



THE TEXAS GENERAL LAND OFFICE



January 2017

Contract Management Handbook

The Texas General Land Office (GLO) serves the schoolchildren, veterans, and all people of Texas by preserving their history, protecting their environment, expanding economic opportunity, helping communities rebuild after disasters, and maximizing state revenue through innovative administration and prudent stewardship of state lands and resources.

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Contract Management Handbook

INTRODUCTION

Purpose

The GLO's *Contract Management Handbook (Handbook)* complies with Texas Government Code §2261.256 and is consistent with the guidance found in the *State of Texas Contract Management Guide (Guide)* managed by the Comptroller's Office. The information contained within this *Handbook* establishes the global principles for contract management that are further defined in processes and procedures at the division level. There may be policies contained in the *Guide* that are not found in this document. In the event that the information in this document contradicts mandatory requirements of the *Guide*, the *Guide* shall prevail. These standardized processes are intended to promote the efficient use of resources and to provide transparency and accountability into the GLO's expenditure of public funds.

This Handbook supplements, but does not replace existing statutory requirements. It is not intended to be a manual on the law of contracts or constitute legal advice. It is a companion to the GLO's Procurement Manual.

CONTRACT MANAGEMENT TEAM

The Contract Management Division (CMD) performs the daily activities associated with managing a contract. Those activities include planning, supporting the procurement team as needed, contract formation, and contract oversight. For each contract or, in some cases, each group of similar contracts, a Contract Manager (CM) may perform the following functions as needed:

- Performs contract start-up activities and advises the Program Area through the contract creation process;
- Ensures the GLO business objectives are met throughout the planning and life of the contract;
- Implements, maintains, and manages contract management processes documented in the *Guide* and the *Handbook*;
- Work with General Counsel to address and resolve any legal concerns or disputes with the contractor;
- Receive and respond to communications between the agency and the contractor as need during contract formation;

- Document changes to the contract;
- Maintain appropriate records;
- Document significant events;
- Monitor contractor progress and performance to ensure conformance to contract requirements;
- Exercise remedies when contractor performance is deficient; and
- Perform contract close process.

Training and Professional Certification

Certified Texas Contract Manager (CTCM)

Pursuant to Government Code section 2262.053, the Texas Comptroller of Public Accounts (TCPA) administers a system of training, continuing education, and certification for state agency contract management personnel. This same law also requires the GLO to ensure that its Contract Managers complete the training and certification developed by the TCPA. GLO Contract Managers that work in the Contract Management Division (CMD) must be CTCMs upon hire or as soon after hire as practicable, based on the SPD's training schedule.

Continuing Education Hours

Government Code sections [2155.078](#) and [2262.053](#) require certified individuals to complete continuing education hours to maintain certification. The Training and Certification Program mandates 80 hours of continuing education hours (CEH) credits averaged over the five-year certification period to qualify for renewal of certification. No more than 24 hours may be counted during any one certification year period; excess credits may not be rolled over to another year. TCPA encourages certified individuals to obtain 16 hours of continuing education hours per certification year.

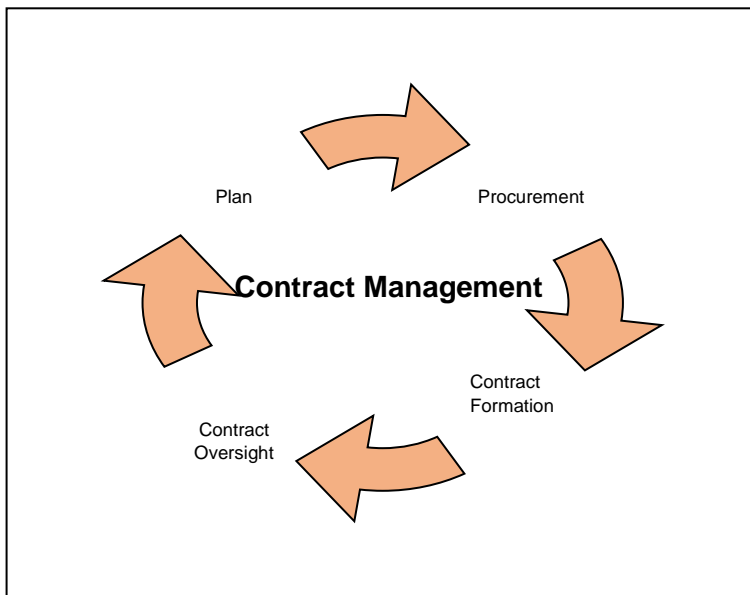
Additional information on the TCPA's training programs can be found at the following web address: <https://www.comptroller.texas.gov/purchasing/training/>.

Ethics

Employees of the GLO are expected to adhere to the highest standards of conduct. This includes adherence to the Ethics Policies as stated in the GLO's Employee Handbook. Members of the CMD must adhere to additional ethical requirements as outlined in the GLO's Procurement Manual when attending meetings involving procurement's evaluation process.

CONTRACT MANAGEMENT

Consistent with the state's Guide, contract management of GLO contracts consists of four categories: Planning, Procurement, Contract Formation, and Contract Oversight. Each of those terms are further defined below. It is important to know that contracting at the GLO is a team of teams' approach. While the Contract Management Division (CMD) is responsible for the overall product, there are times that other divisions within the agency have the lead on specific aspects of the process. For example, during the procurement phase, CMD is an observer of the process until the Purchasing team has completed the responsibilities assigned to that division. Upon completing the tasks assigned to the Purchasing team, CMD re-assumes the lead in the process.



Plan – Identify contracting objectives and strategy.

Procurement – Select the most qualified contractors using a fair and objective process.

Contract Formation – Ensure the contract contains provisions that hold the contractor accountable for producing desired results, including all relevant terms and conditions as well as establish processes that are cost-effective and aligned with the cost of providing the goods and services.

Contract Oversight – Monitor and enforce the terms of the contract.

Planning

The GLO's contract planning process helps staff identify the need for the contract, prepare the statement of work, determine the correct procurement method, and draft the solicitation and contract.

Needs Assessment

The purpose of the needs assessments is to assist the GLO's contracting team in planning for the contract objectives that will be required for services that will cost at least \$25,000. This document provides critical information for the routing, drafting, and formation of the solicitation and contract. It identifies the urgency of the goods or services; indicates whether or not current resources are available to support the project; and, provides the statutory authority for the project, when applicable. Once a Needs Assessment has been reviewed by the Program Area, Contract Manager, Procurement Director and an attorney from the Office of General Counsel, the PM is instructed to submit the NA along with their requisition in BuySpeed.

The Needs Assessment includes:

- **Projected Project Budget and Funding Sources** - An estimated project budget is provided that includes the entire life of the contract, including any renewals. If an estimated budget is not available a detailed explanation must be provided.
- **Consulting Services** - The Needs Assessment has a section to designate if the potential contract will include consulting services, as defined in Section 2254.021 of the Texas Government Code. If consulting services are included, the appropriate notifications are sent to the Legislative Budget Board and the Governor's Office.
- **Project Description** - The project description explains the reason the project is being proposed and the expected benefit to the GLO. In addition, the anticipated expiration date of the project is indicated in this section.
- **Strategic Alignment with GLO's Mission** - Every project the GLO enters into should align with the agency's mission. Space is provided to describe how the proposed project furthers the mission the GLO and fits within any applicable strategic priorities or approved plans.
- **Justification for Project** - A justification as to why the project should be implemented must be provided. This justification will also explain the impact of not entering into the project.
- **Cost Comparison** - The cost comparison will look at the cost of performing the project in-house vs. outsourcing the project. There will be an explanation of how the cost-comparison supports the outsourcing of the project versus performing the service in-house and give cost estimates to the support the conclusion.
- **Project Goals** - A goal is defined as broad in scope, highlighting general intentions, with intangible results, and is not measurable. The needs assessment includes space to describe each project goal that supports the agency or division needs.
- **Additional Resources Needed for Project** - If additional resources or needed to properly administer the project, they are described in the needs assessment. These resources may include equipment, staff, technology, etc.
- **Statutory Authority** - The statutory authority that mandates or authorizes the project is provided in the needs the assessment.

Pre-Procurement Risk Assessment

The GLO Contract Managers will conduct a pre-procurement risk assessment that will be used to determine the level, amount of management, and resources required to effectively monitor selected contracts.

Procurements and Grants Review Committee

The purpose of the Procurements and Grants Review Committee (PGRC) is to examine proposed procurements, projects, contracts, contract amendments and grants to determine whether they are in the best interest of the Texas General Land Office (GLO). Committee members draw upon the knowledge and experience of the committee to help the GLO make informed decisions on grant funds coming to the agency and agency funds used for procured goods and services. The committee's recommendations either for or against a grant, procurement, project, contract, contract amendment will be sent to the Land Commissioner for final determination.

Procurement

The Procurement Division of Financial Management is responsible for purchasing a variety of commodities and services for the GLO and the Veteran's Land Board. The CMD follows the procurement process and participates in meetings and supports the procurement process as needed.

Electronic Requisition

The GLO uses an eProcurement software system called BuySpeed. This system is used to generate electronic requisitions to authorize purchases. The electronic requisition ensures:

- Supervisor's approval of purchases;
- Allocation of funds from the various programs; and
- All of the necessary vendor information is in place and approvals are received for the preparation of a Purchase Order/Contract.

CMD requires an approved requisition be submitted to their Contract Manager prior to a contract being drafted.

Award

Once a vendor is selected, the purchasing team sends a notification to the CMD by way of a Notice of Award. This is the indication that the procurement process has ended and the contract formation may begin.

Contract Formation

Legal Elements

The elements of a binding contract include an offer, acceptance, legal purpose, mutuality of obligation, consideration, and competent parties.

- Offer – An Offer is the promise from the involved parties to act or refrain from acting in the future. For example, Company A promises to paint and Company B promises to pay Company A for the service.

- Acceptance – This is the offeree's assent to the terms required by the offer. Acceptance of the terms must be in the manner specified by offer. GLO contracts require the signatures of authorized representatives from the vendor and GLO.
- Legal Purpose – The contract's objective must be for a legal purpose. For example, a contract for the printing of counterfeit bills is not a binding contract because the purpose of the contract is not legal.
- Mutuality of Obligation – Also known as the "meeting of the minds", this means the parties understand and agree to the substance and terms of the contract.
- Consideration – The exchange of something of value by the involved parties. For example, in the offer above Company A promises to paint and Company B promises to pay. The consideration for this offer would be Company A painting two 10x10 interior rooms by a specified deadline; and, Company B paying Company A \$3,000 upon final inspection of the paint job and completion by the deadline.
- Competent Parties – For a contract to be binding, all parties to the contract must be competent and authorized to enter into a contract.

Drafting The Contract

GLO contracts include standard provisions that are applicable to most contracts. These provisions include administrative provisions, financial provisions, the statement of work, contract term (including termination and dispute resolution) provisions, provisions that relate to the rights and ownership of work products, and provisions that allocate risk.

The GLO uses contract templates that include standard terms and conditions, as well as any relevant or required terms and conditions for the type of contracted service or source of funding.

Drafting Request Form

The GLO's Contract Managers will complete a Drafting Request Form and submit it to the assigned Contract Specialist for drafting.

The Drafting Request Form includes:

- Project information to include project name, requisition number, and project description;
- Approved funding amount and method of funding for the project;
- Payment type and billing schedule;
- TXMAS or DIR contract number (if applicable);
- Term dates;
- Vendor's HUB information;
- Vendor's insurance requirements; and
- The routing path for the approval of the contract.

Binding Signatures

The GLO optimizes the use of technology to electronically obtain signatures from those with the authority to bind the agency to contractual obligations.

Contract Administration

Contract Management System

Contract administration is performed in partnership with the Project Manager and Contract Manager assigned to each contract. The General Land Office utilizes an in-house database known as the Contract Management System ("CMS") to track procurement based contract records. Executed contract documents are maintained in a paper file format or in DocuShare.

Required Posting of Certain Contracts

Texas Government Code §2261.253 requires state agencies to post contracts for purchases of goods or services from a private vendor to the website. The GLO must post:

- Contracts the GLO enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contract, until the contract expires or is completed;
- The statutory or other authority under which a contract, that is not competitively bid, is entered into without compliance with competitive bidding procedures, and
- The request for proposals related to a competitively bid contract until the contract expires or is completed.

Monitoring Performance

The GLO's contract monitoring program begins in the planning phase of the procurement process. Selected GLO contracts will 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, conditions, acquisition, service delivery, and related requirements of a contract.

By assessing risk and allocating monitoring resources accordingly, the GLO 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. If new or greater risks are identified for a contract during the fiscal year, contracts may be added to the monitoring plan.

Post Award Risk Assessment

Upon the execution of a contract, the Contract Manager shall determine the level of monitoring required for the contract by assessing the risk associated with the contract. This risk assessment shall be completed within 30 days of the execution of the contract. The risk score given to the contract will determine the level of review required.

In addition to the Pre-Procurement Risk Factor shown in the Planning and Procurement section of this handbook, post-award factors include:

- Work Order Based;
- Number of Qualified Vendors;
- Procurement Method; and
- Vendor Performance.

Following Contract Execution

Once a contract has been executed and a contract monitoring plan has been developed, the work of monitoring that specific contract begins. Monitoring a contract is a team approach between the Project Manager in the Program Area and the Contract Manager in the Contract Management Division.

Enhanced Contract Monitoring

Tex. Gov't Code 2261.253(c) requires state agencies identify each contract that requires enhanced contract or performance monitoring. The enhanced monitoring is an increased level of monitoring in addition to and beyond the regular monitoring process conducted by the program area. By a rule in the Texas Administrative Code, Title 31, Part 1, Rule §3.51, the GLO has tasked the Procurement and Grants Review Committee to determine which project or contract will receive enhanced monitoring on a case-by-case basis.

Activity Reports

This type of report is generally from the contractor to either the Project Manager for the purpose of reporting on the work performed or completion status for each deliverable. These reports should provide detailed information about each task performed, outstanding items, deliverable timing, and any other information related to the activities/tasks/deliverable.

Vendor Performance Reports

Texas Government Code §2155.089 requires state agencies to file a Vendor Performance Report through the TPASS Web Portal. These reports are filed upon completion or termination of contract on every purchase over \$25,000, including delegated purchases, TPASS contracts, and exempt purchases.

State agencies are required to use the vendor performance tracking system to determine whether or not to award a contract to vendor that's reviewed in the tracking system.

Change Management

During the term of the contract it may become necessary to make changes. These changes can range from simple administrative changes such as clerical corrections, to substantive changes such as adjustments to delivery schedules.

The Project Manager will serve as the point of contact for initiating the substantive changes to the contract while the assigned Contract Manager may initiate administrative changes. The Project Manager will work with the Contract Manager to ensure that any proposed change to the contract is done in line with the state's and contracting laws, agency policies, the terms of the contract, and within the scope of the original solicitation, if applicable.

Administrative Changes

Administrative changes are changes to the contract that do not affect the scope of the contract or the rights of the involved parties. Some examples of administrative changes include, but are not limited to:

- Billing instructions and payment address;
- Clerical corrections (i.e. typographical errors, spelling, and grammar);
- Personnel assigned to the contract; and
- Other adjustments as permitted by specific contract language.

Substantive Changes

Substantive changes affect both parties and typically affect the scope of the contract and/or rights of the involved parties. Some examples of substantive changes include, but are not limited to:

- Price;
- Delivery Schedule;
- Specification; and
- Terms and Conditions

Substantial or Material Changes

Texas Government Code §2155.088 states that the performance of a contract must substantially comply with terms included in the written solicitation for the contract including material/labor costs, duration, price, schedule, and scope. To determine whether a contractual change is substantial or material, the change must be measured by whether or not re-advertising would deny someone who would have been able to respond to the revised specification the opportunity to respond.

Construction Change Orders

If changes to work, time, or money associated with a construction contract become necessary to ensure the accuracy and complete of the construction project, a Change Order (CO) must be issued by the Construction Services Project Manager (CSPM). Upon completing a change order in compliance

with the Construction Services policy on change orders, a completed version is provided to the Contract Management Division for inclusion in the contract document.

Dispute Resolution

The purpose of the dispute resolution process is to resolve problems before they escalate. Contracts issued by the GLO have a provision that requires the GLO to use the dispute resolution process to attempt to resolve disputes arising under the contract.

The GLO's dispute resolution process includes:

- Identifying the problem;
- Researching the facts; and
- Evaluating the appropriate course of action

Termination

A contract may be terminated due to no fault of either party (a.k.a. Termination for Convenience) or because the contractor breached the contract (a.k.a. Termination for Default).

Termination for Convenience

A termination for convenience may happen at any time, in whole or in part, if the termination is in the best interest of the GLO. If a contract is terminated for convenience, the GLO will provide a written notice to the contractor explaining the date the termination is effective and whether the termination is in whole or in part. If only part of the contract is being terminated the notice needs to specify which parts are terminated.

Termination for Default

A termination for default may happen with a contractor fails to perform or in any way breaches the contract. Prior to a contract being terminated for default a cure notice should be sent to the contractor informing them of their performance failures or other breaches and giving them a time period to correct the issues. If a contractor cannot or will not correct the problems, the contract may be terminated for default. A notice of termination should be issued to the contractor that includes:

- The contract number;
- Contract period;
- Effective date of the termination;
- Reference to the termination clause; and
- A statement of facts justifying the termination.

Note: A contract cannot be terminated for default due to excusable causes. Some examples of excusable include: acts of God or public enemy, acts of the agency, fires, floods, epidemics, strikes, freight embargos, and unusually severe weather.

Contract Administration File

Contract documents will be maintained and retained in accordance with state law. The contract administration file shall at a minimum include solicitation documents, the accepted proposal, the contract, supporting documentation, amendments, construction change orders, and any attachments included in the contract. If a performance bond, payment bond, or insurance are required on the project, this documentation is to be included in the file as well.

Retention of Contract and Related Documents

In accordance with Texas Government Code §441.1855 the GLO will retain in records for each contract entered into by the GLO. This includes all contract solicitation documents related to the contract. These contract documents will be destroyed only after the seventh anniversary of the date that the contract was completed or expired. If any issues arise from litigation, claims, negotiations, audits, open records requests, administrative reviews, or other action involving these documents, the retention period will be extended until the issue is resolved.

Contract Close-Out

The purpose of the contract close-out process is to verify that both parties to the contract have fulfilled their contractual obligations and there are no outstanding responsibilities for either party. A contract can be closed when:

- All contract deliverables, include any reports, have been delivered to and accepted by the GLO;
- Final payment is issued;
- Any outstanding monitoring issued have been resolved;
- All property inventory and ownership issues are resolved, including disposition of equipment or licenses purchased under the contract;
- The Project Manager has indicated the final acceptance of all deliverables/tasks (if applicable); and
- Any deficiencies identified during the contract close out process have been documented and communicated to the appropriate parties and documented as a "lesson learned." A Contract Close-Out Checklist will be completed at the close of each contract and maintained as part of the contract administration file.