fairness and competitiveness of the solicitation.

During the discussion of the need for the contract, the Contract Manager will determine what type of solicitation is needed. The two most frequently used solicitation types in the PUC's contracting process are a Request for Proposals and a Request for Qualifications. After discussing the needs for a new contract, the Contract Manager will complete the initial risk assessment and draft a needs assessment form to be signed by the Division Director² initiating the contract, General Counsel, and the Executive Director.

Initial Risk Assessment

The Contract Manager will conduct an initial risk assessment for any contemplated contract before preparing a solicitation to determine whether enhanced contract monitoring is necessary. The risk assessment will be reviewed again once a contractor and proposal is chosen, because the factors used in the risk assessment may change. Some, such as the vendor performance history are likely to be completely unknown during the initial risk assessment. The factors used in the risk assessment are:

- vendor performance history;
- contract amount;
- contract length;
- impact on agency goals; and
- any other factors that may impact the agency.

² If the individual initiating the contract is the Deputy Executive Director or Chief Operating Officer, they will sign instead of a Division Director.

The initial risk assessment will be used to ensure the solicitation includes contract terms that enable enhanced contract monitoring, if needed. Enhanced contract monitoring may include:

- scheduled programmatic reports related to the performance measures in the contract and any other deliverables;
- site visits;
- additional meetings with contractor staff; or
- other documentation needed to assess progress toward meeting performance requirements.

Neither a risk assessment nor enhanced contract monitoring are required if the contract is an interagency agreement, an interlocal agreement, a memorandum of understanding with another state agency, or a contract for which there is no cost.

Contract Initiation Form and Project Number Request

The Contract Manager will prepare and circulate a contract initiation form to obtain the required internal approvals before preparing a solicitation.

Additionally, the Contract Manager will request a project number for the solicitation so that there is a repository for information that must be filed with Central Records.

These two steps may be done concurrently with the requesting employee drafting the Statement of Work.

Statement of Work Drafting

Employees from the division initiating the contract must draft a Statement of Work. The Statement of Work will describe the services or products to be provided under the contract. It should provide any required deliverables and deadlines. It should provide any known expectations about the quality and quantity of the work, along with specific and measurable goals.

If the contract is for services that are expected to be needed indefinitely, the PUC still must provide a set term for the contract, and re-solicit for the services periodically. When this is the case, there may be challenges with transition to a new contractor if the contractor changes when it is re-solicited. Contract Administrators should consider this possibility in drafting the Statement of Work and consider including a requirement for the existing contractor to assist with the transition to the next contractor, if applicable.

Whenever possible, the Statement of Work should tie expected deliverables to payment or other consequences to ensure the PUC can enforce the requirements of the contract. If the financial consequences of the contractor's potential failure to deliver the required goods or services according to the specifications cannot be measured, the Statement of Work may include "liquidated damages," provisions that specify payment the contractor may forfeit or damages the contractor may be required to pay. Liquidated damages are only allowed under certain circumstances. General Counsel must be consulted regarding any liquidated damages clause in a Statement of Work.

The Statement of Work may also describe specific information proposers should provide. For example, if the Statement of Work specifies a goal that can be met in multiple ways, and the agency wants the contractor to describe its process for meeting that goal, the Statement of Work can ask for that in the proposals. Typically, Statements of Work are the same or very similar in the solicitation and the resulting contract. However, any portion of the Statement of Work in the solicitation that requests or requires information at the proposal stage will likely need to be re-written when the Statement of Work is incorporated into a contract to reflect things that will be required of the contractor once the contract is in place.

There are multiple possible audiences for the Statement of Work, and all should be considered in drafting the Statement of Work:

- PUC staff – including the experts drafting the Statement of Work, executive management, and the Contract Manager;
- potential proposers; and
- members of the public – both those who may be directly affected by the performance of the contract, and those who simply have an interest in transparency and the efficient use of public money.

Keeping the multiple audiences in mind, the Statement of Work should be written clearly, avoid jargon, and define any terms that may have a meaning to individuals with expertise in the subject matter of the contract that is different from the common understanding of the term.

Solicitation Drafting

Once the internal approvals and project number are obtained and the Statement of Work is drafted, the assigned Contract Manager assembles the solicitation and the assigned General Counsel reviews it. The solicitation will require several decisions to be made by the Contract Administrator, with the advice of the Contract Manager and General Counsel, including:

- the timeline for the solicitation – including when it will be issued, how much time proposers have to ask questions, how long it will be open (there is a minimum requirement for this depending on the details of the solicitation), when and if evaluators are expected to conduct interviews of proposers, and when the contract is expected to begin;
- page limits for the solicitation;
- minimum years' experience required of proposers; and
- the term of the contract.

The Contract Manager or General Counsel may seek additional clarification on the Statement of Work at this time, and will likely provide suggested edits. The Contract Administrator will be expected to review and approve the entire solicitation once it is assembled. The Contract Administrator may provide edits back to the Contract Manager and General Counsel.

External Approvals

Once a draft solicitation is completed and agreed upon, the Contract Manager will send it for any required external approvals. Additional edits may need to be made after the external approval process. The external approvals needed depend on the facts of the solicitation. See Exhibit 1 for links to the external approval processes and requirements.

Solicitation Issued

When all approvals have been obtained and the solicitation is in its final form, it will be issued by posting on the PUC website, the Electronic State Business Daily (a resource maintained by the Texas Comptroller of Public Accounts), and in some cases, the Texas Register. Additionally, the Contract Manager will send the solicitation to appropriate categories of vendors on the Centralized Master Bidders List (a list maintained by the Texas Comptroller of Public Accounts).

Once a solicitation is issued, proposers or potential proposers are prohibited from communicating directly with any PUC staff other than the Contract Manager or his or her designee. The Contract Manager may facilitate communication with proposers through the appropriate means when needed to answer questions related to the solicitation.

The solicitation will provide a deadline for questions about the solicitation to be sent directly to the Contract Manager's email. The Contract Manager will document the questions, consult the Contract Administrator regarding the answers if needed, and post the questions and answers where they can be viewed by all vendors and the general public.

Request for Delegation of Authority

The Contract Manager will draft a request from the Executive Director to the Commission for delegation of authority to choose a contractor, negotiate the terms of the contract, enter into the contract, and handle any subsequent amendments or cancellation of the contract. This request is a formality and is done primarily to ensure the Commission is informed about potential contracts. Texas Utilities Code section 12.103 gives the Executive Director the responsibility for daily operations of the PUC, which includes contracting authority. However, it has been a long-standing practice of the PUC, and will likely continue unless the Commission directs otherwise.

The Request for Delegation of Authority can be made at any time after the solicitation is issued and before the contract is signed. It will be put on an open meeting agenda and may or may not be taken up for discussion. It should be placed on an open meeting scheduled before contract signature is anticipated to take place.

Proposals Received

Proposals must be received by the deadline stated in the solicitation to be considered for the contract. The solicitation will specify the time and place for delivery ("place" may include a specific email in-box) and the clock or time-stamp to be used to determine whether the proposal is received on-time. The Contract Manager will keep a log of responses received which contains the following information: solicitation number, due date and time, respondent name, date and time response received, and delivery method (i.e., email, fax, hand delivery, USPS, or other delivery service).

The Contract Manager will review each proposal received on-time for responsiveness. Under some circumstances, if there are non-substantive items missing or incomplete, the Contract Manager has discretion to request that a proposer fix the issue with the proposal so that it can be considered. However, the solicitation will specify what is required for the proposal to be responsive, and proposals that do not meet the responsiveness criteria will not be forwarded to the evaluators for consideration. Additionally, proposals received after the deadline will not be considered.

Occasionally, the PUC may receive only one responsive proposal or no responsive proposals by the deadline. In that case, the Contract Manager may re-post the solicitation with a later deadline or withdraw the solicitation. If the agency receives two proposals, and they are both priced higher than the budget, the agency may repost and may amend the requirements to meet budget constraints. If the solicitation is re-posted, it may also be amended (e.g., to adjust expectations based on new information or a shorter timeline).

Scoring Proposals

Once the deadline has passed and all proposals have been screened for responsiveness, the Contract Manager will provide each member of the evaluation team a copy of each proposal, omitting the pricing information, and a scoring sheet that is based on the evaluation criteria established in the solicitation.

Each evaluator must review each proposal and score it based on its own merits. Evaluators are prohibited from collaborating on the scoring. Instead, evaluators must give each proposal the score they believe it merits based on their own best judgment. The Contract Manager will be available for questions from the evaluators regarding the scoring process.

If evaluators have technical questions about the proposals, for example, questions about the meaning of terms used in the proposal, or the way a proposed task would fit into the agency’s work flow, the Contract Manager may call a meeting to allow the evaluators discuss those questions with other evaluators or others in the agency who have the expertise to provide greater understanding. However, those conversations must avoid discussion of the evaluators’ judgment regarding the quality of the proposal.

Once evaluators have completed the scoring sheets for each proposal, they will provide the scoring sheets to the Contract Manager. The Contract Manager will calculate scoring for compensation. The compensation score will be calculated using the following formula:

$$\left(\frac{\textit{Lowest Price}}{\textit{Price of Response Being Evaluated}} \right) \times \textit{Maximum Compensation Points Available}$$

$$=$$

$$\textit{Compensation Score}$$

For example, if the total possible points available for compensation are 100, the lowest-priced proposer receives 100 points. Consider a hypothetical solicitation with proposers A, B, and C, requesting compensation of \$100,000, \$200,000, and \$300,000, respectively.

- Proposer A’s compensation score would be 100. (\$100,000/\$100,000) x 100 = 100.

- Proposer B’s compensation score would be 50. $(\$100,000/\$200,000) \times 100 = 50$.
- Proposer C’s compensation score would be 33. $(\$100,000/\$300,000) \times 100 = 33$ (rounded to the nearest whole point).

The Contract Manager will review the individual evaluators’ scoring sheets and compile a summary scoring sheet combining all evaluation team scoring and including the compensation scoring to calculate overall scores. The Contract manager will average the scores for each criteria scored by the evaluation team and calculate the total scores, including the compensation scoring. The points available for each criteria will be based on the weight given to that criteria, which will be specified in the solicitation.

An example of a hypothetical solicitation scoring, using the hypothetical compensation scores already calculated for Proposers A, B, and C, is illustrated in Table 2.

Table 2

| Points for each Proposer | Criteria 1: Proposal Substance (30% weight) | Criteria 2: Proposer Qualifications (20% weight) | Criteria 3: Compensation Score (50% weight) | Total Score |
|--------------------------|---|--|---|-------------|
| Total Points Possible | 60 | 40 | 100 | 200 |
| A | 30 | 15 | 100 | 145 |
| B | 60 | 40 | 50 | 150 |
| C | 55 | 35 | 33 | 123 |

After overall scores are calculated, the evaluation team, with guidance from the Contract Manager, will take one of the following actions: recommend election of a specific proposer, gather more information before selecting a specific proposer, or recommend that the solicitation be withdrawn or reposted.

If the evaluation team decides to gather more information, that could include requesting additional written information, oral presentations, or best and final offers from one or more proposers. If the evaluation team gathers more information, they will then re-score the proposals using the new information in addition to the information originally provided in the proposals.

The evaluation team will usually use the same criteria to score proposals after additional information is gathered as they used to score the original proposals. However, the evaluation team has the opportunity to change the criteria before gathering additional information, with the advice and guidance of the Contract Manager. If the scoring criteria will be changed, the Contract Manager must notify the proposers of the new criteria prior to gathering the additional information.

The evaluation team may go through multiple rounds of gathering additional information

before making a final decision.

The Contract Manager and Contract Administrator will also check references for at least the top-scoring proposer before a final recommendation is made. The Contract Manager and Contract Administrator will document the attempt to reach references and information gathered.

Recommending a Contractor

When final scoring is complete, the Contract Administrator and Contract Manager will make a recommendation regarding the acceptance of a proposal to the Executive Director, based on the final score. Usually, the recommendation will be to contract with the proposer who scored highest. If the recommendation is not to contract with the highest-scoring proposer, the recommendation must provide written justification of the recommendation. The Executive Director may take one of the following actions.

- Approve the recommendation.
- Decide to contract with another proposer.
- Repost the solicitation.
- Cancel the contract.

The Executive Director will either approve the recommendation or provide written justification of another decision.

Revisiting the Risk Assessment

The Contract Manager will revisit the initial risk assessment considering the following factors:

- vendor performance history;
- contract amount;
- contract length;
- impact on agency goals; and
- any other factors that may impact the agency.

At this point, the vendor will be known, so the vendor performance history can be considered. Additionally, the agreed-upon contract amount will be considered to determine if it varies significantly enough from the budgeted amount to affect the risk assessment. The Contract Manager will also consider whether any other factors have changed and consider whether the level of risk for the contract has changed from the risk assessment conducted at the beginning of the procurement.

If the Contract Manager determines the contract needs enhanced monitoring, the contract will include requirements for the vendor to provide information related to the performance

measures in the contract, as well as any other deliverables, on a scheduled basis. Enhanced monitoring may also include site visits, additional meetings with the vendor's staff, or other documentation relevant to assess progress toward meeting performance requirements.

Additionally, if the contract requires enhanced monitoring, the Procurement Director will notify the Commission, as required by the Enhanced Contract Monitoring Procedure in 16 TAC section 27.170.

Drafting the Contract

The Contract Manager will provide copies of the solicitation, the winning proposal, and any amendments to those two items to the General Counsel assigned to the solicitation. The Contract Manager will also notify the General Counsel whether the contract is one that has been determined to need enhanced monitoring. The General Counsel will draft the contract for review by the Contract Manager and the Contract Administrator. The contract will include the Statement of Work and the general terms specified in the solicitation, as well as any changes that are needed based on the chosen proposal. The general terms are based on a consistent template for all PUC contracts, but changes may be made as needed to serve the purpose of a specific contract or as negotiated with a proposer.

After the Contract Manager and Contract Administrator's review, the General Counsel will incorporate any feedback and the Contract Manager will send a clean version of the draft to the winning proposer for review.

The contractor may request changes. If so, the Contract Administrator, Contract Manager, and General Counsel will discuss and negotiate possible changes to get a contract both parties can agree upon. There are limits to the PUC's ability and willingness to negotiate. Some contract terms are mandated by law. Additionally, the solicitation will require proposers to commit to a firm offer for a specified period of time, recognizing that the solicitation specifies the anticipated terms of the contract. Proposers are allowed to propose changes to the terms of the contract, but if they do not do so at the proposal stage, the PUC can insist upon the terms specified in the solicitation.

Contract Execution

Once a final draft of the contract is agreed upon, both parties will sign. The Executive Director or Executive Director's designee signs on behalf of the PUC. Unless signature authority has been appropriately delegated to another PUC employee, the Executive Director is the only person with the authority to commit the PUC to a contract.

The contract will be effective on a date specified in the contract. The contract may identify a specific date that it will be effective (e.g., September 1, 20XX), or it may specify that it will be effective after a specific event takes place (e.g., "immediately after the last party signs"). **No work may begin before the contract is effective and no payment may be made for work that took place before the contract is effective.**

Certificate of Interested Parties

For most contracts with a value of \$1 million or more³, the contractor is required to submit a

³ See TEX. GOV'T. CODE § 2252.908 for specific requirements.

disclosure of interested parties to the PUC on a form prescribed by the Texas Ethics Commission on or before the date the contract is signed, and the PUC must submit a copy of the disclosure to the Texas Ethics Commission within thirty days of receipt.

Contract Management and Monitoring

Once the contract is effective, the management and monitoring of that contract will primarily be conducted by the Contract Administrator with guidance from the Contract Manager.

The Contract Administrator will be the primary point of contact with the contractor, ensure that the contractor gets anything they need from the PUC to perform their duties, and ensure that the contractor performs the duties they have agreed to. The Contract Administrator has the following responsibilities for management and monitoring.

- Keep track of the contract deadlines and deliverables.
- Notify the Contract Manager if there are problems with the performance of the contract.
- Review all invoices for compliance with the contract in order to recommend approval or denial of payment (See Exhibit 2 for an invoice review checklist).

The Contract Administrator should enter the deliverables and any documentation (e.g., invoices, required reports, and any other documents collected) into the contract management system. The contract management system is administered by the Contract Managers. The Contract Manager assigned to the contract will set up the contracts deliverable checklist in the system and assign the contract to the Contract Administrator. The Contract Manager will also assign access enabling each Contract Manager to only have access to that Contract Manager's contracts.

The Contract Manager will periodically check in with the Contract Administrator to ensure the contractor is complying with the terms of the contract, and will provide guidance if there are problems with the performance of the contract. The Contract Manager and Contract Administrator may contact the General Counsel if legal advice is needed to resolve any contract issues.

Contract Amendments

Occasionally, unforeseen circumstances may require a change to the work performed under the contract or the payment terms of the contract. This must be done through a written amendment to the contract, signed by all parties. The following are some examples of circumstances in which the PUC may consider an amendment to the contract.

- If the compensation terms are based on payment per service and the PUC has required more services than anticipated, making it likely the total budget for the contract will be exceeded before the contract expires, the PUC may amend the contract to raise the total budgeted for payment.
- If the contract terms include a set payment amount for all services but, for reasons that are out of the control of the contractor, the cost of performance is significantly higher than expected, and the contractor requests an amendment to the payment

terms, the PUC may amend the contract to raise the contract fee.

- If the amount or kind of work needed under the contract is different than expected, we may amend the contract to accommodate that change.

Contract amendments are not needed when a term of the contract specifies another process for making the change, for example, when a contractor must change the staff assigned to the contract, or when the contract says that a deadline may be changed by the Contract Administrator. Determining whether amendment of a contract is appropriate may require legal review. In some cases, amendment of a contract may not be appropriate, and the agency will need to solicit for a new contract. For example, significant changes to the scope or budget or a contract may require re-solicitation to comply with the law. Additionally, contracts for consulting or professional services will require posting a solicitation before an amendment may be executed. The Contract Administrator must consult the Contract Manager as soon as the potential need for an amendment is anticipated.

Once it is determined that an amendment is appropriate and needed, the Contract Manager will prepare and circulate a needs assessment to be signed by the appropriate parties. The General Counsel will draft the amendment for review by the Contract Administrator and Contract Manager. The General Counsel may request that the Contract Administrator provide a written description of changes to the Statement of Work if needed.

Contract Termination

Contracts may need to be terminated before the term of the contract has concluded, even if the contractor is performing as expected. Potential reasons for termination may include:

- poor performance;
- completion of work required before the end of the term;
- exhaustion of the budget; or
- legislative changes, including lack of appropriations for the contract.

If the contract needs to be terminated before the term is complete, the Contract Administrator must inform the Contract Manager to initiate the termination.

Contract Closeout and Vendor Performance Reporting

When the contract concludes, the Contract Administrator must complete the Contract Closeout Form (example provided in Exhibit 3) to document that the deliverables have been received and all invoices have been paid. The Contract Administrator must also affirm that arrangements have been made for contract records retention and property has been returned the appropriate owner. Finally, the Contract Administrator must affirm that any deficiencies found during performance of the contract or as part of the closeout process have been documented and communicated to all appropriate parties. At a minimum, deficiencies must be communicated to the Contract Manager so they may be addressed and, where appropriate, included in the agency's vendor performance review.

The Contract Manager will review the Contract Closeout Form, complete the vendor

performance review, ensure the PUC has met all contract requirements, ensure all contract documents have been uploaded to the agency's contracts database, and close the contract file.

The agency must retain each contract and related documents for a period of seven years after the contract expires, terminated, or is completed, after all issues have been resolved. Along with the contract, all solicitation documents must be retained. These retention requirements can be found in the State of Texas Retention Schedule for the Public Utility Commission.

Contract Ethics Rules

All employees involved in contracts on behalf of the PUC must perform their duties ethically and work to ensure the appropriate use of the state's financial resources. Employees are expected to not merely follow the law, but also to strive to avoid even the appearance of impropriety in contracting. This section describes rules that PUC employees must follow when performing contract-related duties. Failure to follow these rules could result in a contract being invalidated or a preferred contractor being disqualified. Employees who violate these rules may be subject to disciplinary action, up to and including termination.

Authorized Purchases Only

Only certain individuals have the authority to make a purchase on behalf of the PUC. Employees who are not authorized to make purchases or sign contracts must not enter into verbal agreements or make promises that the PUC will enter a contract.

Additionally, the PUC cannot pay for work that occurred before a contract is effective, so Contract Administrators must be careful not to authorize any work until the contract is signed.

Limits on Outside Assistance with the Statement of Work

The PUC is allowed to receive help drafting a Statement of Work for a contract solicitation. However, there are limits on this assistance that are intended to prevent inappropriate influences and unfair competition.

If a person or entity is paid to assist with development of a Statement of Work, they are disqualified from bidding on the solicitation. The PUC can accept unpaid advice or assistance from someone who may bid on the solicitation, but PUC staff must avoid enabling undue influence over the solicitation and ensure the PUC avoids the appearance of impropriety. Seek advice from the Contract Manager or General Counsel if you need to obtain outside assistance with developing a Statement of Work for a solicitation.

Avoiding Conflicts of Interest

PUC employees and Commissioners must avoid conflicts of interest in making decisions or recommendations about contracts and procurement. A conflict of interest exists when an individual's personal interests (e.g., relationships, financial interests, or social interests) could compromise their judgment, decisions, or actions in their role as a public servant.

Before any PUC employee or Commissioner receives information about proposals responsive to a solicitation, the Contract Manager will require a signed Non-Disclosure and Conflict Statement form. The form screens for conflicts, such as ownership interest in a proposer, or a familial relationship with someone with an ownership or employment interest in a proposer. The form also screens for potential financial benefit from a contract. Additionally, the employee or Commissioner is required to either state any facts that may create a conflict of interest so that the conflict may be evaluated, or affirm that there is no known potential for a

conflict of interest or appearance of impropriety.

Conflicts of interest may also arise during the term of a contract. If an employee believes their role in working with a contractor may be compromised by a conflict of interest or an appearance of impropriety at any time during a solicitation or the term of a contract, they must notify the Contract Administrator and Contract Manager immediately.

Prohibited Gifts

PUC employees must not accept any gifts (including food, beverages, promotional items, rebates, or other benefits) from a person to whom a contract may be awarded. That includes a proposer to a current solicitation as well as anyone who might reasonably be foreseen to be interested in a future contract.

Post-Employment Restrictions

An employee who “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.”⁴ “Participated” means “to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.”⁵

Additionally, a former employee “may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment.” *See* Tex. Gov’t Code § 572.054(b). Participation in developing a procurement (including a Statement of Work) may constitute a “particular matter” that prevents an employee from working for a contractor on that matter even if the employee did not participate in a procurement or contract negotiation involving the contractor. *See* Ethics Advisory Opinion 570 (Texas Ethics Commission, 2022).

⁴ Tex. Gov’t Code § 572.069.

⁵ Tex. Gov’t Code § 572.054(h)(1) and Ethics Advisory Opinion 586 (Texas Ethics Commission, 2023).

Exhibit 1 – External Notice and Approval Processes

Texas law has various external notice and approval requirements for different types of contracts. The Texas Comptroller of Public Accounts has created a table which provides comprehensive information about these, which can be found at:

<https://comptroller.texas.gov/purchasing/docs/procurement-requirements.pdf>

Additionally, consulting services contracts over \$15,000 require notice to the Legislative Budget Board and the Governor’s Budget and Planning Office, as well as approval from the Governor’s Budget and Planning office.⁶

Contracts for outside legal counsel must also receive approval from the Attorney General.⁷

⁶ Tex. Gov’t. Code § 2254.028.

⁷ Tex. Gov’t. Code [§ 402.0212](#).

Exhibit 2 – Invoice Checklist for Contract Administrators

- Provide invoice to Accounts Payable immediately if invoice is to be paid by the PUC. If Invoice is to be paid by a third party, provide invoice to the third party. Inform Accounts Payable or the third-party payor that the invoice has not yet been reviewed, and tell them when you will complete your review.
- Analyze the invoice to determine if it is acceptable. Confirm the following:
 - the PUC received the goods or services billed for as well as any deliverables currently due;
 - the goods or services billed for are those expected under the contract as described in the Statement of Work and are billable under the compensation terms of the contract; and
 - the pricing used conforms to the compensation terms of the contract.
- If the invoice is acceptable, inform Accounts Payable or the third-party payor that you have reviewed the invoice and it should be paid in the amount stated on the invoice.
- If the invoice is not acceptable, notify the contractor and the PUC Contract Manager. Specify what must be fixed. Instruct Accounts Payable or the third-party payor to wait for a corrected invoice before paying.
- Upload the invoice and deliverable documentation into the agency contracts database.

Exhibit 3 – Contract Closeout Form

Public Utility Commission of Texas
Contract Closeout Form

Contract Number:

Contractor Name:

| | Yes | No | N/A |
|---|--------------------------|--------------------------|--------------------------|
| All deliverables (including reports) have been delivered and accepted by the agency. Before acceptance, contract managers should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed in accordance with contract standards. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Final payment has been made. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| All property inventory and ownership issues are resolved including disposition of any equipment or licenses purchased under the contract. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Contractor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Any deficiencies found during performance of the contract or as part of the closeout process have been documented and communicated to all appropriate parties. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments: