

# Contract Management Handbook

---



**TEXAS HISTORICAL COMMISSION**  
*real places telling real stories*

Version 1.0

THC September 2019

## TABLE OF CONTENTS

REVISION HISTORY .....	3
1 Introduction .....	4
2 Definitions .....	4
3 Purchasing Section Organization .....	4
4 State and Agency Ethical Standards .....	5
4.1 Conflict of Interest .....	5
4.2 Disclosure .....	6
4.3 Required Forms .....	6
5 State Procurement and Contracting Statute and Rules .....	7
6 THC Commission Approval Requirements .....	8
7 Need Assessment .....	8
8 Approvals and Signature Authority .....	8
9 Enhanced Contract Monitoring Program .....	9
9.1 Risk Assessment Worksheet .....	9
9.2 Enhanced Guidance for Contracts over \$1 million .....	9
9.3 Enhanced Guidance for Contracts or Solicitations over \$5 million .....	10
10 Contract Management .....	10
10.1 Contract Monitoring .....	10
10.2 THC Major Contracts/Purchase Orders .....	10
10.3 Contract Change Control .....	11
10.4 Contract Issue/Risk Management .....	11
10.5 Contract Disputes .....	12
10.6 Contract/Purchase Files .....	13
10.7 Posting Contracts/POs and Contract/PO Documents .....	13
11 Contract Management Roles .....	13
11.1 Contract Manager .....	14
11.2 Contract Administrator .....	16
11.3 Office of Attorney General (OAG) .....	18
11.4 Other Contract Stakeholders .....	18
11.5 Protest Procedures.....	19

## REVISION HISTORY

Version	Date	Description
1.0	9/1/2019	Original Release

## 1 Introduction

The 84<sup>th</sup> Texas Legislature in 2015 amended Texas Government Code Chapter 2261, State Contracting Standards and Oversight, to require:

*“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.”*

The Texas Historical Commission (THC) Contract Management Handbook (CMH) was developed by THC employees from the Staff Services Division (SSD). The intent of the handbook is to establish consistent contract management policies and procedures for THC employees involved in procuring and management of contracts.

The CMH is not intended to cover all requirements or issues and is to be applied in conjunction with applicable THC policies, state and federal statutes, laws, rules, policies, and best practices.

Any suggestions should be directed to the Director of Purchasing or the Purchasing & Contract Coordinator.

## 2 Definitions

- ✓ Commissioners – The body of appointed members who jointly oversee the activities of THC.
- ✓ Best Value – Factors to be considered in determining lowest overall cost and value in making certain purchases.
- ✓ Contractors – Non-THC employees who have been hired to perform specific tasks.
- ✓ Contract Manager– Individual(s) assigned to manage or oversee a purchase order or contract.
- ✓ Contract Administrator – An individual in the Staff Services Division, Purchasing Section who conducts the procurement process.
- ✓ Executive Sponsor – A senior executive that supports a project’s viability and defensibility from an agency perspective. This role is responsible for overseeing a project.

## 3 Purchasing Section Organization

The Purchasing Section is responsible for overseeing, coordinating, facilitating, and managing all procurement and contracting related activities for all THC offices. Purchasing staff are available to assist THC employees with procurement and contracting related questions. Purchasing’s efforts are focused on the procurement and contracting activities to obtain the best value for the agency.

Purchasing employs certified staff that assist, review, recommend, approve, and record procurements of goods and/or services in accordance with statute, law, regulations and internal policies.

## 4 State and Agency Ethical Standards

THC employees, Commissioners, and Contractors participating in procurement and contracting processes are subject to a high standard of ethics, and must adhere to THC ethics policies, as set forth in the THC Human Resources Manual. Those that violate these standards are subject to disciplinary action, as described in the THC Human Resources Manual.

THC employees, Commissioners, and Contractors participating in the procurement and contracting processes are responsible for ensuring the proper disposition of public funds. THC employees, Commissioners and Contractors must avoid acts that are improper or give the appearance of impropriety, as it relates to the procurement and contracting process.

The appearance of impropriety may be defined as the absence of circumstances that would cause a reasonable and informed third party, having knowledge of the relevant information, to reasonably conclude that the integrity or objectivity of a THC employee, Commissioner, or Contractor has been compromised.

State personnel must adhere to the highest level of professionalism in performing their official duties. Employees of agencies who perform procurement functions are required (34 Texas Administrative Code §20.157) to adhere to the same ethical standards required of the Comptroller of Public Accounts (CPA) employees:

*“State officials and state employees are entrusted with the safety and welfare of the citizens of Texas. In return for their confidence in state government, citizens expect that state employees’ private interests will not conflict with public business. The nature of purchasing functions makes it critical that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system.”*

*The CPA’s State of Texas Procurement Manual, Section 1.2*

### 4.1 Conflict of Interest

THC employees, Commissioners, and Contractors are prohibited under Texas Government Code §572.051 and Texas Government Code §2155.003 from having an interest in or receiving benefits from a contract or bid for a purchase of goods and/or services. Perception plays a key role in maintaining the highest level of integrity, which includes avoiding the appearance of impropriety.

*“It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in*

*substantial conflict with the proper discharge of the officer's or employee's duties in the public interest."*

Government Code 572.001

## 4.2 Disclosure

Under Texas Government Code §2261.252, each state agency employee or official who is involved in procurement or in contract management for a state agency must 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 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 and/or services with a vendor with whom any of the following agency employees or officials has a financial interest:

- ✓ A member of the agency's governing body;
- ✓ THC's Commissioners, Executive Director, General Counsel, Chief Financial Officer, and Purchasing Manager of the agency;
- ✓ A family member related to an employee or officials described above within the second degree by affinity or consanguinity;
- ✓ Having a "financial interest" in this section is defined as a state agency employee or official that:
  1. Owns or controls, directly or indirectly, an ownership interest of at least 1% in the person including the right to share in profits, proceeds, or capital gains, or;
  2. Could foresee that a contract with a person could result in a financial benefit to the employee or official.
- ✓ 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 1% in a corporation.

Under Texas Government Code §572.069, state officers and employees who participate in a procurement or contract negotiation are prohibited from accepting employment with a vendor for 2 years after the officer's or employee's service or employment with the agency have ceased.

THC has extended these requirements to include contractors.

## 4.3 Required Forms

All THC employees, Commissioners, and Contractors involved in procurement or contract management activities must disclose to the agency any conflict of interest with respect to any contract with a vendor or bid for the purchase of goods and/or services. A Non-Disclosure and Conflict of Interest form will be provided by the responsible purchaser and must be signed by any employee who participates in the development of a specification, solicitation document(s), evaluation, negotiation, or contract monitoring activities. Those that violate this provision are subject to discipline, in accordance with the THC Human Resources Manual. Contract Managers

will be required to sign a Non-Disclosure and Conflict of Interest form once assigned to a contract or major purchase order. THC employees, Commissioners, and Contractors are responsible for immediately reporting a potential conflict of interest if identified at any time during the year to the assigned Purchaser or Purchasing Manager.

Under Texas Government Code §2262.004, THC employees, Commissioners, and Contractors involved in the specification development or an award determination must sign a State Auditor's Office State Agency Uniform Nepotism Disclosure form before a state agency may award a major contract (a contract with a value of \$1 million or more) for the purchase of goods and/or services to a business entity.

Each THC employee, Commissioner, and Contractor involved in procuring or managing a contract must disclose in writing any financial interest in the prospective vendor. The agency may not enter into a contract if a covered employee, Commissioner, or Contractor or any of their family members within a degree described by Texas Government Code §573.002 has a financial interest. For any prospective vendor or business entity for contracts valued more than \$25,000, and THC employee or Commissioner regardless if authority to execute has been delegated to the Executive Director who has a relationship with an employee, a partner, a major stockholder, or a paid consultant of that entity must also report that relationship. This is documented by using the Conflict of Interest Disclosure Form (THCSSD002) which will be provided by the responsible purchaser.

Texas Government Code §2252.908 prohibits agencies from entering into contracts over \$1 million or contracts that require action by the government body without submitting a Disclosure of Interested Parties Form (Texas Ethics Commission form 1295.) Before fully executing a contract valued at \$1 million or more, THC must obtain a copy of the Disclosure of Interested Parties form from the proposed business entity (vendor). THC Purchasing must include the form with the procurement file and the vendor must submit the form to the Texas Ethics Commission within 30 days of receipt of the disclosure.

A Major Contract/Purchase Order is defined as:

- ✓ A Contract/Purchase Order with a "High" or "Important" risk classification based on the outcome from use of the Risk Assessment Worksheet;
- ✓ The total value of the Contract/Purchase Order not including optional renewals, is \$25,000 or more;
- ✓ A Contract/Purchase Order for Temporary Personnel; or
- ✓ The Contract/Purchase Order is based on a Time and Materials fee payment structure.

## 5 State Procurement and Contracting Statute and Rules

Below is a list of procurement statutes, rules, manuals, and guides that the CPA provides on their website. All procurements and/or contracts must adhere to the following: documents.

- ✓ Governing statutes and rules:

<https://comptroller.texas.gov/purchasing/publications/statutes-procedures.php>

- ✓ The State of Texas Procurement Manual and Contract Management Guide:  
<https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>

## 6 THC Commission Approval Requirements

Government Code §2155.088 requires the governing board of a state agency to approve by vote in an open meeting any material change to a contract for goods or services, regardless of the dollar amount of the contract. The government code defines a material change as an extension of the completion date of a contract for six or more months or a change in the amount of the contract by at least ten percent.

## 7 Need Assessment

The requesting Division is responsible for completing a Need Assessment Form and obtaining approval from management, for all procurements that are equal to or exceed \$25,000, or all procurements of temporary personnel of any value for the term of the procurement prior to the submission of a requisition in Centralized Accounting and Payroll/Personnel System (CAPPs). A copy of the approved Need Assessment Form must be submitted along with the requisition and retained in the procurement file. The Division should retain the original.

## 8 Approvals and Signature Authority

- A. Excluding Historic Sites, THC purchases under \$500 are approved by the Division Director. Purchases over \$500 require Deputy Executive Director of Administrative Services or Executive Director approval.
  - 1. Certain purchases require additional approvals regardless of amount.
    - a. Memberships – Executive Director or Deputy Executive Director of Administration (designee) approval required.
    - b. Information Technology (IT) – IT Division approval required.
- B. The Historic Sites Deputy Executive Director has delegated purchase approval in the following amounts:
  - a. Site Managers can approve requisitions up to \$2,500.
  - b. Directors of Historic Sites Operations can approve requisitions up to \$10,000.
  - c. Deputy Executive Director of Historic Sites must approve requisitions and shopping lists over \$10,000.
  - d. Certain purchases require additional approvals regardless of amount.
  - e. Memberships – Executive Director or Deputy Executive Director of Historic Sites (Designee) approval required.
  - f. IT – IT Division approval required.
  - g. Retail Purchases (through approved requisitions or shopping lists).



## 9 Enhanced Contract Monitoring Program

Texas Government Code §2261.253 requires each state agency by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit documentation of possible contract risks identified to the agency governing body. The Chief Financial Officer or Purchasing Manager shall immediately notify the department's governing body of any serious issue or risk that is identified with respect to a contract monitored under this section.

Under 43 TAC Section 210.3, THC has established rules to apply risk assessment factors to agency contracts/purchase orders as defined in Texas Government Code §2261.253. THC staff must consider the following factors when assessing risk:

- Dollar amount of contract/purchase order;
- Total contract/purchase order duration;
- Vendor past performance;
- Risk of fraud, abuse or waste;
- Business process impact due to failure or delay; and
- Commissioner or Executive Director's request for enhanced contract or performance monitoring.

### 9.1 Risk Assessment Worksheet

All procurements with a value of \$25,000 or greater require a completed "Risk Assessment Worksheet form" which will be provided by the responsible purchaser at the time of award of the purchase order/contract. Analysis is to be completed, at a minimum, by the requesting Division Director (or designee) and the assigned Contract Manager, in coordination with other appropriate personnel, with approval of the responsible Division Director. The original completed Risk Assessment Worksheet form shall be sent to the assigned Purchaser.

At the discretion of the Contract Manager or assigned Purchaser, in coordination with other appropriate personnel, with approval of the responsible Division Director, procurements less than \$25,000 may also be subjected to risk assessment analysis.

### 9.2 Enhanced Guidance for Contracts over \$1 million

Under Texas Government Code §2261.254, for all contracts over \$1 million, the agency shall develop and implement contract reporting requirements that provide information on:

- Compliance with financial provisions and delivery schedules;
- Corrective action plans required under the contract and the status of those plans; and
- Any liquidated damages assessed or collected under the contract or purchase order.

In accordance with Section 7.12 of the General Appropriations Acts, THC must provide 10 business days-notice to the Legislative Budget Board (LBB) before payment can be made on any contract that is \$10 million or more or, \$1 million or more that was awarded outside of the competitive process,

or as a result of an emergency or following an emergency procedure. This notice is completed with the Legislative Budget Board Attestation template signed by the Executive Director certifying that the purchase complies with the State of Texas Contract Management Guide, THC Purchasing Manual, and all applicable statutes, rules, policies and procedures related to the procurement and contracting of goods and services, including compliance with conflict of interest disclosure.

THC Purchasing staff utilize a “Peer Review” process to ensure that procurements meet the requirements described above and the “Peer Review” documentation is to be retained in the procurement file.

### 9.3 Enhanced Guidance for Contracts or Solicitations over \$5 million

Under Texas Government Code §2261.255, for all contracts over \$5 million, the Purchasing Manager must verify in writing that the solicitation, procurement methods and contractor selection process comply with state law and agency policy and submit information to the THC Commission on any potential issue that may arise in the solicitation, procurement, or contractor selection process.

Under Texas Government Code §2262.101, all solicitations expected to result in contracts valued at \$5 million and greater must be submitted to the CPA’s Contract Advisory Team for review before the solicitation can be posted. The contract value is determined without regard to source of funds or payment mechanism.

## 10 Contract Management

THC will adhere to the THC Purchasing Manual in executing the contract management and monitoring process. Contract management activities include administering and monitoring the contract/purchase order after the award and during contract implementation. This shall be completed by measuring completed work, computing and approving payments, monitoring contract performance, incorporating necessary changes and modifications to the contract, and actively interacting with the Contractor to achieve the contract objectives. In addition, THC shall adhere to CPA’s Contract Management Guide adopted by the Contract Advisory Team. The THC Contract Management Guide was developed to standardize an agency-wide guide for managing contracts and purchase orders.

### 10.1 Contract Manager

Each purchase order and contract will have a designated Contract Manager from the requesting division and a purchaser to assist in the contract management process. Each division or office of THC has established their specific method of monitoring in accordance with Section 11.1 of this Handbook. For division process specifics, please contact the appropriate division staff.

### 10.2 THC Major Contracts/Purchase Orders

All contracts/purchase orders, regardless of the dollar amount, are formally monitored. A contract is a written document containing the written agreement upon terms for which the law establishes enforceable duties and remedies between a minimum of two parties. A contract, amendment, modification, extension, purchase order, purchase order chance notice (POCN), statement of work

(SOW), interagency cooperative agreement (IAC), inter-local agreement (ILA), and memorandum of understanding (MOU) are all considered contracts.

### 10.3 Contract Change Control

A key aspect for effective contract management regardless of its dollar value or scope is the ability to manage change and have sufficient oversight to prevent scope creep, unauthorized work from being performed, and over billing. The Contract Manager, Contract Administrator, and the Executive Sponsor (if applicable) equally have a responsibility to ensure all contract changes are recorded in the form of a modification, amendment, or POCN. Changes not addressed through a written formal process are considered non-compliant.

Contract Managers should implement a change control system for contracts and keep a log of all requested changes. A PO-Contract Change Request Log template is available on the Staff Services intranet page. The change control system should account for evaluation of requested changes and approvals/disapprovals of requested changes, and the date change was executed, if applicable.

All changes must be within the scope of the original contract/purchase order. Types of changes include, work orders, administrative changes, substantive changes, and constructive changes.

Contract Changes:

- Must be addressed in writing as verbal agreements are not binding and must go through Purchasing to be authorized.
- May require Executive Director and/or Commission approval.
- Are not considered authorized until both parties have signed-off and purchasing has identified the items as being fully executed.

Only staff from the Staff Services Purchasing Section are authorized to execute a modification, amendment, or POCN to an existing purchase order.

### 10.4 Contract Issue/Risk Management

The Contract Manager is typically the first person to have knowledge and attempt to resolve any issues related to the performance of the contract. Contract Managers should keep a log of all issues that arise during the life of the contract and document the timeline of the issue along with the resolution.

To prevent disputes, Contract Managers must:

- Maintain regular communication with contractors as necessary.
- Respond promptly to all contractor inquiries regarding contract concerns.
- Notify Purchasing promptly of any issues.

- Work with Purchasing to develop a strategy to resolve disputes and document any issues related to contract performance.
- Thoroughly document all issues and communications pertaining to contract issues.

Per Texas Government Code §2261.256, each state agency must develop and comply with a procurement accountability and risk analysis procedure that provides for:

- Assessing the risk of fraud, abuse or waste in the contractor selection process, contract provisions and payment and reimbursement rates.
- Identifying contracts that require enhanced contract monitoring or immediate attention of the contract management staff.
- Establishing clear levels of purchasing accountability and staff responsibilities related to procurements.

Performing a risk assessment helps to determine the level or degree of oversight and participation from the Executive Sponsor. Executive sponsorship participation increases when the risk is higher. The Agency developed a Risk Assessment worksheet to determine the risk level of each contract. Based upon the classification of risk, enhanced levels of reporting may be required

This assessment is completed to anticipate risks, mitigate or manage risks, and avoid or transfer risk in order to protect the agency. Performing risk assessment is an ongoing process throughout the life of the contract/purchase order. The Risk Assessment is conducted at the time of award, monitored and updated throughout the life of the contract, as needed, based on current circumstances.

Risks to the contract must be reviewed and re-evaluated by the Contract Manager on a continual basis until the contract/purchase order is completed and final payment has been made.

In addition to using the Risk Assessment worksheet, Contract Managers should keep a log for all contracts and purchase orders. This log should identify all risks to the contract/purchase order, the mitigation plan or strategy for addressing the risk, and the outcome. This log should be available for review upon request by Purchasing or other agency staff.

Under Texas Government Code, Section §2261.253, and other provisions of Senate Bill 20 (84<sup>th</sup> Regular Legislative Session) and the General Appropriations Act, Article IX, Rider 7.12 adopted by the 85<sup>th</sup> Regular Legislative Session, the Purchasing Manager has responsibilities relative to serious issues or risks on certain contracts. The Purchasing Manager shall notify the agency's governing body, through the Chief Financial Officer, of any serious issue or risk on certain contracts/purchase orders.

## 10.5 Contract Disputes

Despite best efforts, there is always the potential for a contract dispute. Contract Managers will follow these steps in order to informally address disputes:

- Identify the Problem – many times what may appear to be a problem can be resolved by providing the contractor with information or clarification.

- Research Facts – obtain all the information regarding the potential problem from relevant sources.
- Evaluation of Contract Terms – review all of the facts in conjunction with the requirements and terms and conditions of the contract/purchase order. The agency should then determine the appropriate course of action.
- Documentation of Communication – identification of problems early in the performance period, effectively communicating, addressing the problems and the agreed upon solutions in writing via an official letter or document to the vendor, is essential.

Document all information related to the informal dispute in the Contract Monitoring file and provide copies to the assigned purchaser.

If the steps above do not resolve the dispute, the steps below are to be followed:

- Contract Manager shall email the assigned Purchaser and include division management. The email should contain an overview of problem(s) and action(s) taken towards resolution to date.
- Purchasing will provide guidance and assistance and escalate to OAG, if necessary.
- Purchasing will facilitate resolutions with all parties.
- Purchasing will facilitate completion of a Notice to Cure, if necessary.
- As requested by purchaser or contract manager, the OAG will provide guidance and direction on appropriate legal action if the vendor is non-compliant.

## 10.6 Contract/Purchase Files

Purchasing is responsible for maintaining an official contract/purchase order file for all contracts/purchase orders that include but is not limited to, the CAPPs requisition, solicitation, responses, scoring, Best and Final Offer, award documents, performance documentation and change documents.

The Contract Manager is responsible for maintaining a working file that captures documents pertaining to the contract/purchase order, issues, changes, risks, expenditures and correspondence and be able to provide that file if issues arise.

## 10.7 Posting Contracts/POs and Contract/PO Documents

THC will also comply with all procurement and contract posting requirements, including those described by Texas Government Codes §2157.0685, §2261.253 and §2261.256. Purchasing is responsible for compliance with posting requirements.

# 11 Contract Management Roles

Per Texas Government Code §2261.256, each state agency must develop and comply with a purchasing accountability and a risk analysis procedure that provides and establishes clear levels of purchasing

accountability and staff responsibilities related to procurement and contract monitoring. Provided below is a high-level description of key differences between the Contract Manager and the Purchaser.

## 11.1 Contract Manager

A Contract Manager must be assigned to every contract/purchase order by the responsible Division. The Contract Manager is responsible for continuous monitoring and day-to-day management of the performance of the contract. The Contract Manager must ensure compliance with terms and conditions, as well as the forecasting and planning for contract/purchase order renewals, changes, and close-outs. The Contract Manager must understand the procurement process, timelines associated with renewals, solicitations, and transitions to ensure that those actions are initiated and planned by the Division in a timely manner.

### ***Contract Managers Are:***

- Appointed by the requesting Division's management.
- Required to attend Certified Texas Contract Manager training offered by the Comptroller.
- Expected to monitor the contract for the life of the contract.
- Required to review vendor performance and complete a Vendor Performance Form to be provided by the Purchaser. The completed form should be submitted to the Purchaser to be entered into the Vendor Performance Portal.
- Responsible for contract monitoring duties and may not delegate those duties to other personnel.
- Responsible for compliance with the THC Purchasing Manual and CPA's Contract Management Guide.

Contract Managers are typically appointed through information contained within the requisition, but other alternative methods such as via e-mails from Division management are also acceptable. Changes in a Contract Manager for a contract/purchase order must be formally requested by the Contract Manager's Division management to Purchasing.

### ***Contract Manager Responsibilities:***

- Continuous monitoring and day-to-day management of the contract's/purchase order's performance to ensure its compliance with terms and conditions as well as the forecasting and planning for contract/purchase order renewals, changes, and close-outs.
- Understanding of the procurement process and timelines associated with renewals, solicitations, and transitions and ensure that those actions are initiated and planned by the Division so as to start and finish within constraints.
- Be familiar with the entire contract/purchase order file. The written contract/purchase order defines both parties' obligations and responsibilities. Understand the requirements, provisions, and deliverables of the procurement documents.

- Serve as the point-of-contact for disseminating the instructions regarding the work to the contractor/vendors. Communicate, track, and escalate (as needed) work to be performed by Agency staff that impacts contract/purchase order performance.
- Meet with the contractor and stakeholder divisions on a regular basis to review progress, discuss problems and consider necessary changes.
- Monitor the budgeting/accounting process to ensure sufficient funds are available, verify accuracy of invoices, and authorize payments consistent with the contract/purchase order terms (enters receipts into CAPPs).
- Ensure that contract/purchase order requirements are satisfied, and the goods and/or services are delivered in a timely manner within the conditions specified in the contract/purchase order.
- Monitor the contractor's progress and performance to ensure goods and/or services conform to the contract/purchase order requirements (specifications) and document contractor activity to identify problem areas. Coordinate with Purchasing and impacted divisions to document vendor performance.
- Facilitate and coordinate with Purchasing and impacted divisions to identify any requested or needed changes to the contract/purchase order or requesting work through Purchasing for implementation.
- Coordinate with division(s) stakeholders to plan, evaluate, and approve work for contracts/purchase orders that impact multiple divisions.
- Work with Purchasing to provide information necessary for proper contract close-out.
- Retain thorough documentation of communication with vendors and progress reports of contract performance.
- Always follow what is in the written contract/purchase order along with all terms and conditions and report contract/purchase order disputes immediately.
- Ensure compliance with the contract and procurement documents. Monitor to ensure avoidance of non-compliance.
- Document all contract/purchase order related communication.
- Report on progress to ensure completion of work.
- Review invoices prior to payment approval.
- Identify inconsistencies between planned and actual performance.
- Immediately report to the Purchasing Manager any conflicts of interest or potential conflict of interest, fraud or potential fraud or any incident that is an ethical concern or that may lead to ethical questions.

***Contract Managers must not:***

- Communicate with vendor(s) in regards to upcoming or active solicitations.
- Accept gifts from vendors.
- Agree to changes in the contract without written authorization from Purchasing.
- Authorize work outside of the current, approved version of the contract/purchase order.
- Attempt to take adverse action against the vendor without consulting with Purchasing and OAG.

***Beware of the following:***

- Failure to have adequate supporting documentation for reports and summary data.
- Invoice(s) with no physical address for vendor.
- Undocumented and/or unapproved adjustments, credits, and write-offs.
- Invoices for services/goods not rendered or received.
- Multiple remittance addresses for the same vendor.
- Duplicate invoices.

## 11.2 Contract Administrator

THC Contract Administrators are defined as Purchasing personnel responsible for facilitating the procurement and contract management processes to ensure compliance with all applicable state laws, policies, and guidelines. Contract Administration involves the administrative activities associated with contracts/purchase orders. The role of a Contract Administrator is to complete the procurement, oversee the management of the contract/purchase order, ensure the customer needs are met, and confirm the Contractor is fully compensated for the goods and/or services rendered per the contract/purchase order terms and conditions. Contract Administrators must receive formal training and are required to be certified by the State of Texas.

***Contract Administrator responsibilities include but are not limited to:***

- Provide guidance and support to the Contract Manager.
- Facilitate/Coordinate escalations between internal stakeholders.
- Determine Solicitation and Procurement Method.
- Facilitate the procurement process and adhere to all State procurement rules, policies, and laws, as well as, THC procurement policies and procedures.
- Lead solicitation evaluation teams and negotiations with vendors, if needed.
- Communicate awards with the vendor.
- Communicate with vendor during planned or active solicitations.



- ✓ Provide oversight to ensure that the State of Texas Contract Management Best Practices are adhered to and are able to withstand an external audit.
- ✓ Work with Contract Managers to address changes and issues.
- ✓ Validate scope and terms of contract/purchase order against requested work orders, changes, performance reporting, etc.
- ✓ Administer, approve, and document any changes to the contract identified by the Contract Manager; Process Modifications, Amendments, and Change Orders are not authorized unless formally issued to the vendor through Purchasing.
- ✓ Facilitate resolving disputes with contractor in a timely manner.
- ✓ Facilitate exercising state remedies, as appropriate, when a contractor's performance is deficient.
- ✓ Aid divisions in developing plans for new solicitations and/or renewals, modifications, and changes.
- ✓ Collect, review and submit Vendor Performance reviews.
- ✓ Provide guidance on contract/purchase order formation and pricing.
- ✓ Maintain appropriate and required records in the official procurement file.
- ✓ Report to Contract Manager and stakeholder divisions on status of contract/purchase order or contract administration activity related approvals.
- ✓ Ensure compliance with posting and reporting requirements.
- ✓ Facilitate compliance with all procurement rules and policies.
- ✓ Perform contract/purchase order closeout process ensuring the contract/purchase order files contain all necessary contract documentation and ensuring formal acceptance is documented.
- ✓ Assist Contract Manager with conducting Risk Assessments.
- ✓ Ensure the required reviews and approvals are conducted and obtained prior to solicitation, award, and/or prior to executing changes or amendments.
- ✓ Immediately report to the Purchasing Manger any issues or risks to a contract/purchase order.
- ✓ Immediately report to the Purchasing Manager any of the following:
  - Conflict of interest or potential conflict of interest.
  - Fraud or potential fraud.
  - Any incident that is an ethical concern or that may lead to ethical questions.

- Failure of a peer, self, contract manager, or customer to abide by required purchasing and contracting rules, laws, or policies.

### 11.3 Office of the Attorney General (OAG)

As requested, OAG provides guidance, direction, and review to assist the agency in ensuring that the contracting and procurement activities are compliant with applicable state laws, policies, and guidelines.

***Upon Request, Other OAG Responsibilities, Include but are not limited to:***

- ✓ Provide guidance and direction through the solicitation, award, monitoring, and closeout processes to help ensure the agency is protected.
- ✓ Help to ensure that THC contracts are monitored and measurable.
- ✓ Identify opportunities to improve clarity of responsibility and expectations documented in the contract.
- ✓ Provide challenges, solutions, instructions and any educational feedback to determine where THC can improve contract language to mitigate agency risk moving forward.
- ✓ Provide guidance and direction on dispute resolution.
- ✓ Identify state remedies, as appropriate, when a vendor's performance is deficient.

### 11.4 Other Contract Stakeholders

***Finance***

- ✓ Ensure compliance with Texas Government Code, Chapter 2251, Subtitle F, and the Texas Prompt Payment Act.
- ✓ Validate and approve use of funds identified on requisition.
- ✓ Complete receipt validation before issuing payments.
- ✓ Perform two or three way match before issuing payment.
  - A two-way match is when the quantity on the invoice are matched to the quantity and amount on the corresponding purchase order.
  - A three-way match is when an invoice is matched to the corresponding purchase order and amount and to the receiving information.
- ✓ Immediately report to the Chief Financial Officer and Purchasing Manager any of the following:
  - Conflict of interest or potential conflict of interest.
  - Fraud or potential fraud.

- Any incident that is an ethical concern or that may lead to ethical questions.
- Failure of a peer, self, contract manager, or customer to abide by required procurement and contracting rules, laws, or policies.

### **Other Divisions**

- ✓ Responsible for evaluating request and determining if they need to contribute or approve specifications.
- ✓ Responsible for identifying to what extent and how the division will be impacted by the contract.
- ✓ Responsible for completing “Need Assessment” and obtaining Commission approval where required.
- ✓ Responsible for reviewing and approving or disapproving, and for providing reason(s) for disapproval as appropriate.
- ✓ Responsible for adhering to all procurement and contracting rules, policies, and procedures.
- ✓ Responsible for supporting the Contract Manager and team.
- ✓ Immediately report to the Purchasing Manager any of the following:
  - Conflict of interest or potential conflict of interest.
  - Fraud or potential fraud.
  - Any incident that is an ethical concern or that may lead to ethical questions.
  - Failure of a peer, self, contract manager, or customer to abide by required procurement and contracting rules, laws, or policies.

## **11.5 Protest Procedures**

The THC has adopted the following procedures in accordance with Texas Government Code, which states that Comptroller and “each state agency” shall develop and adopt protest procedures.

*Policy* - Any actual bidder or offeror who is aggrieved in connection with the award of a contract may formally protest the award of the contract by submitting a protest in accordance with the procedures in this section.

*Procedure* - The numbering in this section jumps from numbers to letters back to numbers (this is in the exact format of THC’s administrative code)

Pursuant to 13 TAC §11.13: (a) The purpose of this section is to provide an internal protest procedure to be used by any actual or prospective bidder, offeror, proposer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by the commission from a delegated procurement. The following procedures are available for persons or firms not awarded the contract pursuant to authority delegated to the commission by the Comptroller of Public Accounts or by Texas Government Code, Chapters

2155 – 2158. These procedures are consistent with the rules of the Comptroller of Public Accounts insofar as such rules are applicable to an internal agency review. (b) Any actual bidder or offeror who is aggrieved in connection with the award of a contract may formerly protest the award of the contract by submitting a protest to the executive director in accordance with the procedures in this section.

(1) Any bid protest must be in writing and received in the care of the executive director within five working days after the bidder is notified that the award of a contract is forthcoming or otherwise knows, or should have known, of the occurrence of the action which is protested.

(2) Formal protests must conform to the requirements of and shall be resolved in accordance with the procedures set forth in this section.

(3) In the event of a timely protest, the commission shall consider the protest and reply in writing before proceeding with the solicitation or with the award of the contract unless the executive director makes a determination that the award of contract without delay is necessary to protect substantial interests of the state.

(4) If the executive director determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, the executive director shall inform the protesting party and other interested parties of that determination by letter. The letter shall set forth the reasons for the determination and may set forth any appropriate remedial action, which may include canceling or voiding the contract to the extent allowed by law.

(5) A bid or a bid protest that is not submitted in a timely manner is not eligible for consideration under this section.

(a) A formal protest shall be addressed to the executive director and must be sworn and contain the following:

- (1) a specific identification of a statutory or regulatory provision(s) that the action complained of is alleged to have violated;
- (2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;
- (3) a precise statement of the relevant facts;
- (4) an identification of the issue or issues to be resolved;
- (5) argument and authorities in support of the protest; and
- (6) a statement that copies of the protest have been mailed or delivered to all other identifiable interested parties. Upon request, the commission will furnish to the requestor a list of interested parties, as reflected in the records of the commission.

(b) The executive director may request additional information from the party submitting the protest, any other interested party, or commission staff.

(c) If the protest is not resolved by mutual agreement, the executive director will issue a written determination of the protest.

- (1) If the executive director determines that no violation of rules or statutes has occurred, he shall so inform the protesting party by letter which sets forth the reasons for the determination.
- (2) If the executive director determines that a violation of the rules or statutes has occurred, he shall so inform the protesting party by letter which sets forth the reasons for the determination and the appropriate remedial action.

- (d) A decision by the executive director shall be the final administrative action.
- (e) The commission will maintain all documentation about the purchasing process to be used in the event of a protest or appeal in accordance with the commission's record retention schedule.

*Authority* – Texas Government Code, Sect 442.005 and Chapters 2155 – 2158.