



TEXAS LOTTERY COMMISSION

Contract Management Manual

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Table of Contents

1. General Provisions	4
1.1. Introduction	4
1.2. Purpose of the Contract Management Manual	4
1.3. Roles and Responsibilities	4
1.4. Ethics and Standards of Conduct.....	5
1.4.1. Conflict of Interest – Purchasing and Contracts Staff	5
1.4.2. Ethics Policy – Standards for Performance and Conduct.....	6
1.4.3. Employment Restriction for Former State Officer or Employee.....	6
2. Planning and Development	6
2.1. Procurement and Contract Planning Process.....	6
2.2. Needs and Risk Assessment / Cost Benefit Analysis	7
2.3. Procurement Lead Times	7
2.4. Scope of Services / Specifications	8
2.5. Payment.....	9
2.6. Contract Term	9
2.7. Contracts Greater than \$10 Million.....	10
3. Procurement.....	10
3.1. HUB Determination	10
3.2. Pre-Proposal Conference.....	10
3.3. Proposal Evaluation	11
3.4. Contract Negotiations	12
4. Contract Formation.....	12
4.1. Contract Documents	12
4.2. Contract Terms and Conditions	13
4.3. Delegated Signature Authority	13
5. Contract Management.....	13
5.1. Contract Management Overview	13
5.2. Contract Management Responsibilities	14
5.3. Certified Texas Contract Manager Training and Certification.....	14

5.4.	Contract Management through the Lifecycle	15
5.5.	Vendor Communication.....	16
5.6.	Contract Management Tips and Best Practices.....	17
5.7.	Contact Amendments	17
5.8.	Contract Renewals.....	18
5.9.	Contract Records	18
5.10.	Contract Records Retention.....	18
5.11.	Contract Monitoring.....	18
5.12.	Risk Assessment and Contract Monitoring	19
5.13.	Contract Monitoring.....	19
5.14.	Escalation of Contract Issues.....	20
5.15.	Contract Closeout	21
5.16.	Vendor Performance Reporting	21
Exhibit A – Sample RFP Template		

1. General Provisions

1.1. Introduction

This Contract Management Manual contains guidelines and procedures that govern the agency's contracting process. The information contained in this Manual is subject to change at any time due to business needs. While the agency will attempt to provide employees with advance notice of any change, it reserves the right to alter this Manual at any time without advance notice.

The Texas Lottery Commission does not tolerate violations of the law. If an employee believes that anyone associated with the agency has requested or directed him or her to perform an action that violates the law, or to omit an action required by law, the employee should report this immediately to the General Counsel, Internal Auditor, or the Executive Director.

1.2. Purpose of the Contract Management Manual

The purpose of this Manual is to establish consistent contract management policies and procedures. Additionally, best practices are included to provide guidance for managing agency contracts. This Manual includes guidelines for:

- Ethical standards of conduct for contracting staff;
- Contracting activities from planning to closeout;
- Contract management requirements and best practices; and
- Risk-based contract monitoring.

More specific procedures have been developed that outline daily processes for the development and management of agency contracts. These procedures can be found on the agency's intranet.

Additionally, the Comptroller of Public Accounts publishes a *State of Texas Procurement and Contract Management Guide*. The Guide provides the framework for understanding procurement requirements for the state of Texas as well as ongoing contract management activities.

1.3. Roles and Responsibilities

The Contracts Management & Procurement Section of the Administration Division oversees all formal procurement and contracting activities. Contracts Management & Procurement is responsible for the following activities:

- Working with administering divisions to develop solicitation documents and evaluate proposals;
- Conducting contract negotiations and executing contracts;
- Management and oversight of all agency formal procurement (RFP) and contract files;
- Managing contract renewals, extensions and amendments;
- Providing technical assistance to contract sponsors;
- Issuing warning letters and assessing sanctions/liquidated damages;
- Management and oversight of contract closeout process and vendor reporting;
- Developing contracting policies and procedures; and
- Conducting annual contract management training for agency staff.

Administering divisions are responsible for carrying out contract management activities through closeout. The contract sponsor serves in a leadership role in all phases of the contract lifecycle and is the primary point of contact for the day-to-day management of the contract after contract execution. The table below, *Contract Management Roles and Responsibilities*, outlines the roles of agency staff during key phases of the contract lifecycle.

Contract Management Roles and Responsibilities	
Key Contract Lifecycle Function	Responsible Party
1. Planning and Development: Identify contracting needs, objectives, strategies, timelines, deliverables, and performance metrics.	Administering Division , in consultation with Contracts Management & Procurement, Legal Services, and other subject matter experts.
2. Procurement: Follow procurement statutes and rules and fairly select the most qualified vendors.	Contracts Management & Procurement in consultation with the administering division(s), Legal Services, Office of the Controller, HUB Coordinator and other subject matter experts.
3. Contract Execution: Develop contracts that provide best value, and contain clear measures, terms, and conditions needed to hold vendors accountable for performance.	Contracts Management & Procurement in consultation with the administering division(s) and Legal Services.
4. Contract Management: Develop contract monitoring plans, effectively monitor and enforce contract requirements and terms, file maintenance, record keeping, and payment approval.	Contract Sponsors and Contracts Management & Procurement in consultation with Legal Services and the Office of the Controller.
5. Contract Termination and Closeout: Conclude the contract, complete the contract management file, and report on the vendor's performance.	Contracts Management & Procurement in consultation with contract sponsors.

1.4. Ethics and Standards of Conduct

All employees involved in procurement and contracting activities must act in an ethical, impartial, transparent, and professional manner. State employees must uphold ethical values when carrying out their official duties and must remain independent and free from the perception of impropriety. Any erosion of public trust or hint of impropriety is detrimental to the integrity of the procurement and contracting process.

1.4.1. Conflict of Interest – Purchasing and Contracts Staff

In accordance with Texas Gov't Code§2261.252, any agency staff involved in procurement and contracting activities must sign a Conflict of Interest statement each year. The Conflict of Interest statement will be signed upon completion of the agency's annual mandatory purchasing and contracts training. This is a continuing disclosure requirement. The agency staff shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

Conflict of Interest statement:

No member of the Commission or any employee or appointee of the Commission shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies, materials, services, and equipment of any kind to the Texas Lottery Commission. Neither shall any member or employee or appointee, under penalty of dismissal, accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift, or

otherwise, any money or other thing of value whatever, nor shall any employee receive any promise, obligation, or contract for future reward or compensation from any such party.

1.4.2. Non-Disclosure and Conflict of Interest Statements

In accordance with Texas Gov't Code §2261.252, at the start of a formal procurement, each member of the evaluation committee and each technical advisor will sign an Evaluation Committee Non-Disclosure Statement and Conflict of Interest Statement. In addition, the following other persons who are or may be involved in the procurement process will sign a Non-Disclosure and Conflict of Interest Statement for Procurement, Legal and Financial Advisors: the Contracts Management & Procurement Manager, the Contract Specialist(s), the Purchasing Manager, the Purchasers, the HUB Coordinator, the assigned attorney, the Deputy General Counsel, the General Counsel, the representative(s) of the Office of the Controller, the Controller and the Administration Director. This is a continuing disclosure requirement. The agency staff shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

1.4.3. Disclosure Statement for Purchasing Personnel

Prior to awarding a contract and in accordance with Texas Gov't Code §2262.004 (required nepotism disclosure), and all purchasing personnel who participated in any procurement that has a value of at least \$1 million dollars during the original term of the contract, not including any renewal periods, must sign a Disclosure Statement for Purchasing Personnel. The disclosure statement is provided to the Executive Director for signature. The required nepotism disclosure form is developed for use by the State Auditor.

1.4.4. Ethics Policy – Standards for Performance and Conduct

Commission Ethics Policy:

Texas Lottery Commission employees have a responsibility to the agency and the citizens of Texas to maintain the highest standards of ethical and professional conduct. Employees are duty-bound to follow the agency's ethics policies and procedures.

Chapter 1 of the Texas Lottery Commission (TLC) Personnel Handbook outlines the agency's standards for performance and professionalism. Topics addressed include, but are not limited to, ethics training, playing Lottery and Bingo games, eligibility for employment, accepting gifts and other things of value, conflicts of interest, fraud policy, reporting ethics concerns and revolving door. All agency staff must read and comply with the standards of performance and professionalism as outlined in the TLC Personnel Handbook.

1.4.5. Employment Restriction for Former State Officer or Employee

In accordance with Texas Gov't Code §572.069, a former state officer or employee of a state agency *who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person/vendor may not accept employment from that person/vendor before the second anniversary of the date the contract has been signed or the procurement is terminated or withdrawn.*

2. Planning and Development

2.1. Procurement and Contract Planning Process

The Contracts Management & Procurement Section (Contracts Administration) of the Administration division is responsible for the oversight and management of all agency contracts. For each new procurement, Contracts Administration staff work with the requesting division to identify the contracting need, objective, strategy, timeline, deliverables, and performance metrics.

During the initial planning phase, Contracts Administration will determine the following:

- Contract approval authority including whether the proposed procurement must be presented to the Commission for informational purposes and/or approval;
- Verify that a Needs and Risk Assessment/Cost Benefit Analysis is submitted, if required;
- If the procurement must be reviewed by the Contract Advisory Team; and
- If the procurement requires a written SOW to be reviewed by the Department of Information Resources.

2.2. Needs and Risk Assessment / Cost Benefit Analysis

A Needs and Risk Assessment, prepared by the administering division, is a decision-making tool to aid the agency in planning its contracts, evaluating new and current goods and services, and making sound financial decisions. It is used as a benchmark to judge the ongoing effectiveness of the agency's expenditures and assist in determining actions that would be most beneficial for the agency and/or provide the best value for the State of Texas. The Needs and Risk Assessment is a means to ensure there are clear contracting objectives, assumptions, and constraints. It can help gather data, quantify objectives and outcomes, and highlight long-term effects of procurement decisions. The Needs and Risk Assessment also identifies how the goods or service will integrate into the agency's overall goals and objectives. Refer to agency procedure OC-FO-003 Needs and Risk Assessment.

2.3. Procurement Lead Times

Contracts Administration will work with the administering division and Legal Services to develop a timeline for each formal procurement. The timeline will take into consideration the following procurement activities (if applicable):

1. **Development and Approval of Needs and Risk Assessment / Cost Benefit Analysis:** This form documents the need and identifies any risks associated with the procurement.
2. **Commission Notice and/or Approval:** Major and Prime procurements require notice to and/or approval by the Commission prior to issuing a procurement. Refer to procedure AD-SS-PU-037 Contract Approval Authority and Responsibilities.
3. **Delegation Authority from State Auditor's Office for Audit Contracts:** The agency must receive a delegation letter from the SAO prior to any procurement for audit services.
4. **Submission and Approval of eRequisition:** The Office of the Controller must verify the availability of funds prior to procurement initiation and contract execution.
5. **Justification for Proprietary or Emergency Purchases:** Written justification is required for proprietary and emergency procurements. Posting on the Electronic State Business Daily is required when the proprietary or emergency purchase exceeds \$25,000.
6. **Preparation of the Solicitation Document:** After the draft statement of work is developed, Contracts Administration will finalize the solicitation document. This includes ensuring the document is complete, includes the agency's standard terms and conditions and follows all applicable statutes, rules, and procedures.
7. **Vendor Communication-** Administration may determine that it would be in the best interest of

the agency to reach out to the vendor community to obtain additional information for an upcoming or potential solicitation. Approved communication methods during the planning activities of a procurement include issuance of a Request for Information (RFI), In-Person or Virtual Pre-Solicitation Meeting(s). Phone Meetings or Email Communication.

8. **Issuance of Solicitation Notice:** Prior to the issuance of a formal procurement, Contracts Administration will determine if a solicitation notice should be sent to the mailing list compiled from the Centralized Master Bidders List (CMBL) and additional vendors identified by the administering division, evaluation committee and HUB coordinator. A solicitation notice is generally sent out two or more weeks prior to the expected posting date. For contracts more than \$20M, two months' notice is required under Texas Gov't Code §2262.051.
9. **HUB Review:** For contracts of \$100,000 or more, the HUB Coordinator must review the draft documents to determine if subcontracting opportunities are probable and identify the applicable class and item codes for the procurement.
10. **Legal Services Review:** Legal must review the procurement documents for all formal procurements (over \$25,000) prior to posting.
11. **Contract Advisory Team Review (CAT):** Procurements that result in contracts with an expected value of \$5 million or more require review by the Contract Advisory Team (CAT).
12. **Approval to Post:** Approval by the Executive Director (or as delegated) is required prior to posting any formal procurement. Refer to Executive Order – Delegated Approval/Signature Authority Guidelines.
13. **Electronic State Business Daily (ESBD):** All formal procurements are posted on the ESBD website. A minimum 14-to-21-day solicitation period is typical for most formal procurements, however if the procurement is complex and requires respondents to submit significant documentation or complex pricing, additional time for the solicitation period should be allowed.
14. **Evaluation of Proposals:** The time required to evaluate proposals will depend on the type and complexity of the procurement. Evaluations for complex procurements may include site visits and oral presentations.
15. **Contract Negotiation and Formation:** Timeframes will vary depending on the type and complexity of the procurement.
16. **Commission Approval:** Major procurements require contract approval by the Commission prior to contract execution. Refer to procedure AD-SS-PU-037 Contract Approval Authority and Responsibilities.
17. **Contract Execution:** Contracts Administration will route the final contract for signature by the Executive Director (or as delegated) and will distribute copies to the vendor and within the agency. Refer to Executive Order – Delegated Approval/Signature Authority Guidelines.

2.4. Scope of Services / Specifications

A clear and concise Scope of Services (SOS), or Specifications (for Invitation for Bids (IFB) is essential for effective contract management. The SOS is the detailed description of what the agency is purchasing and what the vendor is required to provide in order to satisfactorily perform the work. A SOS needs to be clearly defined, contractually sound and unbiased. A SOS should encourage innovative solutions to the requirements described and allow for free and open competition.

The website for the Statewide Procurement Division (SPD) of the Comptroller of Public Accounts

provides a number of reference guides on preparing a SOS. Agency source documentation may include:

- a. The approved Needs and Risk Assessment;
- b. The previous procurement for the goods/service (if applicable); and
- c. The current contract for the service (if applicable).

Common provisions to include in a SOS include, but are not limited to:

- **Background:** Define and describe the current business operations related to the goods/services being procured.
- **Purpose:** Describe the goods or service the agency is purchasing and what the vendor must deliver under the contract. Specifications must be clear and understandable and permit competition between goods or services of equal quality.
- **Location of Work or Service Areas:** Describe the locations where the work is to be performed (e.g., region, counties, cities, zip codes), if applicable.
- **Scope of Services or Specifications:** List and describe what is due and when, including any reports the vendor will be required to submit.
- **Minimum Qualifications:** List the minimum acceptable qualifications for the goods/services to be provided.
- **Record Keeping:** Describe in detail all records the vendor will be required to keep including the format and retention period for the records.
- **Applicable Standards:** Describe any regulatory, agency, or industry specific standards that need to be followed in fulfilling the contract.
- **Acceptance Criteria:** Specify how the agency will determine if the product or service is acceptable.
- **Payment Type and Schedule:** Define the payment methodology, basis for payment, and invoicing process.
- **Transition and Turnover Planning:** Identify any transition activities the vendor will be required to perform in order to be ready to effectively provide services on the contract effective date. Identify any transition activities the vendor will be required to perform at the end of its contract in order to effectively transition to a subsequent vendor.

2.5. Payment

The method of payment has a direct impact on how the scope of services or specifications are written and how the contract is managed. The agency must be able to measure or verify that the goods/services have been received and determine the amount and frequency for payment. Payments should be:

- Consistent with the type of goods/services being provided;
- Encourage efficiencies and effectiveness in the delivery of goods/service;
- Structured to fairly compensate the vendor and encourage timely delivery of goods/services;
- Approximately equal to the value of the goods/services provided;
- Specified and defined in the solicitation document (i.e. fees, costs, and price);
- Be tendered in compliance with applicable state law and regulations; and
- Provide the best value to the state.

In some cases, the best structure may include multiple payment types for different services within the same contract.

2.6. Contract Term

Contracts Administration will work with the administering division to determine the initial contract term and any renewal periods. A reasonable contract term compliant with all applicable law must be

established prior to solicitation and must be included in the solicitation document. All contracts must have a specific ending date. Indefinite contracts are generally prohibited. All contracts must include a “funding out” clause (e.g. Texas Lottery’s Termination Related to Availability of Legislative Appropriations).

2.7. Contract Reviews – Commission and CAT

The agency has defined Major procurements/contracts as formal procurements for goods or services that directly support the agency’s core gaming business function and have a cumulative contract value, for the initial term and any renewal periods, equal to or greater than \$10 million dollars. All Major procurements/contracts must be reviewed and approved by the Commission prior to any action being taken. Refer to agency procedure AD-SS-PU-037 Contract Approval Authority and Responsibilities.

Additionally, the Contract Advisory Team (CAT) assists state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have a value of at least \$5 million dollars for the initial term and any renewal periods. By statute, state agencies must comply with CAT recommendations or provide a written explanation for not complying with the recommendation.

The contract term and estimated value of a contract should be based on:

- Best practices;
- State fiscal standards; and
- Applicable law, procedure, and regulations.

Staff must not artificially split any of these factors, or any contract, in order to avoid the dollar thresholds or to circumvent approval by the Commission and/or review by the Contract Advisory Team.

3. Procurement

3.1. HUB Determination

To maximize the inclusion of minority, woman-owned, service-disabled veteran businesses in state contracting and to accomplish the agency’s mission, Purchasing and Contracts administers the Historically Underutilized Business (HUB) Program. The purpose of the HUB Program is to promote full and equal business opportunities in state contracting through openness, fairness, and the highest ethical standards.

The goal of the agency is to provide opportunities for minority, woman-owned, or service-disabled veterans' businesses to have full and equal access to state procurement opportunities, through contracts or subcontracts. By statute, when issuing a new solicitation with a resulting contract estimated value of \$100,000 or more, state agencies must determine whether subcontracting opportunities are probable.

The agency’s HUB Coordinator works closely with Contracts Administration staff and the administering divisions to review contract solicitations with an expected value of \$100,000 or more, to determine the probability of HUB subcontracting, prior to releasing solicitation documents.

3.2. Pre-Proposal Conference

For each formal procurement, Contracts Administration staff will determine if a pre-proposal conference will be conducted either in person or virtually. The pre-proposal conference will include an

overview of the procurement document and a presentation on the HUB Subcontracting Plan (HSP) requirements. A question-and-answer session will also take place regarding general, technical and HSP questions.

Benefits to conducting the pre-proposal conferences are:

- Allowing prospective proposers to address specific questions or concerns;
- Providing for on-site visits by prospective proposers before submitting responses, if applicable;
- Providing information, schematics, plans, reports, or other data that is confidential and requires receipt of a non-disclosure agreement; and
- Providing opportunities for subcontracting relationships to develop through the conference.

For most procurements attendance at the pre-proposal conference is recommended, but not mandatory. However, certain pre-proposal conferences may be mandatory if an on-site visit is required to have a full understanding of the procurement, if confidential information will be disclosed under a non-disclosure agreement, or if the solicitation is so complex that attendance is critical for respondents to fully understand it. A video of the pre-proposal conference may be posted on the Texas Lottery website. All prospective Proposers are highly encouraged to view the video.

3.3. Proposal Evaluation

It is the agency's intent to conduct fair, comprehensive, and impartial evaluations of all procurements using an evaluation committee. An evaluation committee for each formal procurement will be selected by the Executive Director and may consist of Texas Lottery employees or outside individuals with expertise in particular areas. In addition, the Texas Lottery's General Counsel, other in-house legal counsel, and outside legal counsel may assist by advising the evaluation committee. Texas Lottery employees and consultants may also assist in the process as technical non-voting members of the evaluation committee.

Evaluation committee members may seek, obtain and consider the opinions of other committee members or subject matter experts (including Texas Lottery staff, staff from other Texas agencies and consultants retained by the Texas Lottery) when evaluating particular areas of a proposal. The evaluation committee may request clarification of information or representations in a proposal before completing the initial evaluation. Requests for clarification and responses to requests for clarification will be in writing and will become part of the evaluation record. Once discussions end, each member of the evaluation committee will meet as a group and independently score each responsive proposal.

The procurement process will be conducted in accordance with 16 Texas Administrative Code §401.101. At a minimum, the factors to be considered by the evaluation committee in evaluating a proposal shall include:

- i. the proposer's price to provide the goods or services;
- ii. the probable quality of the offered goods or services;
- iii. the agency's evaluation of the likelihood of the proposal to produce the desired outcome for the agency, considering, among other criteria:
 - a. the quality of the proposer's past performance in contracting with the agency, with other state entities, or with private sector entities;
 - b. the qualifications of the proposer's personnel;
 - c. the experience of the proposer in providing the requested goods or services;
 - d. the financial status of the proposer; and
 - e. whether the proposer performed the good faith effort required by the HUB subcontracting plan, when the agency has determined that subcontracting is probable.

The evaluation committee also may consider vendor performance reviews maintained by the Texas Comptroller of Public Accounts under Tex. Gov't Code Ann. Section 2262.055. A copy of the scoring matrix is included in each solicitation document.

3.4. Contract Negotiations

If the Best and Final Offer (BAFO) process is not used, the agency will attempt to negotiate a contract with the selected proposer. If a contract cannot be negotiated with the selected proposer on terms the agency determines reasonable, negotiations with that proposer will be terminated, and negotiations will be undertaken with the next highest scored proposer. This process will be continued until a contract is executed by a proposer and the agency, or negotiations with all qualified proposers are terminated. If no contract is executed, the agency may cancel the solicitation.

If the Best and Final Offer (BAFO) process is utilized, the agency may select top proposers, which may each be given an opportunity to discuss, clarify, and negotiate with the agency, and submit revisions to their respective proposals to the agency through a BAFO process. During discussions between the proposers and the agency, no information from a competing proposal may be revealed by the agency to another competitor. Any type of auction practice or allowing the transfer of technical information is specifically prohibited. At the conclusion of the discussions, BAFOs may be formally requested from the proposers and a deadline will be set for submission. BAFOs will be submitted by supplemental pages and not a complete resubmission of the proposal. All BAFOs will be reviewed by the evaluation committee. The evaluation committee will evaluate and score the BAFO response together with the original proposal in accordance with the evaluation criteria.

Where more than one vendor or contractor is needed to meet the agency's requirements for quantity, delivery, or service, the agency may award a contract to two or more vendors or contractors using a single solicitation to furnish the same or similar supplies or services.

All negotiated changes must be included in writing in the final contract. Documentation of the negotiation process will be retained as part of the procurement file. Refer to 16 TAC §401.101 and agency procedure AD-SS-PU-024 Contract Negotiations.

4. Contract Formation

A written contract must be executed before a vendor can provide goods or services. Contracts Administration will work with the administering division and legal staff to develop the contract and include all required contract documents and the appropriate contract terms and conditions.

A contract can be documented in different formats, including a four-corner contract or purchase order. The term four-corner contract is used to describe a single document that includes all of the terms and conditions within the four-corners of a single document. Purchase orders (PO) are also contracts but instead of containing all of the terms and conditions in a single document, the PO incorporates the terms and conditions, statement of work, and other relevant documents by reference.

4.1. Contract Documents

At a minimum, the written contract must include or incorporate by reference the following documents, if applicable:

- The solicitation document (RFP/IFB);
- Any clarification or modifications to the solicitation document made in response to questions submitted by proposers;
- The contractor's proposal; and
- The contractor's cost proposal, or revised cost proposal, as may have been modified during contract negotiations, if applicable.

4.2. Contract Terms and Conditions

The agency has developed standard contract terms and conditions that are applicable to contracted goods and services. The terms and conditions are included in the solicitation document and address areas such as:

- Governing laws and regulations;
- Begin and end date;
- Termination provisions;
- Extension or renewal options;
- Amendments and other contract modifications;
- Payment and invoicing;
- Performance bonds;
- Sanctions and liquidated damages;
- Ticket purchase requirements, Tex. Gov't Code Ann. §466.254;
- Sales agent eligibility required for vendors, Tex. Gov't Code Ann. §466.155; and
- Background investigations.

Contracts Administration, in consultation with the administering division and legal services, is responsible for ensuring the appropriate terms and conditions are used for each procurement. A boiler plate RFP, which includes the agency's terms and conditions, is included as Appendix A to this Manual.

4.3. Delegated Signature Authority

Pursuant to Tex. Gov't Code Ann. §467.103, the Executive Director of the Texas Lottery Commission is charged with performing all duties required by the commission to administer the State Lottery Act and all laws under the commission's jurisdiction. Pursuant to 16 TAC §401.105, except for a contract that by law requires the Commission's approval, the Texas Lottery Commission delegates authority to the Executive Director (or his/her designee) to approve all contracts and purchase orders not defined as major procurements. Additionally, the Texas Lottery Commission delegates authority to the Executive Director to execute all contracts for the agency. This authority may be delegated by the Executive Director.

The agency has defined Major procurements/contracts as formal procurements for goods or services that directly support the agency's core gaming business function and have a cumulative contract value, for the initial term and any renewal periods, equal to or greater than ten (10) million dollars. All Major procurements/contracts must be reviewed and approved by the Commission prior to any action being taken. Refer to agency procedure AD-SS-PU-037 Contract Approval Authority and Responsibilities.

5. Contract Management

5.1. Contract Management Overview

The agency is responsible for managing resources effectively, efficiently, and in a manner that is aligned with the agency's mission.

Texas Lottery Mission – The Texas Lottery is committed to generating revenue for the State of Texas through the responsible management and sale of entertaining lottery products. The Texas Lottery will incorporate the highest standards of security, integrity and responsible gaming principles, set and achieve challenging goals, provide quality customer service and utilize a TEAM approach.

Charitable Bingo Mission – Provide authorized organizations the opportunity to raise funds for their charitable purposes by conducting bingo. Determine that all charitable bingo funds are used for a lawful purpose. Promote and maintain the integrity of the charitable bingo industry throughout Texas.

This Manual establishes the framework for the management of all agency contracts. Contracts Administration and contract sponsors are responsible for ensuring all agency contracts are managed in accordance with the agency's governing statute and rules, this Manual and agency procedures.

5.2. Contract Management Responsibilities

Effective contract management requires that a contract administrator, from the Contracts Administration section and a contract sponsor, from the administering division, be actively involved throughout each stage of the contract lifecycle. Contract management is an essential function that involves:

Planning:

- Promoting the use of best practices;
- Assessing the level of risk associated with the contract;
- Determining the need to obtain any necessary input from vendors and what approved communication method will be used;
- Coordinating a well-defined statement of work with input from stakeholders; and
- Establishing specific, time-bound, performance measures and requirements to ensure vendor accountability.

Procurement:

- Monitoring procurements for any potential conflicts of interest that may arise, and reporting any concerns; and
- Complying with statutes, rules, and policies related to agency operations and contracts.

Contract Formation:

- Ensuring that the statement of work clearly defines vendor responsibilities and performance outcomes and expectations; and
- Maintaining required documentation, such as required disclosure and conflict of interest forms, correct signature authority, amendments, and monitoring results.

Contract Oversight:

- Behaving ethically at all times and exercising informed and professional judgment;
- Establishing a contract monitoring plan;
- Communicating and coordinating with all stakeholders involved with the contract;
- Being well versed in the contract terms, including its purpose, scope, requirements, and deliverables to ensure the vendor is held accountable for performance;
- Ensuring the vendor adheres to all applicable statutes, rules and regulations, and the terms and conditions of the contract;
- Overseeing performance and receipt of quality and deliverables;
- Reviewing and approving billing and tracking budget trends;
- Conducting contract closeout/termination activities, vendor performance reporting; and
- Documenting lessons learned.

5.3. Contract Developer and Contract Manager Training and Certification

Contract Developer – SPD administers a training, continuing education, and certification program

for Texas public procurement professionals. A certification is required to draft a solicitation that is posted to the Electronic State Business Daily or Texas Register. Purchasers who develop solicitations as their primary role must obtain a Certified Texas Contract Developer (CTCD) certification.

Contract Manager – A state agency employee must be certified as a Certified Texas Contract Manager (CTCM) to engage in contract management functions on behalf of a state agency if the employee has the job title of “contract manager” or “contract administration manager” or “contract technician”; performs contract management activities as fifty percent (50%) or more of their job activities; or manages any contract in excess of \$5,000,000.

Pursuant to Texas Gov’t Code §656.053, each Texas Lottery Commissioner must complete an abbreviated contract management program developed by the Comptroller of Public Accounts. Registration for the training can be found on the CPA website.

5.4. Contract Management through the Lifecycle

Although each contract type may be different, understanding what information is needed throughout the contract lifecycle is critical. The contract lifecycle offers a framework in which to plan for contract management requirements, timelines, and contingencies.

Considerations and tasks throughout the lifecycle:	
Contract and Procurement Planning	<ul style="list-style-type: none"> • Complete Needs and Risk Assessment • Identify Administering Division / Contract Sponsor • Define contract objective • Identify evaluation committee and subject matter experts, if applicable • Ensure conflict of interest and non-disclosure statements are complete • Identify level of approval needed • Determine need for vendor input and which approved communication method will be used • Develop statement of work • Review any documented lessons learned from existing/previous contract • Develop deliverables and performance measures
Procurement	<ul style="list-style-type: none"> • Prepare solicitation document • Develop evaluation criteria • Create and finalize evaluation tool prior to posting of solicitation • Consideration to include HUB Subcontracting Plan • Conduct Pre-Proposal conference, if applicable • Evaluate proposals and select Apparent Successful Proposer(s)
Contract Formation	<ul style="list-style-type: none"> • Conduct contract negotiations • Finalize contract documents based on outcome of contract negotiations • Ensure required checks are completed • Coordinate appropriate signature based on identified signature authority
Contract Management	<ul style="list-style-type: none"> • Conduct post award meeting, if applicable • Maintain official contract record including accurate and timely updates for all required contract reporting • Review and approve billing and track budget trends • Assess risk and document any decisions, actions and progress • Coordinate and communicate with vendor and agency staff on an ongoing basis • Administer contract changes • Track and review performance measures and outcomes • Provide technical assistance as needed • Conduct required contract monitoring

Contract Termination and Closeout	<ul style="list-style-type: none"> • Document termination decision and communicate with key stakeholders while receiving approval for termination • Resolve any outstanding issues • Complete vendor performance reporting • Document lessons learned
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5.5. Vendor Communication

Vendor Communication prior to contract award

TLC Procedures identify methods that Contracts and Purchasing staff should follow for vendor communications. Communication between public procurement staff and vendors is necessary and encouraged. If used effectively, communication with industry representatives is a vital resource for the TLC.

Texas law authorizes the exchange of information between state agencies, TLC and a vendor, related to future solicitations. When considering a new solicitation, Contracts or Purchasing shall develop a plan to obtain any necessary vendor input, which may include issuing a Request for Information (RFI), holding a formal pre-solicitation meeting with the vendor community, contacting industry leaders directly, or contacting vendors directly. If used effectively, the result of these interactions can enhance competition, lead to a more detailed and up-to-date description of technical requirements or scope of work and ultimately result in better value for the State.

After a solicitation is issued, the TLC must carefully limit the flow of information between potential vendors and TLC personnel. All vendors should receive equal access to procurement and specification information. Poor communication controls can lead to the appearance of impropriety in an open procurement, and increase the likelihood of protests.

The TLC may receive other unsolicited contacts from potential vendors. The TLC should work to educate and assist potential vendors to navigate state procurement channels, such as the Electronic State Business Daily (ESBD) and the Central Master Bidders List (CMBL).

If there is any doubt about appropriate communications with vendors, consult with TLC Legal Services.

Vendor communication after Contract award

Contract sponsors are responsible for holding vendors accountable and ensuring compliance with the agency's statute, rules and regulations, and contract terms and conditions. Regular and on-going communication with vendors is essential for successful contract management.

Contract sponsors and agency staff may provide technical assistance, as needed, throughout the term of the contract. Technical assistance may be provided by phone, email, or during on-site visits, and can include circumstances such as:

- Turnover in key vendor staff;
- Clarification of monitoring and oversight requirements;
- Billing or payment issues; or
- Other identified needs.

Contract sponsors should work closely with Contracts Administration to determine if formal communication or action is required to address specific contract issues, and can include circumstances such as:

- Non-compliance with contract terms and conditions;

- Missed deliverable due dates; or
- Issuance of sanctions or liquidated damages.

All official vendor correspondence is issued through Contracts Administration. The contract sponsor and Contracts Administration are responsible for ensuring all vendor communications are adequately documented and maintained in the official contract management file.

5.6. Contract Management Tips and Best Practices

Contract management best practices are techniques that may be used to improve the contracting process:

Contract Management Best Practices	
Be Timely and Proactive	<ul style="list-style-type: none"> • Assign a contract sponsor early in the procurement process to actively participate throughout the contract lifecycle. • Meet internal and external deadlines and submit reports and other information as required. • Make mutually agreeable arrangements ahead of due dates if a deadline cannot be met.
Communicate Effectively	<ul style="list-style-type: none"> • Keep open, consistent, and clear communication with those involved in the contract. • Seek advice early on, from Contracts Administration staff, legal and management before a problem worsens and becomes more difficult to resolve or increases risk to the agency. • Document contract performance issues timely to ensure Purchasing and Contracts staff, legal and management have ready access to information when needed. • Determine roles and responsibilities, including knowing who has authority for decisions, who is responsible for taking actions, and who should be consulted and informed. • Adhere to the agency's delegated signature authority.
Know the Contract	<ul style="list-style-type: none"> • Understanding of the base contract prevents costly mistakes when amending it such as duplicating costs for services or goods already included in original contract. • Understanding of requirements and deliverables is essential to ensuring successful contract outcomes.
Understand the Impact of Decisions	<ul style="list-style-type: none"> • Use all available information, data, and reports when analyzing a potential course of action. • Continually assess contractor risk, and take into consideration how potential decisions and actions can decrease, or increase, contract risks. • Seek input on key decisions from subject matter experts to reduce the risk of unintended consequences, foster mutual cooperation, and promote effective contract management.

5.7. Contact Amendments

Contracts Administration is responsible for coordinating the review, approval and execution of all contracts as well as any modifications, amendments or renewals to a contract as authorized by the Executive Director, or a division director. All contract modifications, amendments or renewals should be referred to Contracts Administration for review, regardless of the contract dollar amount or if the contract is delegated to the division director level by an Executive Order.

Any change, revision or modification to an original contract must be made in the form of an amendment to the contract. A new procurement is required if the proposed change is outside of the scope of the original procurement. The requesting division will submit documentation for the requested change and any supporting materials to Contracts Administration. Contracts Administration will review the information, prepare an amendment, work with the requesting

division to seek additional information or clarification, and send the document to Legal Services for review. Refer to procedure AD-SS-PU-025 Modifying, Amending or Renewing a Contract. Depending on the nature of the amendment, a Needs and Risk Assessment may be required. Refer to procedure OC-FO-003 Needs and Risk Assessment.

5.8. Contract Extensions

Approximately six months prior to the expiration of a contract, Contracts Administration will send a Contract Recommendation Memo to the administering division to determine what action should be taken. If there are extensions remaining on a Contract, the requesting division may return the Contract Recommendation Memo requesting the extension option be exercised and provide any supporting materials to Contracts Administration. Contracts Administration will review the information, prepare the extension, work with the requesting division to seek additional information or clarification, and may send the document to Legal Services for review. When all documentation and approvals to process the extension have been received, Contracts Administration will obtain the required signatures, and route copies of the final document to all appropriate divisions and the vendor. Extensions generally require a Needs and Risk Assessment. Refer to procedure OC-FO-003 Needs and Risk Assessment.

If no more extensions remain available under a contract, the requesting division should consult with Contracts Administration to determine whether the services are still needed and a new solicitation must be issued.

5.9. Contract Records

Maintaining and documenting contract management activities is critical to effectively managing contracts, making informed decisions, settling claims or disputes, and accurately accounting for and reporting contract data. Contracts Administration is the official repository for all contract information. Contract sponsors are responsible for ensuring that Contracts Administration receives all contract related documentation, and the contract record is updated throughout the lifecycle and contains accurate and complete information.

5.10. Contract Records Retention

Pursuant to Texas Gov't Code §441.1855, effective for contracts executed September 1, 2015 and thereafter, all contract documents must be retained for a minimum of seven years after a contract is complete (expired, terminated, or otherwise closed) or the last action related to the contract is resolved, whichever is later.

5.11. Contract Monitoring

All agency contracts must be monitored to verify that the contract is performing effectively and efficiently in accordance with contract terms and conditions. Contract monitoring includes planned, ongoing, periodic, or unscheduled activities that measure and ensure compliance with the terms and conditions, and delivery of the goods and/or services.

The objective of contract monitoring is to promote accountability and ensure the State gets what it pays for by:

- Determining compliance with the terms and conditions of the contract;
- Providing feedback and technical assistance to prevent non-compliance;
- Evaluating process controls to ensure reliable validation of service deliverables; and
- Evaluating progress towards successful completion of contractual deliverables.

Contracts Administration must complete a Risk Assessment Analysis for all applicable

contracts in order to prioritize monitoring activities and establish a contract monitoring plan.

5.12. Risk Assessment and Contract Monitoring

By assessing risk and allocating monitoring resources accordingly, an agency can more effectively focus limited resources on contracts that pose the highest risk to the State. A risk-based approach does not mean lower risk contracts are not monitored; rather more complex or higher risk contracts may receive more frequent or in-depth monitoring.

Within 60 calendar days of the effective date of the contract, the administering division, in collaboration with Contracts Administration, as appropriate, must conduct a risk assessment. Refer to procedure AD-SS-PU-038 Contract Risk Assessment Analysis. The risk assessment includes a variety of risk factors that, in aggregate, are used to determine the overall risk level of the contract (high, medium, or low). Risk should be reassessed if a contract is amended or extended in order to account for any changes that may require an adjustment in the prioritization of the contract monitoring activities.

- A Risk Assessment Analysis is required for:
 - All contracts designated as Major, Prime and Operational. Refer to procedure AD-SS-PU-037 Contract Approval Authority and Responsibilities
- A Risk Assessment Analysis is not required for:
 - Interagency Agreements
 - Contracts with no Monetary Value
 - Lease Agreements
 - Software and Hardware Maintenance Agreements
 - Commodity Purchases or Equipment Lease Agreements
 - Short-Term Promotional Agreements \$25,000 or Less

5.13. Contract Monitoring

Contract monitoring activities can be conducted in a variety of ways, as long as they are objective, address contract complexity, value, and risk. The agency has established minimum contract monitoring activities for all contracts that result from a formal procurement, regardless of the size, value or risk. Enhanced contract monitoring may be appropriate for certain contracts. Minimum contract monitoring activities include:

- **Billing Validation:** Contract sponsors are responsible for reviewing each vendor invoice to determine if the rates and services are the same as allowed by the contract, and all supporting documentation (e.g. cost reports and third-party receipts for expenses) is provided. This includes confirmation that the goods and/or services being invoiced have been received and accepted by the agency. Invoices that are incorrect, lacking supporting documentation or for which the goods/services have not been provided in accordance with the contract will be disputed.
- **Contract Terms and Conditions:** Contracts Administration monitors all agency contracts for certain administrative reporting activities. These include vendor reporting of litigation, lobbyist activities, changes in ownership or financial status, and changes in key personnel.
- **Bonds and Insurance:** Contracts Administration is responsible for ensuring vendor compliance with all contract provisions for performance bonds and insurance.
- **Reporting Requirements:** Contract sponsors are responsible for ensuring vendor compliance with all contract reporting requirements included in the scope of work/specifications.
- **Receipt and Acceptance of Goods/Services:** Contract sponsors are responsible for ensuring the receipt and acceptance of goods and services in accordance with contract requirements (scope of services).

Additional enhanced monitoring (meaning greater frequency or more robust monitoring tools) may be required and will be determined by the administering division. Examples of enhanced monitoring activities may include:

- **On-Site Visit:** Monitoring of vendor facilities, personnel, live operations, service delivery or other observable characteristics to objectively validate compliance with contract requirements. Site visits are often conducted as part of the procurement process. Contract sponsors are responsible for determining if subsequent site visits are required to ensure continued contract compliance.
- **Team Approach:** A team approach may be used for complex or large contracts. It may include implementation of a contract management governance framework which includes formal structures to oversee contractors' obligations and objectives and ongoing communication to promote positive performance and adherence to the contract. All representatives of the review team should be on the same page regarding any issues and corrections, sanctions, or remedies.

The agency's contract for Lottery Operations and Services is an extremely complex and large contract with extended terms and extensive deliverables. This contract is integrated with all aspects of the agency's core business function. As such, the agency has determined that enhanced contract monitoring activities performed by a third-party vendor are required. Contract monitoring activities provided by the third-party vendor may include:

- **Deliverable Risk Assessment:** The agency and independent third-party vendor work together to identify and risk rank all contract deliverables. The risk assessment report establishes the compliance monitoring frequency and activities for each deliverable.
- **Compliance Monitoring:** The independent third-party vendor validates and verifies compliance with contract requirements. This monitoring may be conducted as either a site visit, desk review or both.

Contract sponsors must ensure that documentation of monitoring activities is factual, thorough, and substantiates any findings, such as performance deficiencies or instances of non-compliance. Monitoring documentation must be provided to Contracts Administration to be maintained within the official contract file.

Any issues or findings identified as a result of contract monitoring activities must be sent to Contracts Administration for action. Contracts Administration will work with the administering division and legal services to determine what action should be taken, such as escalation, warning letter, liquidated damages, corrective action plan or payment holdback.

5.14. Escalation of Contract Issues

Contracts Administration is responsible for providing assistance to the administering division(s) in monitoring contract performance. Each administering division is responsible for the day-to-day management and monitoring of assigned contracts. Routine, day-to-day communications will be handled by the administering division. All official correspondence with vendors regarding contract matters on performance issues will go out under the oversight and signature of the Administration Division Director or his designee. Refer to procedure AD-SS-PU-018 Contract Performance Monitoring Process.

Examples of Significant Issues for Escalation Include:

- Risk that the contract will exceed budget limitations or timeframes;
- Repeated non-compliance;
- Security or integrity concerns;
- Appearance of impropriety or potential conflict of interest; and
- Suspicion of fraud, waste, or abuse.

Effective escalation helps ensure that serious problems and issues are addressed quickly to

prevent harm to clients, gaps in goods or service coverage, or misuse or waste of taxpayer dollars.

5.15. Contract Closeout

Contract closeout is the final step of the contract lifecycle and occurs once the contract has expired or terminated. Within thirty (30) days, or as soon as possible thereafter, after the expiration, termination or completion of a contract, a Contract Closeout Memo will be initiated from Contracts Administration to the director of the administering division. Refer to procedure AD-SS-PU-002 Contract Closeout Process.

5.16. Vendor Performance Reporting

Purchasing and Contracts is responsible for reviewing and submitting vendor performance information to the Comptroller of Public Accounts' Vendor Performance Tracking System (VPTS). Refer to procedure AD-SS-PU-016 Vendor Performance Tracking System. Vendor performance reporting is required for the following procurement types:

- Purchases over \$25,000 from contracts administered by the CPA.
- Any other purchase over \$25,000 made through delegated authority granted by CPA.
- Purchases made through other entities pursuant to Gov't Code Chapter 10, Subtitle D.
- Other purchases exempt from CPA procurement rules and procedures.

If a contract value exceeds \$5 million, the state agency must file a vendor performance report:

- At least once each year during the term of the contract; and
- At each milestone identified for the contract.
- A contract subject to this reporting may not be extended until the applicable reports have been submitted to the Vendor Performance Tracking System.

The purpose of the Vendor Performance Tracking System (VPTS) is to:

- Reduce risk by providing information on past performance.
- Identify vendors that have exceptional performance.
- Aid purchasers in making a best value determination based on vendor past performance.
- Protect the state from vendors with unethical business practices, or repeated delivery issues.
- Provide performance scores in four measurable categories for the Centralized Master Bidders List (CMBL) vendors.
- Track vendor performance for delegated and exempt purchases.

Purchasing and Contracts Management & Procurement are responsible for gathering information from the administering divisions to report vendor performance, if any additional information is needed. All documentation submitted for the procurement file must be factual in nature and not contain any opinion.

By statute, the Comptroller of Public Accounts must track and evaluate vendor performance based on information reported by state agencies. State agencies must consider performance information and contractor ratings contained in the VPTS when determining whether or not to award a contract to a particular contractor.

Note: Update the manual and Appendix A – Sample RFP Template on the Contract Management page on the TLC's website when revisions are made.