

TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

PROCUREMENT AND CONTRACT MANAGEMENT GUIDE

I. Introduction

The information contained in this handbook reflects the policies, procedures and practices of the Texas Behavioral Health Executive Council (BHEC) for procuring the products and services required to support the agency's mission and goals. It has been developed to comply with Texas Government Code 2261.256 and SB 20.

II. Ethical Standards

It is the policy of the State of Texas and BHEC 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.

Any BHEC officer or employee involved in the development or approval of a contract that has an actual or potential conflict of interest must disclose it and are subject to removal from involvement in the contract process. Conflicts of interest are not limited to financial interests, but also include nepotism, which involves an explicit act of using one's position to favor a relative. These relationships can be either by consanguinity (bloodlines) or by affinity (virtue of marriage).

All purchasing staff must sign conflict of interest statements.

A former state officer or employee of BHEC who during the period of state service or employment participated on behalf of BHEC in a procurement or contract negotiation may not accept employment from that person/vendor before the second anniversary of the date the contract is completed, terminated or withdrawn. (If that employee is the agency head, this restriction extends to the fourth anniversary.)

III. Purchasing, Contract Development and Contract Management

Purchasing is defined by the Texas Comptroller of Public Accounts (CPA) as "the receipt and processing of requisitions, development of scope of work, the issuance of purchase orders against existing cooperative or agency contracts and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily or in the Texas Register."

Contract Development is defined by the CPA as “actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation of and advertising solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals and the preparation and completion of contract award documents. The term does not include invoice or audit functions.”

Contract Management is defined by the CPA as “actions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance and ensuring that contract performance and practices are consistent with applicable rules, laws and the State of Texas Procurement Manual and Contract Management Guide.”

IV. Planning and Risk Assessment

Delegated purchases made through agency purchase orders, term contract purchases and purchases made under Texas Department of Information Resources (DIR) are made in accordance with the following BHEC purchasing policies.

- a) Needs Assessment – Is the purchase necessary to the business needs of the agency?
- b) Cost estimate and funding source – Is the purchase within the approved budget of the agency? Is it an allowable use of appropriated fund?
- c) Procurement Method Determination – what procurement method should be used to make the purchase?

V. Procurement Method Determination

Delegated purchases are those that the Comptroller’s State Procurement Division (SPD) has by rule delegated its purchasing authority to agencies.

Non-delegated purchases are all purchases that the SPC does NOT delegate by rule to agencies. For purchases of goods greater than \$ 50,000 the agency must submit its delegation request as an Open Market Requisition (OMR). For purchases of services greater than \$100,000 the agency must submit its delegation request and its solicitation through the Procurement Oversight & Delegation portal.

Information technology procurements less than \$5 million are required to be purchased through DIR contracts. (Purchases of goods exceeding \$5 million must be purchased through DIR bulk purchase.) Exemptions can be granted by DIR for (1) DIR approved blanket or one-time exemptions, (2) LBB approval and (3) DIR certificate of unavailability. For IT

contracts that exceed \$50,000, the agency must submit a Statement of Work (SOW) to DIR for approval prior to entering into the contract.

VI. Competitive Bid Solicitation

When necessary, the agency must solicit competitive bids from vendors on the Centralized Master Bidders List (CMBL). For contracts \$5,000 to \$25,000, the agency must provide an IFB to at least three vendors on the CMBL; two of these must be Historically Underutilized Businesses (HUBs). For contracts over \$25,000, the agency must solicit bids from all vendors on the CMBL in that region using an Invitation for Bids (IFB). An IFB is a formal written competitive sealed bid process, which contains a SOW and standard Texas terms and conditions. Additionally, this IFB must be posted on Electronic State Business Daily (ESBD) for a minimum of 14 days to allow vendors other than those on the CMBL a chance to bid.

Competitively bid contracts are awarded on the basis of best value. Factors other than price, that determine best value include the following:

- (a) Installation costs
- (b) Life cycle costs
- (c) Quality
- (d) Reliability
- (e) Delivery terms
- (f) Vendor experience and any past performance
- (g) Vendor's financial resources and ability to fulfill the contract
- (h) Cost of training
- (i) Any other relevant factors depending on the context of the contract.

During the solicitation process period all communication with bidders must pass through the agency's designated point of contact. Questions relating to the solicitation should be in writing. This includes questions relating to the significance of specifications, establishing points relating to evaluation, elaborating on details of requirements, or other interpretation on key points of the solicitation. These questions and answers will be collected in a Q&A document and shared with all bidders. This helps ensure that all bidders receive the same information and interpretations of the solicitation.

VII. Evaluation

Evaluations are conducted by the evaluation team according to a pre-determined scoring system, which reflects what the agency has determined is the best value for the particular needs.

Responses must have all required elements (signed proposal, completed HUB subcontracting plans, etc.) and must meet all minimum requirements to be considered for the evaluation. Late or unsigned bids are not accepted.

Pricing should be separated from proposals and evaluated by an agency purchaser. Evaluations are to be scored independently by each member of the evaluation team and each proposal should be evaluated on its individual merits in respect to the requirements of the solicitation.

If specifically permitted by the solicitation, the agency may elect to conduct oral presentations after reviewing the responses. If elected, the agency may schedule presentations for all respondents or a limited number of top ranked vendors in the competitive range. The time allowed and the agenda format shall be the same for all presenters, and the order in which they present will be determined by drawing names. After oral presentations, the agency may solicit Best and Final Offers (BAFOs) prior to awarding the contract.

VIII. Contract Award

Contracts are awarded on the basis of best value under the established scoring process. The agency may negotiate terms and conditions during the procurement process if state law permits. Negotiations are NOT allowed under the IFB procurement method, UNLESS only one qualified bid is received.

Upon review by any oversight agency (if necessary), review of all required disclosures, and review of all required vendor compliance agency verifications (SAM, warrant/payment hold, etc) a purchase order or notice of award incorporating the specifications of the initial solicitation, terms and conditions, and any negotiated details will be issued to the awarded vendor and will serve as the basis of the contract. Agency may also need to provide notification of the contract award to ESBD, Texas Register, LBB contracts database, or DIR QAT. For all contracts not posted to the LBB contracts database, the agency must post certain information on its website about each private vendor contract. Additionally, if DIR approved the SOW for the awarded contract, that SOW must also be posted on the agency website.

IX. Contract Management

Major contracts should have a contract manager assigned to them. The contract manager should be an individual involved in the planning, drafting and issuance of the initial solicitation. The contract manager may expect to act as the voice of the contract, ensuring that all parties adhere to the mutually agreed upon terms. Duties of a contract manager may include:

- Planning
- Developing the SOW
- Acting as point of contact
- Performance monitoring
- Acceptance of deliverables
- Authorizing payment
- Budget monitoring
- Change management
- Dispute resolution
- Implementation of corrective actions, including termination
- Maintenance of records
- Contract closeout

X. Change, Dispute and Termination

Changes to contracts are to be made in writing. Changes must be within the scope of the initial contract. Changes must be by mutual agreement, unless there is specific wording in the contract that gives the agency authority to act unilaterally.

In the event of a dispute, the contract manager should take appropriate steps to resolve the matter and prevent escalation. Initial steps include:

- Identify the problem
- Research the issue, obtaining relevant details from all parties
- Evaluate, reviewing the facts in regard to the relevant terms of the contract

XI. Contract Close Out

When a contract is completed the contract manager must ensure the contract file has the following items:

- Documentation that all deliverables have been received
- All performance measures completed
- All contract disputes are resolved
- Final invoice is received and payment made
- Vendor performance reported