



TEXAS FACILITIES COMMISSION



CONTRACT MANUAL

Table of Contents

PURPOSE	iii
CHAPTER I. Contract Request Procedures and Processes	1
CHAPTER II. Contract Administration and Monitoring	9
CHAPTER III. TFC Standard Terms and Conditions	14
CHAPTER IV. Contract Close-Out Process	35
CHAPTER V. Commission Policies Pertaining to Contracts	1
CHAPTER VI. Needs/Risk Assessment and Enhanced Monitoring	15
CHAPTER VII. Professional Services Contracts	21
CHAPTER VIII. Consultant Contracts	23
CHAPTER IX. Outside Counsel Contracts.....	26
CHAPTER X. Interagency and Interlocal Agreements.....	30
CHAPTER XI. Construction Contracts	32
CHAPTER XII. Maintenance, Service, and Other Agreements.....	36
CHAPTER XIII. Information Technology Contracts	37
CHAPTER XIV. Uniform General Conditions.....	41
CHAPTER XV. Architectural and Engineering Guidelines	42
CHAPTER XVI. Conflicts of Interest, Ethics, and Interested Parties	43
CHAPTER XVII. Invoices	47
CHAPTER XVIII. Criminal Background Checks and E-Verify	48
CHAPTER XIX. Prevailing Wage Rate Determinations	50
CHAPTER XX. Bonds and Insurnace.....	52
CHAPTER XXI. HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENTS.....	56
APPENDIX A. TFC Formal Procurement and Vendor Selection / Award Process for Goods, Services, Professional Services, and Consulting Services.....	57
APPENDIX B. Contract Request Form, FDC	74
APPENDIX C. Contract Request Form, General	75
APPENDIX D. TFC Contract Close-Out Checklist	76
APPENDIX E. TFC Needs/Risk Assessment Form	77
APPENDIX F. TFC Vendor Performance Evaluation	78
APPENDIX G. TFC Annual Non-Disclosure and Conflict of Interest Certification	81
APPENDIX H. Outside Employment/Board Member Notification Form	83
APPENDIX I. TFC Non-Disclosure Statement and Evaluation Team Brief.....	84
APPENDIX J. Criminal Background Checks and Applications Guidelines.....	86

APPENDIX K. Certificate of Insurance (“COI”)	92
APPENDIX L. COI Checklist	93

PURPOSE

The purpose of this TFC Contract Manual (“Manual”) is to provide a common frame of reference for the development of agency contracts. This Manual is based on state directives and agency policy as well as best practices which have been standardized for use by TFC program divisions. The Manual is to be used in conjunction with the State of Texas Procurement and Contract Management Guide, produced by the Comptroller of Public Accounts (“CPA”) pursuant to Section 2262.051, Texas Government Code. All state agencies are required to comply with its provisions, Texas Government Code Section 2262.052(a).

The TFC Procurement Division provides advice concerning procurement methods, planning, preparing of the solicitation, the solicitation process and evaluation and award of a contract. This process is outlined in the Texas Facilities Commission Formal Procurement and Vendor Selection/Award Process for Goods, Services, Professional Services and Consulting Services (*see* app. A) and is to be followed in conjunction with this Manual.

The TFC Legal Services Division provides legal advice concerning contracting authority, contracting type, contract formation and any unique terms and conditions or other proposed deviations from standard practices described in this Manual.

In order to ensure that all contracts are drafted and executed timely and in accordance with state law and agency policies and procedures, TFC staff are required to comply with this Manual.

CHAPTER I. Contract Request Procedures and Processes

(A) CONTRACT REQUEST PROCEDURES.

Before initiation of a contract, memorandum of agreement (“MOA”), or memorandum of understanding (“MOU”), letter agreement, service or license agreement, the Legal Services Division must receive a FULLY EXECUTED TFC Contract Request Form (see apps. B and C) with the appropriate contract information from the client division requesting the preparation of a contract, hereinafter referred to as the “Requesting Division.” “Fully executed” means a completed TFC Contract Request Form, including the necessary attachments, that has been properly routed and signed in accordance with current Texas Facilities Commission (“TFC” and/or “Commission”) contract request procedures and Commission Policies.

In addition, at the time that the Requesting Division creates a TFC Contract Request Form, it should simultaneously create a purchase requisition or a purchase order change notice (“POCN”) to be routed through the TFC Purchase Requisition Process. The purchase requisition is to request a solicitation, if necessary, and to approve the availability and report the expenditure of funds—the approval of a purchase requisition does not equate to the approval of a contract. Only a FULLY EXECUTED contract will allow services to commence.

(1) When requesting the preparation of a contract, the Director and Deputy Executive Director must sign-off on the TFC Contract Request Form regardless of whether money is involved. This authorizes the Legal Services Division to draft/negotiate the legal terms of the contract. The Vendor I.D. Number and address, Notice of Good Standing, and Historically Underutilized Business (“HUB”) status are required.

(2) If an outside vendor pays franchise taxes, it must be in good standing with the Comptroller’s Office. TFC cannot enter into a contract with a vendor who owes delinquent taxes. A vendor’s tax status will be checked by the Procurement Division upon receipt of a TFC Contract Request Form. Documentation of the vendor’s tax status must be attached to the TFC Contract Request Form for the official contract file. This procedure is not necessary for contracts with other governmental entities.

(3) The amount of consideration to be paid under the contract must be provided on the TFC Contract Request Form. All payments, particularly the final one, should be conditioned on satisfactory completion of the project or tasks. A final report reflecting the results of a study, an expert’s recommendations, or an appropriate summary of the project, acceptable to the payor, may be required before final payment. It is important to match the compensation and the services before the contract is signed because retroactive increases in compensation to contractors are forbidden by the Texas Constitution unless the scope of services changes by circumstance. For those contracts that do not involve money, the Requesting Division should enter \$0.00 under “Contract Amount.” If the contract is for services to be performed by TFC and includes a contract amount to be paid to TFC, the requesting division should still enter \$0.00 under “Contract Amount” and include the amount to be paid to TFC under the “Amount to be paid to TFC” section of the TFC Contract Request Form.

For contracts to reimburse a contractor for work performed, the contract must include detailed budget-by-budget categories, clear definitions of allowable and unallowable expenditures, and a

requirement of regular and timely reports to the agency on expenditures to prevent the work from exceeding the budgeted amount. It is also important to include a provision that, notwithstanding the budgeted amount, reimbursement by the agency will be limited to reasonable and necessary allowable costs as determined by the agency. The latter provision gives the agency tighter financial control, especially in instances where the budget was not closely scrutinized. Rates shall remain unchanged during the term of the agreement, unless approved in advance by the General Counsel and the Chief Financial Officer.

(4) The “Description of Services” section of the TFC Contract Request Form provides the basis for the narrative description of the tasks or services that are to be performed. It is important to provide a complete, detailed description of the services to be rendered so that the drafter can accurately depict the services in the contract. Attach a work plan, or any other attachments to the TFC Contract Request Form, if such documents will be necessary attachments to the contract or will assist in drafting. Include the effective dates of the contract and, if the request is for an amendment to an existing contract, the existing contract number.

(5) Each contract must include a timeline for delivery by the contractor or a list of milestones that the contractor must achieve by a certain date. Inclusion of milestones, deliverables, and delivery dates allows the agency to monitor and determine whether the contractor is working in a timely fashion that will allow for timely performance of the work. Acceptance of the deliverables by the agency should be a prerequisite to payment under the contract. In most instances, a specific termination provision is included and/or a retainage clause to a contract to assure timely completion of work. The Requesting Division is responsible for monitoring performance under the contract. Whenever a contractor has a cost overrun or a missed delivery date or milestone, the Deputy Executive Director of the Requesting Division should be informed, as well as the General Counsel, to make a decision about whether or not to terminate the contract.

(6) The Legal Services Division shall receive complete insurance certificates and bond packages, when applicable, prior to the commencement of services under a contract. A complete and correct certificate of insurance should be attached to the TFC Contract Request Form; in no instance will the Executive Director, or his designee, execute a contract in which the proper certification of insurance has not been provided to the Legal Services Division. Regarding indefinite delivery indefinite quantity (“IDIQ”) assignments, a complete and correct certificate of insurance must be submitted to the Legal Services Division prior to the first assignment being executed. In addition, the requisite insurance must be maintained by a contractor for the duration of the agreement. Proper insurance documentation is the responsibility of the Requesting Division. No assignment, amendment, etc. will be executed without an updated certificate of insurance in the official contract file. The process for the review and approval of insurance certificates and bonds can be found under Chapter XX.

(7) For requests for IDIQ assignments in the amount of \$100,000.00 or less, the Requesting Division shall include a statement as to why that particular professional service provider was selected as the most qualified of the candidates from the appropriate IDIQ pool. For requests for IDIQ assignments over the amount of \$100,000.00, the Requesting Division shall provide the following justifications on, or attached to, the TFC Contract Request Form.

(a) The Requesting Division shall include a statement as to why that particular professional service provider was selected as the most qualified of the candidates from the appropriate IDIQ pool.

(b) The Requesting Division shall include a statement indicating which of the categories under the relevant Commission Policy the IDIQ assignment falls and why (see chap. IV.B). These categories include: (i) a situation in which the delay of agency action could have a detrimental effect on the agency or a client agency; (ii) a situation in which an imminent threat to public health and safety exists; or (iii) a reasonably unforeseeable situation.

(8) For contracts that exceed \$5 million dollars in value, the Director of Procurement must verify in writing that the solicitation and purchasing methods and contractor selection process complied with state law and agency policy. This shall be accomplished by his/her signature on the TFC Contract Request Form.

(9) Pursuant to Section 2155.0755 of the Texas Government Code, the Procurement Director must approve the use of the best value standard for selecting a contractor. Documentation of the best value standard used is evidenced by the tabulation document created during the evaluation of a solicitation and approved by the Director of Procurement. By signing the TFC Contract Request Form, the Director of Procurement is certifying that the agency complied with the application of best value, agency policy, and the State of Texas Procurement and Contract Management Guide for the solicitation.

(10) Some contracts may be exempt from competitive bidding. Emergency purchases, governed by Texas Government Code Section 2155.137, occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. Proprietary purchases are required to comply with Texas Government Code Section 2155.067 and are a product or service that has a distinctive feature or characteristic that is not shared or provided by competing companies or similar products or services. Both emergency and proprietary purchases that exceed \$25,000 shall be posted on the CPA's Electronic State Business Daily ("ESBD") and require approval by the Director of Procurement or the Executive Director for the file.

Backdating of contracts is highly discouraged and may require approval by the Executive Director. Contractors will not be paid for services performed without a fully executed contract. This includes contract amendments. Therefore, services should not be performed until a fully executed contract is in place. The date of commencement must not be inconsistent with the date, if any, reflected as the date of execution by the parties.

(B) CONTRACT REQUEST ROUTING PROCESS.

(1) The TFC Contract Request Form shall be filled out by the Requesting Division and approved by the Requesting Division's Director and Deputy Executive Director.

(2) The completed TFC Contract Request Form and any supporting documentation shall be forwarded to a designated staff member of the Fiscal Administration Division to ensure that funds are available or to document funds to be received by TFC.

(3) The TFC Contract Request Form, if approved by the Fiscal Administration Division, is forwarded to the Director of Procurement.

(4) Upon receipt by the Director of Procurement, he/she will check to ensure that an outside vendor who pays franchise taxes is in good standing with the Comptroller's Office. Documentation of the vendor's tax status must be attached to the TFC Contract Request Form for the official contract file. In addition, the Director of Procurement will check to ensure the selected contractor's eligibility to contract in the Comptroller's Vendor Performance Tracking System. **Approval and signature by the Director of Procurement is written verification that the solicitation and purchasing methods and contractor selection complied with state law and agency policy.** If the contract was done by emergency or proprietary purchase, the Director of Procurement will also provide a copy of the authorization memo for the official contract file.

(5) Once approved by the Director of Procurement, the TFC Contract Request Form is forwarded to the HUB Division to ensure that the contractor has complied with all HUB requirements pursuant to Texas Government Code, Chapter 2161. A copy of the approved HUB Subcontracting Plan, if required, must be attached to the TFC Contract Request Form for the official contract file; in no instance will the Executive Director, or his designee, execute a contract in which an approved HUB Subcontracting Plan, if required, has not been provided to the Legal Services Division. Subsequent HUB Subcontracting Plans, if required, and HUB Progress Assessment Reports, if required, will be maintained in the official HUB file. Only the initial HUB Subcontracting Plan, if required, is maintained in the official contract file.

(6) Once approved by the HUB Division, the TFC Contract Request Form is forwarded to the TFC Insurance Analyst to ensure that the contractor complies with all insurance and bond requirements. A copy of the certificate of insurance and all other supporting documentation must be attached to the TFC Contract Request Form for the official contract file; in no instance will the Executive Director, or his designee, execute a contract in which a complete and accurate certificate of insurance, has not been provided to the Legal Services Division.

(7) Once approved by the TFC Insurance Analyst, the TFC Contract Request Form is forwarded to the Legal Services Division and a Contract Specialist will create the official contract file.

(C) LEGAL SERVICES CONTRACT INTAKE PROCEDURES.

All TFC Contract Request Forms requesting the preparation of a contract will be routed to the Legal Services Division. Upon receipt, the following procedures will be followed:

(1) A Legal Services Division Contract Specialist will review the TFC Contract Request Form to verify that all information is complete, all necessary attachments are attached, and all necessary approvals have been obtained. Upon receipt of an incomplete TFC Contract Request Form, it will be returned to the Requesting Division for completion. Substantial completion is acceptable so long as the necessary information is easily attainable by Legal Services Division staff.

(2) Upon receipt, the Contract Specialist will proceed with the following:

(a) identification of the legal status of the contracting party;

(i) has the contractor been employed by the State within the past two (2) years; and/or

(ii) has the contractor been employed by the Texas Facilities Commission within the last year;

(b) review to determine receipt of a completed and correct certificate of insurance;

(c) review to determine whether the request is an amendment to an existing contract and review all prior associated contract files, if applicable;

(d) assign the contract a TFC Contract Number and enter information into the TFC Contract Database;

(e) create a physical file;

(f) prepare the initial draft contract; and

(g) route the draft contract to an attorney for review.

(3) Upon review, the attorney will make any corrections, if necessary, and then route the draft contract back to the Contract Specialist for revisions and final processing.

(4) If there are no further revisions, copies of the contract and attachments will be routed by the Contract Specialist for final review and sign-off.

(a) Contracts are routed to the following individuals for final review and sign-off: the General Counsel, the Director of the Requesting Division, and the Deputy Executive Director of the Requesting Division.

(b) The three final reviewers must initial the contract to indicate that the contract has been reviewed and approved. Initial lines are provided under the signature line of the Executive Director, or the Executive Director's designee, as follows: (i) "G.C." for the General Counsel; (ii) "Dir." for the Director of the Requesting Division; and (iii) "D.E.D" for the Deputy Executive Director of the Requesting Division.

(c) Once reviewed and initialed by all three final reviewers, the contract will be returned to the Legal Services Division.

(5) Once returned to the Legal Services Division, the Contract Specialist will send the contract to the contractor for signature.

Unless overnight delivery is specified by the Requesting Division, all contracts shall be routed through DocuSign.

(6) Upon return of the contract from the contractor, the contract will be submitted to the Executive Director, or the Executive Director's designee in accordance with the TFC Delegation of Authority (available on the Portal), for final execution and returned to the Legal Services Division for final distribution. All contracts must be submitted to the Executive Director, or the Executive Director's designee, by the Legal Services Division. If time is of the essence, the Legal Services Division may secure the signature of the Executive Director, or the Executive Director's designee, prior to that of the contractor.

(7) After final execution, the Legal Services Division will send a copy of the contract to the contractor and retain a copy of the contract in the official contract file . The official contract file is maintained by the Legal Services Division. An electronic copy of the executed contract will be uploaded by the Contract Specialist to G:\Contracts. The Contract Specialist will send an email notification to the Project Manager and/or Requesting Division contact(s), the Fiscal Administration Division, and the Procurement Division stating that the contract has been fully executed and uploaded to G:\Contracts. In addition, an electronic copy of the executed contract will be uploaded by the Contract Specialist to the designated TFC website page. Upon notification by the Contract Specialist of an executed contract, the Procurement Division will upload the solicitation document to the TFC website page to accompany the contract. If the contract was not competitively bid, the Contract Specialist will upload the proprietary or emergency purchase memo with the contract.

Contract requests are prioritized by the date of receipt by the Legal Services Division.

(D) REQUEST FOR CREATION OF A TFC FORM CONTRACT.

For TFC service contracts, or contracts in which a TFC form has not been created and one is necessary for use during the TFC Procurement process for the solicitation of services, the Requesting Division shall coordinate with the Legal Services Division prior to notifying the Procurement Division to commence the solicitation process.

To commence this process, the Requesting Division shall provide the Legal Services Division, by email, a request to draft a form contract. The email should be addressed to the General Counsel with a copy to the Deputy Executive Director of the Requesting Division. Upon receipt of the email, the General Counsel will assign a Contract Specialist who will work with an attorney and the Requesting Division staff on the draft contract. The Contract Specialist will notify staff of such assignment.

In the request, the Requesting Division shall provide the Legal Services Division with the following information so that a form contract can be created and attached to the future solicitation for the services:

- (1) scope of work;
- (2) term of contract;
- (3) working hours if outside of 8:00a.m.–5:00p.m.;
- (4) unsatisfactory performance levels for termination;
- (5) personnel requirements including number, qualifications, necessary licensure, etc.;
- (6) payment structure including compensation, fee, and budget attachments for the contract;
- (7) amounts/types of required insurance;
- (8) applicable codes; and

- (9) any other information necessary to draft the base contract.

The Contract Specialist shall prepare the initial draft contract and route to an attorney for review. Upon review, the attorney will make any corrections, if necessary, and then route the draft contract back to the Requesting Division for final review. Upon receipt by the Requesting Division of a finalized draft, the division shall proceed with the TFC Procurement procedures and provide the Procurement Division with the approved draft contract as well as the approval email from the Legal Services Division for use in the solicitation.

For TFC service contracts, or contracts in which TFC has a form contract but changes need to be made prior to solicitation, the Requesting Division should use the current contract form and redline the requested changes and forwarded to the General Counsel with a copy to the Deputy Executive Director of the Requesting Division. Upon receipt of the email, the General Counsel will assign a Contract Specialist who will work with an attorney and the Requesting Division staff on the requested changes and thereafter follow the same procedure outlined above.

After the solicitation process and the selection of the winning contractor, the Requesting Division shall complete a TFC Contract Request Form and follow the normal TFC Contract Request Process. The Requesting Division should include copies of all necessary exhibits/attachments created during the solicitation process that are referenced in the contract and need to be attached to the contract.

(E) STANDARD CONTRACT PROVISIONS.

During the development of a formal contract, the Legal Services Division includes many standard clauses that are either required by law or recommended in the State of Texas Procurement and Contract Management Guide. Standard terms and conditions for TFC contracts can be found in Chapter III of this Manual.

(F) CONTRACT TEMPLATES.

Contract templates developed by the Legal Services Division in conjunction with a Requesting Division may be found on the shared drive, G:\Contracts\TEMPLATES. All templates are provided in a “read-only” version that will track changes for review. When requesting a contract involving a template in which changes are requested, the Requesting Division should make the requested changes and forward the amended document to the General Counsel for review and approval in accordance with Subsection (D) above.

(G) FILE MAINTENANCE FOR SERVICE CONTRACTS.

Most TFC service contracts are used to provide services that cannot be performed by TFC staff or require a specialized service. Some service contracts are executed with a base amount that usually covers a monthly fee, such as custodial, or an inspection or maintenance schedule. Others include a total amount for services that may be requested of a contractor during the contract period; thereafter, requested services are approved through a “delivery release” issued by TFC and the amounts are deducted from the contract amount. In addition, many service contracts include an addition amount for “additional services” that may be used above the base contract amount that allows for TFC to request additional services outside of the scope of work, but related to the

service, that may be requested of the contractor. These services are usually requested by a delivery release or POCN.

No delivery release or POCN shall be issued if no funds are available under the contract.

(H) CERTIFICATE OF INTERESTED PARTIES FORM 1295, TEXAS ETHICS COMMISSION.

Upon receipt of the signed Certificate of Interested Parties Form 1295 from a contractor, as further discussed in Chapter XVI entitled “Conflicts of Interest, Ethics and Interested Parties,” the appropriate Contract Specialist will notify the Texas Ethics Commission (“TEC”), using the TEC filing application not later than the 30th day after the effective date of the contract and place the form received from the contractor in the original contract file.

(I) IMPORTANT PHONE NUMBERS.

Legal Services Division:

General Counsel	Stephen M. Foster	475-2400
Executive Assistant	Kasey Glaser	463-7220
Contract Specialist	Martin Blair	463-7829
Contract Specialist	Christopher George	463-1742
Insurance Analyst	Heidi Gonzalez	463-2975

Fiscal Administration Division:

Chief Financial Officer	Diane Jackson	463-1918
Budget Manager	Thomas Brown	463-3157
Accounting Director	Daniel Benjamin	463-3591

Procurement Division:

Procurement Director	Rico Gamino	936-3567
HUB Director	Yolanda Strey	475-0453

CHAPTER II. Contract Administration and Monitoring

TFC follows the requirements of the State of Texas Procurement and Contract Management Guide ("TPCMG") that was created pursuant to Texas Government Code, Section 2262.051, by the Statewide Procurement Division ("SPD") Contract Management Office of the Comptroller of Public Accounts in consultation with the Office of the Attorney General, the Department of Information Resources, and the State Auditor's Office for use by state agencies. TFC staff should consult the TPCMG, contract statements of work, agency procedures and program area processes and procedures when conducting contract administration and monitoring efforts.

(A) CONTRACT ADMINISTRATION.

Contract administration starts with developing clear, concise performance-based statements of work. The statement of work should be the roadmap for contract administration. Therefore, planning for contract administration occurs prior to issuance of the solicitation. The goal of contract administration is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. Effective contract administration minimizes or eliminates problems and potential claims and disputes.

(1) The primary tasks of contract administration are to:

- (a) verify contractor performance for purposes of payment;
 - (b) identify material breach of contract by assessing the difference between contract performance and material nonperformance;
 - (c) determine if corrective action is necessary and take such action if required;
- and
- (d) develop completion plan for exit requirements for acceptance, final payment, and contract closure.

(2) TFC shall designate a contract administrator or project manager for all TFC contracts who will serve as the point of contact for the contract/project.

- (a) The primary responsibilities of the contract administrator/project manager are:
- (i) participating in developing the solicitation and writing the draft documents;
 - (ii) consulting with legal counsel to address any legal concerns and/or issues;
 - (iii) during solicitation development, determine if the contractor's compensation structure is appropriate for the work;

- (iv) serving as the point of contact for disseminating the instructions regarding the work to the contractor/vendor;
- (v) receiving and responding to communications between the agency and the contractor;
- (vi) managing, approving, and documenting any changes to the contract;
- (vii) managing any state property used in contract performance, e.g., computers, telephones, identification badges, etc.;
- (viii) identifying and resolving disputes with contractor in a timely manner;
- (ix) implementing a quality control/assurance process;
- (x) maintaining appropriate records;
- (xi) documenting significant events;
- (xii) monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements;
- (xiii) exercising state remedies, as appropriate, when a contractor's performance is deficient;
- (xiv) inspecting and approving the final product/services by submitting a written document accepting the deliverables;
- (xv) monitoring the budgeting/accounting process to ensure sufficient funds are available;
- (xvi) verify accuracy of invoices and authorize payments consistent with the contract terms; and
- (xvii) performing contract close-out process to ensure the contract file contains all necessary contract documentation, and documenting formal acceptance, vendor performance, and lessons learned.

(b) Contract administrators/project managers are not authorized to:

- (i) instruct the contractor to start work before the contract is fully executed;
- (ii) change the scope of the contract without doing so through the formal contract amendment process;
- (iii) direct the contractor to perform work that is not specifically described in and funded by the contract;

(iv) extend the time period of the contract without execution of an approved amendment; and

(v) allow the contractor to incur any additional costs over the limit set by the contract.

(B) MONITORING CONTRACT PERFORMANCE.

Monitoring the performance of the contractor is a key function of proper contract administration. Contract monitoring is a regular process of evaluating contractor performance based on measurable service deliverables, verifying compliance with the terms and conditions in the contract, and addressing any developing problems or issues.

The purposes of monitoring are to:

- (1) improve performance through early identification of questions and issue resolution;
- (2) identify potential problems or issues that may require additional scrutiny;
- (3) evaluate contractor performance to ensure there is a reliable basis for validating service deliverables; and
- (4) assure that financial documentation is adequate and accurate so that costs will not be questioned later on.

Another key purpose of contract monitoring is to identify project and/or financial problems as early as possible so that corrective action may be taken to prevent/minimize project implementation deficiencies and/or financial problems that will result in questioned costs and other types of exceptions that may be identified as part of an audit of the contract. In addition, monitoring helps provide qualitative observations and data on how well services are being provided and whether desired service outcomes are being achieved.

Monitoring contractor compliance, as well as the level of necessary monitoring, is the responsibility of the contract administrator/project manager that oversees the contract. In some instances the obligation of monitoring the progress of a contract is assigned to another contractor; this is also known as independent oversight. For example, in the case of a construction contract, the task of ensuring progress in accordance with the contract may be performed by the architectural firm that provided the construction plans. For highly technical work, consultant subject matter experts may perform monitoring services independently or in conjunction with agency staff. The monitoring of performance may be done in many ways which may be specified in the statement of work of the contract. It is vital that the contract administrator/project manager review the statement of work and other contract terms, including contractor compliance requirements. All of these requirements are deliverables that the contractor agreed to when the contract was executed or the purchase order was issued. Monitoring should be focused on the items that are the most important: typically, cost and the outcomes that result from the contract. For example,

- (1) Do services cost more than they should?
- (2) Is money spent on non-allowable costs?

- (3) Was the item listed in the contractor's budget and approved by the agency?
- (4) Are the materials of the quality and quantity specified in the contract?
- (5) Is the contractor on schedule?
- (6) Does the contractor inaccurately report their progress?
- (7) Does the contractor make corrections to goods and/or services as identified as not meeting the requirements set forth in the agreement?

Methods for contract monitoring may vary depending on the type of the contract and/or the services to be received. Examples include meetings with contractors and key project staff, site visits, required reports, document review, and the review of invoices.

Site visits can be used to verify actual performance against a scheduled or reported performance. These visits can ensure that the contractor is dedicating sufficient resources and appropriate personnel to the contract. Site visits can be full scope or limited scope; limited scope visits are typically used to focus on a particular problem. The contract administrator/project manager should always document the results of a site visit.

If the contract required the submittal of documents or reports, the contract administrator/project manager should always perform a desk review of the documents. It is important to review the documents or reports against the requirements of the contract to determine if all requirements and schedules are being met.

In addition, the contract administrator/project manager should review all contractor invoices and pay applications to determine if the rates and services are the same as allowed by the contract. All supporting documentation should be reviewed to determine if it adequately supports the request for payment. If the contractor consistently provides incorrect invoices and/or the supporting documentation is insufficient to support the request, then additional monitoring may be necessary.

Finally, it is important to follow any internal procedures that have been created by an individual TFC division for monitoring contract performance.

(C) USE OF MONITORING REVIEW RESULTS.

Monitoring reviews, audits, and investigations should be routinely followed up to: (i) ensure corrective actions have been taken; (ii) identify common problem areas that might require training; and (iii) improve future contracts. The goal of follow up should be to bring the contractor back into compliance with the contract requirements. Monitoring results should also be used to improve the contract requirements for future contacts.

(D) CONTRACT COMPLIANCE REPORTING.

Section 2261.254 of the Texas Government Code requires state agencies to develop and implement contract reporting requirements that provide information on compliance with financial provisions and delivery schedules under a contract, corrective action plans required under a contract and the status of any active corrective action plan, and any liquidated damages assessed or collected under a contract. In addition, Commission Policies require reports on all contracts executed during a prior month to be provided to Commission members in the Commission notebook materials for the next scheduled meeting. In order to comply with the requirements of Section 2261.254, staff shall inform the appropriate Contract Specialist, the Director of Procurement and the General Counsel of any issues that arise during the term of a contract involving delivery schedules, corrective action plans and/or liquidated damages including, but not limited to, a brief description of the issue and the dates and dollars involved. These issues will be placed on the next report issued to the members of the Commission and every subsequent report until the issue(s) is resolved. Should any of the issues involve potential litigation, such issues will be reported to the Commission by the General Counsel in a manner determined by the General Counsel.

Pursuant to Texas Government Code Section 2261.253(c) each state agency, by rule, shall: (i) establish a procedure to identify each contract that requires enhanced contract or performance monitoring; (ii) submit information on the contract to the agency's governing body; and (iii) require that staff immediately notify the agency's governing body of any serious issue or risk that is identified with respect to a contract monitored under this subsection. To meet the statutory requirement, the Commission proposed and adopted Texas Administrative Code, Title 1, Part 5, Chapter 111.27 entitled "Enhanced Contract Monitoring" which requires staff to perform enhanced contract monitoring on all contracts exceeding \$1,000,000.00 and to report information on these contracts to the Commission.

If it is determined by the Director of Procurement and the General Counsel, in consultation with the Executive Director, that any issue reported by staff on any contract reported pursuant to Sections 2261.253 or 2261.254 rises to a level that requires immediate reporting to the members of the Commission, it will be the responsibility of the General Counsel to make the notification in a manner determined by the General Counsel. Thereafter, the General Counsel, in conjunction with the Executive Director and the Commission Chair, will determine if the item should be placed on the agenda for the next scheduled open meeting of the Commission.

CHAPTER III. TFC Standard Terms and Conditions

Contracts include a variety of terms and conditions often referred to as standard terms and conditions. During the development of a formal contract, the Legal Services Division includes many standard clauses that are either required by law or recommended in the State of Texas Procurement and Contract Management Guide. These do not include terms and conditions that are specific per project, such as statement of work, term of contract, consideration, corrective action, etc.

(A) FUNDING OUT CLAUSE.

STATE FUNDING. (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of Tex. Const. art. III, § 49. In compliance with Tex. Const. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b) Furthermore, any damages due under this Contract should not exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach; provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.

(B) DISPUTE RESOLUTION CLAUSES.

For all contracts except architect/engineering and construction-related contracts over \$250,000.00 and interagency agreements:

DISPUTE RESOLUTION. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Contract.

For all architect/engineering and construction-related contracts over \$250,000.00:

DISPUTE RESOLUTION. Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by the parties to attempt to resolve all disputes arising under this Contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code, Section 114.002 shall be governed by the following dispute resolution process.

(a) Claims for Breach of Contract and Counterclaims. CMR may make a claim against TFC for breach of a contract between TFC and CMR. TFC may assert a counterclaim against CMR.

(i) Notice. CMR must provide written notice to TFC of a claim for breach of contract not later than one hundred eighty (180) days after the date of the event giving rise to the

claim. The notice must state with particularity: (i) the nature of the alleged breach; (ii) the amount CMR seeks as damages; and (iii) the legal theory of recovery.

(ii) TFC must assert, in a writing delivered to CMR, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under Section 12.11.1.1 above.

(b) Damages. The total amount of money recoverable on a claim for breach of contract under this Section 12.11 may not, after deducting the amount specified below, exceed an amount equal to the sum of: (i) the balance due and owing on the Contract price; (ii) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and (iii) any delay or labor-related expense incurred by the CMR as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

(i) Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Section 12.11.2 above.

(ii) Any award of damages under this Contract may not include: (i) consequential or similar damages, except delays or labor-related expenses described by Section 12.11.2 above; (ii) exemplary damages; (iii) any damages based on an unjust enrichment theory; (iv) attorney's fees; or (v) home office overhead.

(c) Negotiation. TFC's general counsel shall examine the claim and any counterclaim and negotiate with CMR in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the negotiation of any dispute arising from this Contract. In the event negotiation results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the settlement to writing, and each party shall sign the settlement. A partial settlement or resolution of a claim does not waive a party's rights as to the parts of the claim that are not resolved.

(d) Mediation. Before the one hundred twentieth (120th) day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties may agree to mediate a claim made under this Contract. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the mediation of any dispute arising from this Contract.

(e) Adjudication. On or after the two hundred seventieth (270th) day following the date the claim is filed with TFC, unless the parties agree in writing to an extension of time, CMR may adjudicate any claim in accordance with and to the extent permitted under the Texas Civil Practice and Remedies Code, Chapter 114 or the Texas Government Code, Chapter 2260.

(f) Payment of Claims. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under this Section 12.11 only from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim. Chapter 304 of the Texas

Finance Code applies to a judgment awarded to a claimant except that the applicable rate of interest may not exceed six percent (6%). Consistent with the Texas Civil Practice and Remedies Code, Section 114.011, property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

(g) Representation of TFC. The Office of the Attorney General of Texas shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 12.11.

(C) TERMINATION AND DEFAULT CLAUSES.

TERMINATION. (a) Termination with Default. TFC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to TFC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or TFC resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

(b) Termination without Default. TFC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section ____ (c) below.

(c) Implementation of Termination. Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by TFC's Contract Administrator to preserve the work in progress and to protect materials, properties, and equipment. In the event of termination by TFC, TFC shall pay Contractor for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work in accordance with the prices included in the scope of work.

(d) Termination by Contractor. Contractor may terminate the Contract upon providing sixty (60) days' written notice to TFC. In the event of termination by Contractor, Contractor shall be governed by the terms and conditions of this Contract, and shall perform the acts outlined in Section ____ (c) above. Contractor will be held responsible for additional cost incurred from the termination of this Contract.

NO LIABILITY UPON TERMINATION. If this Contract is terminated for any reason, TFC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

(D) RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURES.

SUPPORTING DOCUMENTS, RETENTION; RIGHT TO AUDIT; INDEPENDENT AUDITS.

(a) Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Contract. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TFC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

(b) Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. The acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is:

- (i) confidential by law;
- (ii) marked or designated "confidential" (or words to that effect) by TFC; or
- (iii) information that Contractor is otherwise required to keep confidential by this Contract.

PUBLIC RECORDS. Notwithstanding any provisions of this Contract to the contrary, Contractor understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, Contractor will cooperate with TFC in the production of documents responsive to the request. Contractor agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Contractor may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Contractor will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise

obtained in its performance is subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

PUBLIC DISCLOSURE. No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of TFC.

(E) INDEMNIFICATION AND LEGAL OBLIGATIONS CLAUSES.

INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

INFRINGEMENTS. (a) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. (b) CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, (iv) ANY INTELLECTUAL PROPERTY RIGHT

OWNED BY OR LICENSED TO TFC, OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. (c) IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT.

TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. (a) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. (b) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

COMPLIANCE WITH OTHER LAWS. In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Contractor shall make itself

familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

GOVERNING LAW AND VENUE. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

(F) NOTICE CLAUSES.

NOTICES. Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TFC or Contractor, as the case may be, at the address set forth below:

For TFC:

Texas Facilities Commission
Attention: Legal Services Division

1711 San Jacinto Blvd., Room 400
Austin, TX 78701

Phone: (512) 463-3446
Fax: (512) 236-6171

For Contractor: Company Name
 Attn: _____
 Address Line 1
 Address Line 2

 Phone: _____
 Email: _____

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

NAME AND ORGANIZATIONAL CHANGES. (a) Contractor must provide TFC with written notification of all name changes and organizational changes relating to Contractor including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and Contractor shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

(b) TFC may terminate the Contract due to any change to Contractor that materially alters Contractor's ability to perform under the Contract.

(G) ASSIGNMENT, SUBCONTRACTING AND HUB CLAUSES.

ASSIGNMENT AND SUBCONTRACTS. (a) Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Contract without the prior written consent of TFC.

(b) Notwithstanding this provision, it is mutually understood and agreed that Contractor may subcontract with others for some or all of the services to be performed. Subcontractors providing service under this Contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for the service. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances.

(i) Contractors planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Exhibit _____ – HUB Subcontracting Plan, as further described in Section _____ below.

(ii) Subcontracting shall be at the Contractor's expense.

(iii) TFC retains the right to check any subcontractor's background and make the determination to approve or reject the use of subcontractors.

(iv) Contractor shall be the only contact for TFC and subcontractors. Contractor shall list a designated point of contact for all TFC and subcontractor inquiries.

HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS). In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Contractor's obligations with TFC. If Contractor subcontracts with others for some or all of the services to be performed under this Contract, Contractor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 as described in Exhibit ____ – HUB Subcontracting Plan, attached hereto and incorporated herein for all purposes. In addition to information required by Section _____ above, Contractor shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on Exhibit ____ - 1 – HSP Progress Assessment Report, attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

(H) INDEPENDENT CONTRACTOR CLAUSE.

RELATIONSHIP OF THE PARTIES. Contractor is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor. Subject only to the terms of this Contract, Contractor shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and TFC shall have no obligation with respect to:

- (i) withholding of income taxes, FICA or any other taxes or fees;
- (ii) industrial or workers' compensation insurance coverage;
- (iii) participation in any group insurance plans available to employees of the State of Texas;
- (iv) participation or contributions by the State of Texas to the State Employees Retirement System;
- (v) accumulation of vacation leave or sick leave; or
- (vi) unemployment compensation coverage provided by the State.

(I) FORCE MAJURE CLAUSE.

FORCE MAJEURE. Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure", including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents, breakdowns, or floods, earthquakes,

hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to Contractor.

(J) TECHNOLOGY ACCESS CLAUSE.

ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS. (a) Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(b) If applicable, Contractor shall provide the Texas Department of Information Resources (“DIR”) with the universal resource locator (“URL”) to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Contractors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

(K) BUY TEXAS CLAUSE.

BUY TEXAS. If Contractor is authorized to make purchases under this Contract, Contractor certifies that Contractor will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code Ch. 2155.

(L) WARRANTY CLAUSES.

PERFORMANCE WARRANTY. All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local codes and ordinances and any other authority having lawful jurisdiction. Contractor shall guarantee all work included in the Contract against any defects in workmanship and shall satisfactorily correct, at no cost to TFC, any such defect that may become apparent within a period of one (1) year after completion of work. The warranty period shall commence upon the date of acceptance by TFC.

MATERIAL WARRANTY. All material furnished under this Contract is guaranteed by Contractor to be in compliance with this Contract, fit and sufficient for the purpose intended, new and free from defects. Materials furnished under this Contract shall be the latest improved product in current production, as offered to commercial trade, and shall be of quality material. Used, shopworn, demonstrator, prototype, reconditioned, or discontinued products or material are not acceptable. The warranty period for Contractor-provided materials shall be for a period of one (1)

year after completion of the installation or within the manufacturer's warranty, whichever is longer. The warranty period shall commence upon date of acceptance by TFC.

NO LITIGATION WARRANTY. Contractor represents and warrants that it is not a party to or otherwise substantively involved in any matter involving litigation, or any administrative or regulatory proceeding, which, if decided adversely to Contractor's interests, could be reasonably expected to adversely affect Contractor's ability to fully and timely perform all of its obligations under this contract. Contractor agrees that in the event any action, event or circumstance occurs, that could be reasonably expected to adversely affect Contractor's ability to fully and timely perform all of its obligations under this Contract, Contractor shall provide written notice to TFC of such action, event or circumstance, and shall continue to update TFC in writing every thirty (30) days thereafter of the status of the action, event or circumstance, until otherwise directed by TFC.

WARRANTY ON SAFETY AND HEALTH REQUIREMENTS. Contractor shall procure, at Contractor's expense, all necessary and required licenses and permits necessary for the performance of this Contract. Contractor represents and warrants that the services provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, OSHA, and all Texas health and safety standards.

(M) SECURITY, ACCESS AND FACILITY CLAUSES.

SECURITY AND IDENTIFICATION. Contractor shall abide by all procedures and rules as conveyed by TFC's Contract Administrator regarding security requirements of the property where work is to be performed. Contractor employees must wear either uniforms or appropriate clothing identifying them as employees of the Contractor at all times when working in TFC facilities. Shorts and/or muscle shirts shall not be worn at any time. Contractor personnel must have a TFC supplied identification badge visible at all times when working in TFC facilities.

or

SECURITY AND IDENTIFICATION. Contractor shall abide by all procedures and rules as conveyed by the Contract Administrator regarding security requirements of the building where work is to be performed. All Contractor's and subcontractor's personnel must wear uniform clothing to identify the company for which they work.

CONTRACTOR ACCESS. Access routes, entrance gates or doors, parking and storage areas, and other necessary Contractor access, along with any imposed time limitations shall be designated by TFC's Contract Administrator. Contractor shall conduct operations in strict observation of the access routes and other areas established. Under no circumstances shall any of Contractor's employee, vehicles, or equipment enter or move upon any area not authorized by TFC's Contract Administrator for access by Contractor.

EXAMINATION OF PREMISES. Contractor shall be held to have examined all properties at which the work will take place and to be familiar with the conditions under which the work will be accomplished. Contractor shall inspect existing conditions prior to commencing work, including elements subject to damage or movement during the performance of services under this Contract.

EXISTING UTILITIES AND STRUCTURES. Contractor shall adequately protect the work, TFC's property, adjacent property and the public. In the event of damage to facilities as a result of Contractor's operations, Contractor shall take immediate steps to notify TFC's Contract

Administrator and subsequently repair or restore all services to the satisfactory approval of TFC's Contract Administrator. Further, Contractor shall engage any additional outside services which may be necessary to facilitate repairs until services are restored. All costs involved in making repairs and restoring disrupted services shall be at the expense of Contractor, and Contractor shall be fully responsible for any and all claims resulting from the damage. TFC's Contract Administrator may elect to perform such repairs and deduct the cost of such repairs, replacements, and outside services from amounts due to Contractor. Upon the approval of TFC's Contract Administrator, Contractor shall have permission to utilize air, water, gas, steam, electricity, and similar items of expense from existing resources on TFC property.

WASTE REMOVAL. Contractor will be allowed to store materials and equipment in performance of the Contract only if space is available in each building. Storage space will be arranged through the Contract Administrator. Contractor shall keep the premises clean on a continual basis, and no trash or debris will be permitted to accumulate in work areas. Contractor shall be responsible for removal and disposal of all waste packaging material associated with services being performed which may include, if applicable, the rental of a waste receptacle associated with this Contract. If needed, site placement of the waste receptacle shall be approved by the Contract Administrator.

or

STORAGE/WASTE REMOVAL. Contractor will be allowed to temporarily store materials and equipment in performance of this Contract during the project time period only if space is available in each building. Storage space will be arranged through the Contract Administrator. Contractor shall keep premises clean on a continual basis and no trash or debris will be permitted to accumulate in work areas. Use of a dust barrier may be required and will be communicated to Contractor by the Contract Administrator on a per project basis. Contractor shall be responsible for removal and disposal of all waste packaging material and excess materials purchased by Contractor associated with this project which may include, if applicable, the rental of a waste receptacle. If needed, site placement of the waste receptacle shall be approved by the Contract Administrator. TFC is not responsible for the security of stored materials and equipment. TFC encourages the use of gang boxes for tool storage and securing the site when unoccupied by Contractor. Contractor shall maintain at all times clear access to fire lanes, and emergency and utility control facilities such as fire hydrants, fire alarm boxes, utility valves, manholes, junction boxes, fire extinguishers and emergency exits.

CHEMICALS. Contractors and subcontractors shall provide TFC Risk Management and the Contract Administrator a legible Material Safety Data Sheet (hereinafter referred to as "MSDS") for all chemicals to be used or brought onto TFC controlled property for each project. MSDS's shall be submitted prior to the start of work.

DISPOSAL OF SALVAGEABLE ITEMS. Contract Administrator shall mark and/or otherwise inform the Contractor of any material that will be salvaged by the Owner. Disposal may include depositing in a central location for salvage by the Owner or delivery to the Owner's warehouse located at 6506 Bolm Rd., Austin, Texas or such other location as determined by the Contract Administrator.

SMOKING. All TFC facilities where work is to be performed are nonsmoking buildings. Contractor's employees are prohibited from smoking in all areas except in areas designated for smoking.

(N) PATENT AND COPYRIGHT CLAUSE.

PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS. Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TFC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without TFC's prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsels, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

(O) CRIMINAL BACKGROUND CHECK AND E-VERIFY CLAUSES.

GENERAL AND CRIMINAL BACKGROUND CHECKS. (a) Contractor represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TFC as to the facts and circumstances surrounding the conviction.

(b) Contractor's employees and subcontractors that will complete any work on-site at a state-owned property will be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor. A complete criminal background check shall be completed before any employee performs services at the site, and may be requested at any time thereafter. Criminal background checks must be accomplished by the Texas Department of Public Safety ("DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of Contractor's employees and/or subcontractors, DPS or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in Exhibit _____ - Criminal Background Checks and Application Guidelines attached hereto and incorporated herein for all purposes.

E-VERIFY. (a) By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of:

(i) all persons employed to perform duties within the State of Texas, during the term of the Contract; and

(ii) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

(b) Contractor shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires

that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract.

(c) For persons not eligible for E-Verify screening, Contractor (including subcontractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

(P) INSURANCE CLAUSES.

Dollar amounts to change based on project type and amount.

INSURANCE. Prior to the commencement of work under this Contract, Contractor agrees to carry and maintain insurance in the following types and amounts for the duration of this Contract, to furnish certificates of insurance including corresponding policy endorsements, and make available, at no cost to TFC, copies of policy declaration pages as evidence thereof:

(a) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of \$1,000,000.00 bodily injury per accident, \$1,000,000.00 bodily injury disease policy limit and \$1,000,000.00 per disease, per employee. Workers' compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Certification in writing from Contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096. A Waiver of Transfer Right of Recovery Against Others in favor of TFC shall be included.

(b) Commercial General Liability with a combined single limit of \$1,000,000.00 per occurrence for coverage A and B including products/completed operations, where appropriate, with a separate aggregate of \$2,000,000.00 for bodily injury and for property damages. The general aggregate limit shall apply on a per Project basis. The policy shall contain the following provisions:

(i) blanket contractual liability coverage for liability assumed under the Contract;

(ii) independent contractors' coverage;

(iii) State of Texas, TFC, its officials, directors, employees, representatives and volunteers must be listed as additional insureds;

(iv) thirty (30) day Notice of Cancellation in favor of TFC; and

(v) Waiver of Transfer Right of Recovery Against Others in favor of TFC.

(c) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. Alternate acceptable limits are \$1,000,000.00 bodily injury per person, \$1,000,000.00 bodily injury per occurrence and at least \$500,000.00 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

- (i) Waiver of Subrogation endorsement;
- (ii) Thirty (30) day Notice of Cancellation endorsement; and
- (iii) Additional Insured endorsement.

(d) Umbrella Liability Insurance for an amount of not less than \$1,000,000.00 that provides coverage at least as broad as and applies in excess and follows the form of the primary liability coverage's required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

(e) Special Form Builder's Risk Insurance. Special Risk Builder's Risk Insurance, or installation floater for those instances in which the Project involves solely the installation of material and/or equipment.

(i) Coverage shall be include, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm.

(ii) For those properties located within a Tier 1 or Tier 2 windstorm area, named storm coverage must be provided with the same policy limits as required below.

(iii) For those properties located in flood prone areas, flood insurance coverage must be provided with the same policy limits as required below.

(iv) Builder's risk and installation floater limits shall be equal to one hundred percent (100%) of the Contract Sum.

(f) For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include Existing Property coverage in an amount equivalent to the Total Contract Sum. For purposes herein, "Existing Property" means existing buildings or structures as well as, all personal property contained therein. "Existing Property" does not include personal property owned or operated by Contractor or any Subcontractors.

(g) For TFC furnished equipment or materials that will be in care, custody or control of contractor, contractor shall be responsible for any and all damages and losses thereto.

(h) The policy must be written jointly in the names of TFC and contractor. Subcontractors must be named as additional insureds. The policy shall have endorsements as follows:

(i) this insurance shall be specific as to coverage and not contributing insurance with any insurance or self-insurance carried by TFC, if any;

(ii) this insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion; and

(iii) loss, if any, shall be adjusted with and made payable to TFC as trustee for the insureds as their interests may appear. TFC shall be named as loss payee.

(i) Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.

(j) Policy shall remain in effect until Substantial Completion is achieved as to all phases of the Project.

GENERAL REQUIREMENTS FOR INSURANCE. (a) Contractor shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b) Contractor shall maintain coverage for the duration of this Contract. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Contract. Contractor shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by Contractor.

(c) Contractor shall not commence work under this Contract until they have obtained the required insurance and until such insurance has been reviewed by TFC. Contractor shall not allow any subcontractors to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of Contractor hereunder.

(d) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(e) TFC shall be an additional insured as its interests may apply on the Commercial General Liability and Business Automobile Liability Policies.

(f) Contractor shall produce endorsements upon TFC's request to each affected policy:

(i) Naming TFC, P.O. Box 13047, Austin, Texas 78711 as additional insured (except Workers' Compensation and employers' Liability);

(ii) That obligates the insurance company to notify the TFC Contract Administrator, TFC, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation; and,

(iii) That the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Contract, covering both TFC and Contractor, shall be considered primary coverage as applicable.

(g) TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or

the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(h) Contractor shall not cause any insurance required under this Contract to cancel nor permit any insurance to lapse during the term of this Contract.

(i) TFC reserves the right to review the insurance requirements of this section during the effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as Contractor (such adjustments shall be commercially available to Contractor).

(j) Contractor shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(k) Actual losses not covered by insurance as required by this Contract shall be paid by Contractor.

(l) Contractor's insurance shall include a waiver of subrogation to TFC for the Workers' Compensation and Employers' Liability, Commercial General Liability, and Business Automobile Liability policies.

(Q) CONTACTOR GENERAL AFFIRMATION CLAUSES.

FINANCIAL INTERESTS/GIFTS. (a) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Contractor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

(b) Pursuant to Texas Government Code Chapter 573 and Section 2254.032, if applicable, Contractor certifies that Contractor knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in Contractor's company or corporation. Contractor further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of TFC.

PRIOR EMPLOYMENT. Contractor certifies that Contractor shall comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees including "revolving door" provisions. Furthermore, Contractor certifies that if it employs any former employee of TFC, such employee will perform no work in connection with this Purchase Order during the twelve (12) month period immediately following the employee's last date of employment at TFC.

ELIGIBILITY. Pursuant to Texas Government Code Section 2155.004(b), Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

FAMILY CODE. Pursuant to the requirements of Texas Family Code Section 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Contractor has provided the name and Social Security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership of the business entity entering into this Contract prior to its execution. Contractor acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

DEBTS OR DELINQUENCIES TO STATE. Pursuant to Texas Government Code Section 403.055, Contractor understands and agrees that any payment due under this Contract may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support.

EQUAL OPPORTUNITY. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Contractor shall include the above provisions in all subcontracts pertaining to the work.

DECEPTIVE TRADE PRACTICE; UNFAIR BUSINESS PRACTICES. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

AGENCY EXECUTIVE HEAD. Under Texas Government Code Section 669.003 relating to contracting with an executive of a state agency, Contractor represents that no person who, in the past four (4) years, served as an executive of TFC or any other state agency, was involved with or has any interest in this Contract or any contract resulting from this Contractor. If Contractor employs or has used the services of a former executive head of TFC or any other state agency, then Contractor shall provide the following information: the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor, and the date of employment with Contractor.

LIABILITY FOR TAXES. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TFC shall not be liable for any taxes resulting from this Contract.

NO CONFLICTS. Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that

Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

PROHIBITION ON CERTAIN BIDS AND CONTRACTS. Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. Contractor represents and warrants that during the five (5) year period preceding the date of this Contract, Contractor has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

IMMIGRATION REFORM. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and subcontractors who contract with the State. Contractor shall not place any employee of Contractor at a worksite, nor shall Contractor permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, TFC without first confirming said employee's authorization to lawfully work in the United States. Contractor warrants that Contractor: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to Contractor's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States. Contractor further acknowledges, agrees, and warrants that Contractor: (i) has complied, and shall at all times during the term of the Contractor comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS-ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, Contractor shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of Contractor or any of its employees. Contractor acknowledges, agrees and warrants that all Subcontractors permitted by it to perform work will be required to agree to these same terms as a condition to being awarded a Subcontract for such work.

(R) MISCELLANEOUS CLAUSES.

FEDERAL, STATE, AND LOCAL REQUIREMENTS. Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

DRUG FREE WORK PLACE. Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor, Contractor's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

LABOR ACTIVITY. If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Contractor at TFC's facility, which results in the curtailment or discontinuation of services performed herein, TFC shall have the right during said period to employ any means legally permissible to have the work performed.

COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

NO WAIVER. Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State of Texas. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TFC does not waive any privileges, rights, defenses, or immunities available to TFC by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

FALSE STATEMENTS; BREACH OF REPRESENTATIONS. By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and TFC may terminate or void this Contract for cause and pursue other remedies available to TFC under this Contract and applicable law.

SURVIVAL OF TERMS. Termination of the Purchase Order for any reason shall not release Vendor from any liability of obligation set forth in the Purchase Order that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

ENTIRE CONTRACT & MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

CHAPTER IV. Contract Close-Out Process

(A) CONTRACT CLOSE-OUT.

The contract close-out process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are not responsibilities remaining. In addition, contract close-out is the time to assess the success of the contract and determine if there are any “lessons learned” for future contracting.

A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all agency furnished equipment and materials have been returned; and final payment has been made to the contractor. To initiate the close-out process, the agency should first determine that the contractor has satisfactorily performed all required contractual obligations. A contract is ready for close out when the following occur.

- (1) All deliverables, including reports have been delivered and accepted by the agency. Contract managers should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed.
- (2) Final payment has been made.
- (3) All monitoring issues have been resolved.
- (4) All property inventory and ownership issues are resolved including disposition of any equipment or licenses purchased under the contract.
- (5) Final acceptance from the Project Manager/Contract Administrator has been received (if applicable).
- (6) Contractor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance.
- (7) Any deficiencies found as part of the close-out process are documented and communicated to all appropriate parties.

At the end of the term of an agreement, the contract administrator/project manager shall follow any close-out procedures that have been adopted by his/her division as well as complete a TFC Contract Close-Out Checklist (see app. D) and forward it to the Legal Services Division to complete the official contract file. Any documentation that is required for close-out should be forwarded to the appropriate division, such as Vendor Performance Reports (Procurement Division), final reports (Records Division), etc.

(B) LESSONS LEARNED REVIEW.

It is also encouraged that staff associated with a contract complete a lessons learned review when closing-out a contract. This review gives staff the opportunity to gather, document, and analyze feedback on events that happened during a project or contract that may be beneficial in the future.

When run well, a lessons learned review can yield big benefits. It provides an opportunity for staff to discuss how to capitalize on the things that went well with a project/contract in order to produce similar positive results in the future, as well as an opportunity to discuss what changes are needed for next time. A lessons learned review provides an opportunity for staff to discuss:

- (1) successes that happened during or because of the project;
- (2) unintended outcomes that happened during or because of the project;
- (3) other things that, in retrospect, might have been better handled if done differently; and/or
- (4) recommendations to others who might be involved in future projects of a similar type.

The point of the review is to recognize and document lessons so that future TFC projects/contracts result in more of the successful, positive outcomes and less of the unsuccessful things encountered by this project/contract team.

(C) VENDER PERFORMANCE REVIEW.

State agencies are required to report vendor performance for delegated purchases in the amounts of \$25,000.00 and above for commodities and \$100,000.00 and above for services. State agencies are also required to report vendor performance annually and at each key milestone for contracts above \$5,000,000.00. Upon the end of a contract that requires vendor performance reporting or when otherwise required, the contract administrator/project manager is required to complete a TFC Vendor Performance Evaluation (see app. F) and forward it to the Procurement Division, in accordance with Procurement procedures, regarding the performance of the contractor to be entered into the Vendor Performance Tracking System (“VPTS”). A copy will also be forwarded to the Legal Services Division to complete the official contract file. The VPTS is utilized by state agencies, universities, municipalities, and counties as a tool for the consideration and non-consideration of awards based upon reported performance.

The CPA is the agency responsible for maintaining the VPTS and reviewing the information provided by state agencies to rate vendors who provide goods and services for the State of Texas. The ratings are on an A through F Scale, with A being the highest grade, and allows a vendor who receives lower than a C an opportunity to protest.

State agencies are required to use the VPTS system to determine whether to award a contract to a vendor reviewed in the tracking system. The CPA by rule shall establish the manner in which the rating scale affects a vendor’s eligibility for state contracts and the grades on the scale that disqualify a vendor from state contracting.

The CPA may disqualify or “bar” a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, for:

- (1) substandard performance under a contract with the state or a state agency;

- (2) material misrepresentations in a bid or proposal to the state or a state agency or during the course of performing a contract with the state or a state agency;
- (3) fraud;
- (4) breaching a contract with the state or a state agency; or
- (5) repeated unfavorable performance reviews under Texas Government Code Section 2155.089 or repeated unfavorable classifications received by the vendor under Texas Government Code Section 2262.055 after considering the following factors:
 - (a) the severity of the substandard performance by the vendor;
 - (b) the impact to the state of the substandard performance;
 - (c) any recommendations by a contracting state agency that provides an unfavorable performance review;
 - (d) whether debarment of the vendor is in the best interest of the state; and
 - (e) any other factor that the CPA considers relevant, as specified by Comptroller rule.

The CPA may bar a vendor from participating in state contracts, including contracts for which purchasing authority is delegated to a state agency, if more than two (2) contracts between the vendor and the state have been terminated by the state for unsatisfactory vendor performance during the preceding three (3) years.

(D) RETENTION OF CONTRACT DOCUMENTS.

Pursuant to Texas Government Code, Section 441.1855, state agencies are required to retain each contract entered into by the state agency and all contract solicitation documents related to the contract and may destroy the contract and documents only after the seventh anniversary of the date the contract is completed or expired or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved. Therefore, all originals of contracting documents kept both by the Legal Services Division, the Procurement Division and the requesting program area must be retained for seven (7) years. In addition, the TFC Records Retention Schedule for construction contracts is the “life of the asset” plus an additional ten (10) years. Any questions regarding the retention of contract documents should be directed to the Records Management Department.

CHAPTER V. Commission Policies Pertaining to Contracts

The following are the policies, as amended and adopted by the Commission at a regularly scheduled meeting, that pertain to agency contracts. The Commission will not enter into any contract that violates a Commission policy.

(A) **PROCESS FOR CONSTRUCTION PROJECT CONTRACT APPROVALS, COMMISSION POLICY III.a.**

PURPOSE: To delineate the process and milestone approvals the Executive Director and his staff will follow for agency contracts for construction projects.

POLICY: The Executive Director and the Facilities Design and Construction Division (“FDC”) shall follow and execute the process for contract approval as follows and as outlined in the table below.

PROCESS FOR CONTRACT APPROVAL

Steps	Procedures
1	User agency notifies Commission of project and available funds and enters into an agreement with the Commission to complete the work.
2	Commission staff evaluates the project and available funds to determine what contracts are necessary to complete the project and what project delivery method should be used and makes a recommendation to the Executive Director for approval.

If the approved selected project delivery method is construction manager-at-risk (“CMR”) or a similar method, proceed with Steps 3–8.

Steps	Procedures
3	Commission issues a request for qualifications (“RFQ”) for professional services in accordance with appropriate State laws.
4	Commission issues an RFQ or request for proposals (“RFP”), as appropriate, for CMR or other similar services in accordance with the appropriate State laws.
5	FDC analyzes the responses to the RFQ or RFP and secures a best and final offer (“BAFO”).
6	FDC presents its recommendation to the Executive Director for approval.
7A	If construction services contract is \$1,000,000.00 or less, Executive Director approves or rejects the selected contractor.
7B	If construction services contract is more than \$1,000,000.00, the Executive Director shall make a recommendation on the selected contractor and place the item on the Commission open meeting agenda for consideration and action by the Commission.
8	Executive Director executes contract for construction services.

If the approved selected project delivery method is an invitation for bid (“IFB”), competitive sealed proposal (“CSP”) or a similar method requiring completed construction documents prior to the construction solicitation and involves the selection of professional services, proceed with Steps 9–16.

Steps	Procedures
9	Commission issues an RFQ for professional services in accordance with the appropriate State laws.
10	FDC analyzes the responses to the RFQ, selects the most qualified candidate, and negotiates a reasonable fee.
11A	If the professional services contract is \$500,000.00 or less, Executive Director approves or rejects the selected professional services provider.
11B	If the professional services contract is more than \$500,000.00, the Executive Director shall make a recommendation on the selected provider and place the item on the Commission open meeting agenda for consideration and action by the Commission.
12	Executive Director executes contract for professional services.
13	Upon completion of design of project by professional services provider, Commission issues an RFP for construction services.
14	FDC analyzes the responses to the RFP and selects the most qualified contractor with the lowest and best bid.
15A	If the construction services contract is less than \$1,000,000.00, Executive Director approves or rejects the selected contractor.
15B	If the construction services contract is \$1,000,000.00 or more, the Executive Director shall make a recommendation on the selected contractor and place the item on the Commission open meeting agenda for consideration and action by the Commission.
16	Executive Director executes the contract for construction services.

DISCUSSION: When obtaining construction services, the Commission may select from one of the following five methods of contracting: (i) lowest and best bid method; (ii) design-build method; (iii) construction manager-at-Risk method; (iv) competitive sealed proposal method; (v) construction manager-agent; (vi) job order contracting; and (vii) energy savings performance contracts. When determining the circumstances for the use of each method of contracting allowed for design and construction services, the Facilities Design & Construction Division (“FDC”), in consultation with senior management, makes a recommendation of which contracting method to employ for each project.

Criteria for selecting project delivery methods primarily include the following, although there may be compelling circumstances beyond these criteria that govern the final selection of the delivery method.

(i) Lowest and best bid or invitation for bid (“IFB”): small to midsize projects of low complexity. This method is reserved for projects of simple scope where enforcement of quality and completion is straightforward and there is low risk for error in the definition of the work scope.

(ii) Design-build (“D-B”): midsize to large projects, new construction of low to moderate complexity. Because some control over the design process is forfeited, this method is reserved for projects of simple scope where there is not a large variance in methodology or quality possible. Additionally, this method facilitates a compressed schedule.

(iii) Construction manager-at-risk (“CMR”): midsize to large projects of moderate to high complexity with phasing or detailed scheduling requirements. This method proactively supports projects where accurate, early cost estimates and constructability reviews are required and can easily accommodate project phasing for a compressed schedule or to address schedule

constraints. CMR facilitates successful completion of projects where budget and schedule control are the highest priority.

(iv) Competitive sealed proposal (“CSP”): small to large projects of low to moderate complexity where the owner desires to control the design and quality of materials and systems. Speed of project delivery is typically secondary to design and quality control.

(v) Construction manager agent: projects that require a contractor as a third party consultant to assist the owner in evaluating cost, quality, and schedule. The agent assumes minimal risk. This method is reserved for projects where construction economics, processes, and schedule are highly intricate and the agent assists the owner in managing risk and ensuring quality and cost control.

(vi) Job order contracting: projects of simple and repetitive scope that can be bid similarly to a unit price contract. This method is reserved for small maintenance type tasks that involve a reoccurring need and can be specified in a broad general approach. The speed of project delivery is of highest priority and competitive pricing is sacrificed.

(vii) Energy savings performance contracts: projects of simple scope with a clear and realistic potential for energy or other resource conservation and savings. Projects are typically not funded, but must be authorized. Projects are paid for through the resulting utility savings and must demonstrate a robust return on investment. Infrastructure must be in place to adequately measure and verify savings in order to enforce contractual terms and conditions.

During the development phase of a project, the FDC assigned project manager will assess the project and recommend a delivery method to FDC senior management.

In recommending a delivery method, the project manager’s assessment will take into account the degree to which the project lends itself to clear and straightforward documentation which would yield a well-founded competitive bid, or the potential advantage resulting from participation by the contractor during the design phase or the potential purchase of services which can be clearly defined by a performance specification as opposed to traditional design and construction documentation.

Based on this project assessment, the project manager will make a recommendation from the delivery methods set forth above, to the FDC senior management team. Based on senior management's review, the FDC Division Director, in conjunction with the Deputy Executive Director of Facilities, will make a recommendation to the Executive Director for approval of the appropriate delivery method that best meets the needs of the project and is in the best interest of the State. The recommended delivery method and justification for use of such method shall be included on the purchase requisition approved by the Executive Director prior to solicitation of a contract. In addition, staff shall include the justification for the selection of a project delivery method in the Commission meeting materials submitted to Commission members when seeking approval of award of a construction contract included on a meeting agenda.

(B) APPROVAL OF PROFESSIONAL SERVICES AND CONSULTANT CONTRACTS, COMMISSION POLICY III.b.

PURPOSE: To authorize the Executive Director to execute a professional services and consultant contract up to an amount of \$500,000.00 without Commission approval, all

amendments thereto up to \$250,000.00 without Commission approval, and indefinite delivery indefinite quantity (“IDIQ”) contracts for professional services not to exceed \$400,000.00 for mechanical electrical and plumbing and architectural and engineering design and \$250,000.00 for all other disciplines without Commission approval. Contracts exceeding this amount will be placed on a Commission open meeting agenda for consideration and approval. In addition, the Executive Director shall not execute more than \$2,000,000.00 in professional services agreements, consultant agreements and IDIQ contracts within a thirty (30) day period from the previous Commission meeting without Commission approval.

To authorize the Executive Director to execute assignments under indefinite delivery indefinite quantity contracts for professional services up to an amount of \$250,000.00 without Commission approval. Assignments exceeding this amount will be placed on a Commission open meeting agenda for consideration and approval.

POLICY: The Executive Director is authorized to approve all professional services and consultant contracts up to an amount of \$500,000.00 without Commission approval and all amendments thereto, not to exceed a total aggregate amount of 50% of the original base contract amount for contracts not exceeding the amount of \$500,000.00. The Executive Director shall not execute more than \$2,000,000.00 in professional services, consultant and indefinite delivery indefinite quantity agreements within a thirty (30) day period from the previous Commission meeting without Commission approval.

Any contracts above the threshold amount of \$500,000.00 and any amendments to such contracts above this threshold in which the total amount of the contract increases by more than 50% of the original contract amount, or where multiple amendments exceed a total aggregate amount of 50% of the original contract amount, shall be placed on the Commission open meeting agenda for consideration and action by the Commission.

The Executive Director is authorized to undergo the solicitation process for IDIQs for a two (2) year term with an optional two (2) year renewal term. An IDIQ for any particular discipline may be awarded, including but not limited to: (i) mechanical electrical and plumbing; (ii) architectural and engineering design; (iii) geotechnical and construction materials testing; (iv) surveying; (v) environmental engineering; (vi) heating, ventilation and air conditioning testing and balancing; and (vii) appraising.

IDIQs may be used for small projects in which the design costs fall below \$100,000.00.

In addition, IDIQs may be used for projects in cases such as: (i) a situation in which the delay of agency action could have a detrimental effect on the agency or a client agency; (ii) a situation in which an imminent threat to public health and safety exists; and/or (iii) a reasonably unforeseeable situation.

When selecting an IDIQ for a project, staff shall select the most qualified contractor available within the pool of IDIQs and shall justify their selection on the materials presented to the Executive Director for approval.

IDIQ awards shall be approved by the Commission and shall be work order contracts with an amount not to exceed \$400,000.00 for mechanical electrical and plumbing and architectural and

engineering design and \$250,000.00 for all other disciplines during the two (2) year term of such contract.

All professional services and consulting services providers will be selected in accordance with all applicable State laws and purchasing guidelines and will adhere to all Commission procurement and contract procedures as well as Commission policies. In addition, a minimum of one (1) Texas Registered Professional Engineer and/or Architect, as appropriate, shall be included in the evaluation team when selecting a contractor. Finally, it is the desire of the Commission that the professional community understand clearly how the Commission intends to contract for services so that the selection process is perceived as fair to all professionals. It is the responsibility of Commission staff to continually communicate the selection methods so that the Commission can attract the best possible professionals.

The Chairman may, with the approval of two (2) commissioners, delegate to the Executive Director, on a case-by-case basis, the authority to approve professional services and consultant contracts in excess of \$500,000.00, or any amendments thereto, in cases of an emergency and/or to ensure that Commission business transactions are consummated timely. "Emergency action" shall be defined as: (i) a situation in which an imminent threat to public health and safety exists; (ii) a reasonably unforeseeable situation; and/or (iii) a situation in which a quorum of the members of the Commission cannot attend a monthly meeting or emergency meeting and the delay of agency action could have a detrimental effect on the agency or a client agency. Such delegations shall be reported to the full Commission at the next scheduled open meeting.

Dividing a commitment or transaction into two or more parts to evade the limit of delegated authority under this policy is prohibited and is a violation of this policy. This policy shall be interpreted broadly so that a series of reasonably related transactions shall be considered as a single transaction for purposes of determining approval and authority levels required by this policy.

It is emphasized that contracts and amendments within the limits of the Executive Director's authority shall be approved by the Executive Director, or his/her designee, and cannot be approved by individuals having a lower level of approval authority than the specified transaction requires, except pursuant to a delegation of temporary authority as outlined below.

Temporary authority may be designated by the Executive Director when the Executive Director will be out of the office for prolonged periods. Such temporary authorization shall be in writing and specify the scope of delegation and the effective length of time for which the authorization exists. The Executive Director shall notify the Commission of any temporary authorization.

Employees requesting, negotiating, and executing contracts and amendments are required to ensure that all appropriate approvals and reviews required by Commission procurement and contract policies and procedures have been obtained and that appropriate documentation of these approvals is maintained.

Commission staff shall provide a report to the members of the Commission at the next scheduled Commission meeting which will include relevant data on all professional services, consultant, and IDIQ contracts that the Executive Director has approved during the preceding month as well as any other reporting data as requested by the Commission.

All agreements shall be signed by the Executive Director or his designee.

(C) APPROVAL OF CONSTRUCTION CONTRACTS, COMMISSION POLICY III.c.

PURPOSE: To authorize the Executive Director to execute a construction-related services contract up to an amount of \$1,000,000.00 and all amendments thereto up to 50% of the original contract amount. In addition, the Executive Director shall not execute more than \$4,000,000.00 in construction services contracts within a thirty (30) day period from the previous Commission meeting without Commission approval.

POLICY: The Executive Director is authorized to approve all contracts for construction services up to an amount of \$1,000,000.00 without Commission approval and all amendments thereto, not to exceed a total aggregate amount of 50% of the original base contract amount for contract not exceeding the amount of \$1,000,000.00. The Executive Director shall not execute more than \$4,000,000.00 in construction services contracts within a thirty (30) day period from the previous Commission meeting without Commission approval.

Any contracts above the threshold amount of \$1,000,000.00 and any amendments to such contracts above this threshold in which the total amount of the contract increases by more than 50% of the original contract amount, or where multiple amendments exceed a total aggregate amount of 50% of the original contract amount, shall be placed on the Commission open meeting agenda for consideration and action by the Commission. Construction services include contracts for all construction-related services such as heavy construction, construction manager-at-risk, remediation, moving services, and other services related to the construction of state buildings and other structures, not otherwise provided by a professional services provider on the project.

The Chairman may, with the approval of two (2) commissioners, delegate to the Executive Director, on a case-by-case basis, the authority to approve contracts for construction services in excess of \$1,000,000.00, or any change orders thereto, in cases of an emergency and/or to ensure that Commission business transactions are consummated timely. All emergency actions shall be reported to the full Commission at the next scheduled open meeting. "Emergency action" shall be defined as: (i) a situation in which an imminent threat to public health and safety exists; (ii) a reasonably unforeseeable situation; and/or (iii) a situation in which a quorum of the members of the Commission cannot attend a monthly meeting or emergency meeting and the delay of agency action could have a detrimental effect on the agency or a client agency. Such delegations shall be reported to the full Commission at the next scheduled open meeting.

Dividing a commitment or transaction into two or more parts to evade the limit of delegated authority under this policy is prohibited and is a violation of this policy. This policy shall be interpreted broadly so that a series of reasonably related transactions shall be considered as a single transaction for purposes of determining approval and authority levels required by this policy.

It is emphasized that contracts and amendments within the limits of the Executive Director's authority shall be approved by the Executive Director, or his/her designee, and cannot be approved by individuals having a lower level of approval authority than the specified transaction requires, except pursuant to a delegation of temporary authority as outlined below.

Temporary authority may be designated by the Executive Director when the Executive Director will be out of the office for prolonged periods. Such temporary authorization shall be in writing and specify the scope of delegation and the effective length of time for which the

authorization exists. The Executive Director shall notify the Commission of any temporary authorization.

Employees requesting, negotiating, and executing contracts and amendments are required to ensure that all appropriate approvals and reviews required by Commission procurement and contract policies and procedures have been obtained and that appropriate documentation of these approvals is maintained.

Commission staff shall provide a report to the members of the Commission at the next scheduled Commission meeting which will include relevant data on all contracts for construction services that the Executive Director has approved during the preceding month.

All agreements shall be signed by the Executive Director or his designee.

(D) APPROVAL OF INTERAGENCY AND INTERLOCAL AGREEMENTS, COMMISSION POLICY III.d.

PURPOSE: To authorize the Executive Director to execute an interagency or interlocal agreement up to an amount of \$500,000.00 and all amendments thereto up to \$250,000.00 without Commission approval. Agreements exceeding this amount will be placed on a Commission open meeting agenda for consideration and approval. The Executive Director shall not execute more than \$2,000,000.00 in interagency and interlocal agreements within a thirty (30) day period from the previous Commission meeting without Commission prior approval.

POLICY: The Executive Director is authorized to approve all interagency and interlocal agreements, including, but not limited to, interagency contracts, memorandums of agreement, memorandums of understanding, letter agreements, and any other contractual obligation with another state agency or local government in which the Commission will expend funds up to an amount of \$500,000.00 without prior Commission approval and all amendments thereto, not to exceed a total aggregate amount of 50% of the original base contract amount for contracts not exceeding the amount of \$500,000.00. The Executive Director shall not execute more than \$2,000,000.00 in interagency and interlocal agreements within a thirty (30) day period from the previous Commission meeting without Commission approval.

Any interagency and interlocal contracts above the threshold amount of \$500,000.00 and any amendments to such contracts above this threshold in which the total amount of the contract increases by more than 50% of the original contract amount, not to exceed a total aggregate amount of 50% of the original contract amount, shall be placed on the Commission open meeting agenda for consideration and action by the Commission.

Interagency and interlocal contracts in which the Texas Facilities Commission is the performing agency and in which the Commission is expending no dollars shall be approved by the Executive Director.

The Chairman may, with the approval of two (2) commissioners, delegate to the Executive Director, on a case-by-case basis, the authority to approve interagency and interlocal contracts in excess of \$500,000.00, or any amendments thereto, in cases of an emergency or to ensure that Commission business transactions are consummated timely. "Emergency action" shall be defined as: (i) a situation in which an imminent threat to public health and safety exists; (ii) a reasonably unforeseeable situation; and/or (iii) a situation in which a quorum of the members of the

Commission cannot attend a monthly meeting or emergency meeting and the delay of agency action could have a detrimental effect on the agency or a client agency. Such delegations shall be reported to the full Commission at the next scheduled open meeting.

Temporary authority may be designated by the Executive Director when the Executive Director will be out of the office for prolonged periods. Such temporary authorization shall be in writing and specify the scope of delegation and the effective length of time for which the authorization exists. The Executive Director shall notify the Commission of any temporary authorization.

Commission staff shall provide a report to the members of the Commission at the next scheduled Commission meeting which will include relevant data on all interagency and interlocal contracts in which the Commission is expending an amount greater than \$500,000.00 that the Executive Director has approved during the preceding month.

All agreements shall be signed by the Executive Director or his designee.

(E) APPROVAL OF MAINTENANCE, GROUNDS, UTILITY AND SERVICE CONTRACTS, COMMISSION POLICY III.e.

PURPOSE: To authorize the Executive Director to execute a contract for maintenance, grounds, utilities, and other services related to facility management up to an amount of \$500,000.00 and all amendments thereto up to \$250,000.00 without Commission approval. Contracts exceeding this amount will be placed on a Commission open meeting agenda for consideration and approval. In addition, the Executive Director may delegate facility management authority to an occupying agency, when in the best interest of the State.

POLICY: The Executive Director is authorized to approve all service contracts related to facility management necessary to carry out the statutory duties of the Commission including, but not limited to, contracts for maintenance, grounds, utilities, and other related services agreements up to an amount of \$500,000.00 without prior Commission approval and all amendments thereto not to exceed a total aggregate amount of 50% of the original base contract amount. Service agreements shall include those services necessary to carry out the day-to-day functions of the agency. Contracts for child-care services, and amendments thereof, shall be approved by the Commission during an open meeting regardless of the amount of the contract or amendment.

Any contracts above the threshold amount of \$500,000.00 and any amendments to such contracts above this threshold in which the total amount of the contract increases by more than 50% of the original contract amount, or where multiple amendments exceed a total aggregate amount of more than 50% of the original amount, shall be placed on the Commission open meeting agenda for consideration and action by the Commission.

The Chair may, with the approval of two (2) commissioners, delegate to the Executive Director, on a case-by-case basis, the authority to approve service contracts in excess of \$500,000.00, or any amendments thereto, in cases of an emergency and/or to ensure that Commission business transactions are consummated timely. "Emergency action" shall be defined as: (i) a situation in which an imminent threat to public health and safety exists; (ii) a reasonably unforeseeable situation; and/or (iii) a situation in which a quorum of the members of the Commission cannot attend a monthly meeting or emergency meeting and the delay of agency action could have a detrimental effect on the agency or a client agency. Such delegations shall be reported to the full Commission at the next scheduled open meeting.

Dividing a commitment or transaction into two or more parts to evade the limit of delegated authority under this policy is prohibited and is a violation of this policy. This policy shall be interpreted broadly so that a series of reasonably related transactions shall be considered as a single transaction for purposes of determining approval and authority levels required by this policy.

It is emphasized that contracts within the limits of the Executive Director's authority shall be approved by the Executive Director, or his/her designee, and cannot be approved by individuals having a lower level of approval authority than the specified transaction requires, except pursuant to a delegation of temporary authority as outlined below.

Temporary authority may be designated by the Executive Director when the Executive Director will be out of the office for prolonged periods. Such temporary authorization shall be in writing and specify the scope of delegation and the effective length of time for which the authorization exists. The Executive Director shall notify the Commission of any temporary authorization.

Employees requesting, negotiating and executing contracts and amendments are required to ensure that all appropriate approvals and reviews required by Commission procurement and contract policies and procedures have been obtained and that appropriate documentation of these approvals is maintained.

Commission staff shall provide a report to the members of the Commission at the next scheduled Commission meeting which will include relevant data on all service contracts that the Executive Director has approved during the preceding month.

All agreements shall be signed by the Executive Director or his designee.

(F) OUTSIDE COUNSEL CONTRACTS, COMMISSION POLICY III.f.

PURPOSE: To authorize the Executive Director to execute an outside counsel contract up to an amount of \$250,000.00 without Commission approval and all amendments thereto up to \$125,000.00 without Commission approval. Contracts exceeding this amount will be placed on a Commission open meeting agenda for consideration and approval.

POLICY: The Executive Director is authorized to approve all outside counsel contracts up to an amount of \$250,000.00 without Commission approval and all amendments thereto up to \$250,000.00 without Commission approval.

Any contracts above the threshold amount of \$250,000.00 and any amendments to such contracts above this shall be placed on the Commission open meeting agenda for consideration and action by the Commission.

All outside counsel contracts will be selected in accordance with all applicable State laws and purchasing guidelines, will be approved by the Office of the Attorney General, and will adhere to all Commission procurement and contract procedures as well as Commission policies.

It is emphasized that contracts and amendments within the limits of the Executive Director's authority shall be approved by the Executive Director, or his/her designee, and cannot be approved by individuals having a lower level of approval authority than the specified transaction requires, except pursuant to a delegation of temporary authority as outlined below.

Temporary authority may be designated by the Executive Director when the Executive Director will be out of the office for prolonged periods. Such temporary authorization shall be in writing and specify the scope of delegation and the effective length of time for which the authorization exists. The Executive Director shall notify the Commission of any temporary authorization.

Employees requesting, negotiating and executing contracts and amendments are required to ensure that all appropriate approvals and reviews required by Commission procurement and contract policies and procedures have been obtained and that appropriate documentation of these approvals is maintained.

Commission staff shall provide a report to the members of the Commission at the next scheduled Commission meeting which will include relevant data on all outside counsel contracts that the Executive Director has approved during the preceding month.

All agreements shall be signed by the Executive Director or his designee.

(G) ALL OTHER CONTRACTS, COMMISSION POLICY III.g.

PURPOSE: To authorize the Executive Director to execute a purchase of goods or services not authorized under another Commission policy up to an amount of \$1,000,000.00 and all amendments thereto up to 50% of the original contract amount. Contracts exceeding this amount will be placed on a Commission open meeting agenda for consideration and approval.

POLICY: The Executive Director is authorized to approve all purchases for goods or services not authorized under another Commission policy up to an amount of \$1,000,000.00 without Commission approval and all amendments thereto up to 50% of the original contract amount.

Dividing a commitment or transaction into two or more parts to evade the limit of delegated authority under this policy is prohibited and is a violation of this policy. This policy shall be interpreted broadly so that a series of reasonably related transactions shall be considered as a single transaction for purposes of determining approval and authority levels required by this policy.

It is emphasized that contracts and amendments within the limits of the Executive Director's authority shall be approved by the Executive Director, or his/her designee, and cannot be approved by individuals having a lower level of approval authority than the specified transaction requires, except pursuant to a delegation of temporary authority as outlined below.

Temporary authority may be designated by the Executive Director when the Executive Director will be out of the office for prolonged periods. Such temporary authorization shall be in writing and specify the scope of delegation and the effective length of time for which the authorization exists. The Executive Director shall notify the Commission of any temporary authorization.

Employees requesting, negotiating and executing contracts and amendments are required to ensure that all appropriate approvals and reviews required by Commission procurement and contract policies and procedures have been obtained and that appropriate documentation of these approvals is maintained.

Commission staff shall provide a report to the members of the Commission at the next scheduled Commission meeting which will include relevant data on all contracts that the Executive Director has approved during the preceding month.

All agreements shall be signed by the Executive Director or his designee.

(H) CONFLICTS OF INTEREST, COMMISSION POLICY III.h.

PURPOSE: To prohibit the Commission from contracting with business entities with which high-level agency leadership or staff has a financial interest and to provide conflict of interest disclosure requirements for Commission members and agency staff.

POLICY: Each employee of the Commission or Commission member who is involved in procurement or in contract management for the Commission shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or Commission member with respect to any contract or bid for the purchase of goods or services by the agency.

Pursuant to Section 2152.064 of the Texas Government Code, a Commission member, employee or appointee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services, including professional or consulting services, by the Commission or another agency of the state in connection with the Commission's duties concerning: charge and control of state buildings, grounds, or property; maintenance or repair of state buildings, grounds, or property; construction of a state building; or purchase or lease of state buildings, grounds, or property by or for the state. In Title 1, Texas Administrative Code, Section 45.5, the Texas Ethics Commission has defined "employee" to mean a TFC employee who exercises discretion in connection with a contract, payment, claim, or other pecuniary transaction under Section 2152.064. In addition, "commission member," "appointee," and "employee" includes the spouse or dependent child of a commission member, appointee, or employee. In addition, Section 45.5 states that Section 2152.064 of the Government Code does not apply to the ownership of stock the value of which does not exceed the lesser of \$25,000 or 5% in any one company, or ownership of shares in a publicly traded mutual fund or similar investment vehicle in which the person does not exercise any discretion regarding the investment of the assets of the fund or other investment vehicle.

This provision applies to all TFC employees. However, during the 84th Legislative Session, the Texas Legislature passed more stringent ethics requirements for state officials and certain state agency employees.

Effective September 1, 2015, pursuant to Section 2261.252 of the Texas Government Code, a state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom the following agency employees or officials have a financial interest:

- (1) a member of the Commission;
- (2) the Executive Director;
- (3) the General Counsel;
- (4) the Director of Procurement; and

(5) the family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

“Financial interest” means owns or controls, directly or indirectly, an ownership interest of at least one percent (1%) in the person or entity, include the right to share in profits, proceeds or capital gains or could reasonably foresee that a contract with the person or entity could result in a financial benefit to the employee or official. A financial interest prohibit by this section does not include a retirement plan, a blind trust, insurance coverage or an ownership interest of less than one percent (1%) in a corporation.

In addition, Section 2261.252 requires each state employee or official who is involved in procurement or in contract management for a state agency to disclose to the agency any potential conflict of interest specified by state law or the 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. To comply with this requirement, all Commission members and TFC staff involved in procurement or contract management on behalf of the agency shall sign an annual non-disclosure and conflict of interest certification.

(I) ENHANCED CONTRACT MONITORING, COMMISSION POLICY III.i.

PURPOSE: To establish a policy for statutory required enhanced contract monitoring and reporting.

POLICY: Contracts for the purchase of goods or services that have a value in excess of \$1,000,000.00 will be identified for enhanced contract monitoring and will be included in reports provided monthly by each agency program area to the Commission which will include relevant data on risk factors such as scope of services, budget, and schedule. In addition, the Commission will be notified, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this policy.

DISCUSSION: Pursuant to Texas Government Code Section 2261.253(c) each state agency, by rule, shall: (i) establish a procedure to identify each contract that requires enhanced contract or performance monitoring; (ii) submit information on the contract to the agency’s governing body; and (iii) require that staff immediately notify the agency’s governing body of any serious issue or risk that is identified with respect to a contract monitored under this subsection. The statute does not define “enhanced contract monitoring” or what information is required to be submitted, and when, to the governing body. To meet the statutory requirement, the Commission proposed and adopted Texas Administrative Code, Title 1, Part 5, Section 111.27 entitled “Enhanced Contract Monitoring” which requires staff to perform enhanced contract monitoring on all contracts exceeding \$1,000,000.00 and to report information on these contracts to the Commission. The rule also states that contracts will be monitored in accordance with policies and procedures found in the *TFC Contract Manual*, which has a chapter that addresses contract administration and monitoring that adopts concepts from the *State of Texas Procurement and Contract Management Guide*, which agencies are required to follow. In addition, the Commission policies involving contract issues are also included in the *TFC Contract Manual*.

Methods for enhanced contract monitoring may vary depending on the type of the contract and/or the services to be received, but will be designed so that the agency knows: (i) it received what it paid for; (ii) that the contractor is complying with the terms of the contract; and (iii) that the

contract is complete and can be closed. If applicable, monitoring shall include, but not be limited to: (i) site visits, inspections and/or meetings; (ii) contractor status reports; (iii) documentation review; (iv) expenditure document review; and (v) corrective action.

For contracts related to capital projects and minor construction including professional services, technical services and construction, examples of enhanced monitoring activities to be performed by TFC staff, or in conjunction with a third party contractor, include but are not limited to the following, where applicable:

- (i) project team meetings and pre-construction conferences;
- (ii) periodic professional site observations of work to verify compliance with the plans and specifications with frequency commensurate with the level of activity and critical nature of the work being performed;
- (iii) additional professional service provider peer review of the design at various stages of development and performance of quality assurance observations of construction;
- (iv) review and approval of equipment and material shop drawing submittals for job specific fabricated materials;
- (v) review of contractor's daily logs for journal of construction activity;
- (vi) review of contractor's work progress schedule;
- (vii) on-site review of preliminary monthly pay applications for verification of types, quality, and quantity of work performed;
- (viii) review and approval of formal monthly pay application;
- (ix) substantial completion inspection and development of punch list;
- (x) review and approval of contractor's close out documents; and
- (xi) final inspection and verification of all punch list items addressed.

In addition, enhanced monitoring will consist of monthly reporting to the Commission on specific metrics relating to the triple constraint of capital projects: (i) quality and scope; (ii) cost; and (iii) schedule. Specific reporting data points will be the following:

SCOPE	Status of deliverables and any issues currently under resolution any issues that are a substantial impediment to completion.
COST	Original contract amount. Total change to contract amount. Report on cost adjustments for prior month.
SCHEDULE	Next milestone deliverable, description and date.

For all other agency contracts exceeding \$1,000,000.00, such as agency service contracts, enhanced monitoring will consist of documented site visits and inspections, deliverable checklists and contractor reporting, as set forth in the terms of a contract, as well as spot checks of other contract provisions and requirements. In addition, enhanced monitoring will include monthly

reporting to the Commission on specific metrics relating to scope of services and deliverables, budget, and corrective action.

SCOPE OF SERVICES AND DELIVERABLES	Confirmation of receipt of services and/or deliverables per contract specifications such as inspection/site visit reports, checklists for deliverables, and spot checks/inspections.
COST	Original contract amount. Any changes to contract amount.
CORRECTIVE ACTION	Any corrective measures. Status updates on open corrective action.

(J). PROCUREMENT POLICIES AND PROCEDURES AND CONTRACT MANUAL, COMMISSION POLICY III.j.

PURPOSE: To instruct staff to create and adopt procurement and contract policies that are consistent with State law and that provide a consistent framework for the procurement process and the development of agency contracts.

POLICY: The Procurement Division, to be approved by the Director of Procurement, shall create procurement policies and procedures that provide advice concerning procurement methods, planning, preparing of the solicitation, the solicitation process, and evaluation and award of a contract. Such policies and procedures shall comply with State law and the State of Texas Procurement and Contract Management Guide, produced by the Comptroller of Public Accounts (“CPA”), as required by Section 2262.052(a) of the Texas Government Code.

The Legal Services Division, to be approved by the General Counsel, shall adopt a contract manual based on state directives and agency policy as well as best practices which have been standardized for use by TFC program divisions. Such policies and procedures shall comply with State law and the State of Texas Procurement and Contract Management Guide, produced by the Comptroller of Public Accounts (“CPA”), as required by Section 2262.052(a) of the Texas Government Code.

CHAPTER VI. Needs/Risk Assessment and Enhanced Monitoring

Pursuant to Texas Government Code Section 2261.256, a state agency is required to develop and comply with a purchasing accountability and risk analysis procedure. The procedure must provide for:

- (1) assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
- (2) identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff; and
- (3) establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

To begin the solicitation process, the Requesting Division is required to perform a risk/needs assessment to determine if the agency actually needs to contract for the services, as opposed to performing the services in-house, to ensure the contracting team plans for the correct contracting objective, and to assess the risks.

(A) NEEDS ASSESSMENT.

A needs assessment is important to determine the need for an outside contract and to identify the correct contracting objective. A clear definition of the contracting objectives and purpose to be accomplished by the contract is intended to assist staff later in developing the statement of work, solicitation, negotiation and contracting documents, and in verifying the performance of a contractor. If the contracting purpose implements, changes, or supports the agency's statutory duties, it is useful to identify existing statutory requirements, agency rules, policies and business processes that will be impacted by the contract. If business processes or practices are not documented, it is often useful to document the business processes. Once the legal requirements and business processes are clearly identified, the agency can assess how these duties or processes will be changed or impacted. In addition, it is important to document any concerns or risks identified by the assessment so that the changes and risks can be managed or mitigated in the contract document.

The success of many contracts is dependent upon how well business requirements are documented, communicated and understood by the contractor community. Detailed agency business practices are frequently incorporated into the statement of work in a contract, so agency staff input and cooperation is critical when planning and developing a statement of work.

(B) WELL-FORMED CONTRACTING OBJECTIVES AND PURPOSE.

A well-formed statement of the contracting objectives should provide a general understanding of what will be accomplished by a contractor. Well-formed objectives will help guide and keep the contracting process focused and on track.

While researching, agency contract administrators and project managers may wish to contact potential contractors to discuss the procurement. This is an acceptable practice as long as the agency solicits information from more than one (1) contractor and advises the contractor up front that the agency's interest at this point is strictly for research purposes and that any formal requests for pricing or other information will be made through the formal competitive sealed bid or competitive sealed proposal process.

During the planning stage of the procurement, it is necessary to develop an estimated cost for the contract. The cost estimate should assist staff in determining the type of procurement method to be used. Even if limited by budget restraints, an estimated cost will provide an idea of the range of services that the agency can include in the statement of work.

If no TFC staff have knowledge in the subject area to assist with the cost estimate, TFC may contact several contractors to obtain pricing information. If contractors are contacted, they must be advised that the cost estimates are for information purposes only and that the estimate is not a formal solicitation.

The following is a guide to follow when developing the contract objectives for a needs assessment:

- (1) What services does TFC specifically need?
- (2) Does TFC have authority to perform these services?
- (3) Is TFC statutorily mandated to perform these services? By what statute?
- (4) What will fulfilling this need do for TFC? What do you hope to accomplish with this service?
- (5) Is there information available for how these services are performed by other entities? What are the strengths and weakness? Lessons learned? Would a Request for Information be helpful to see what is available?
- (6) What form will the contract take? What are the deliverables? How will TFC track and document performance?
- (7) What is the available budget? What are the customary fees or charges for this service?

(C) RISK ASSESSMENT FOR THE SOLICITATION OF A CONTRACT.

Risks are inherent in all stages of the procurement process. In order to allow for more informed decisions as to risk levels and how to address each identified risk and to allocate TFC's limited financial and human resources to monitor the performance of TFC's contractors, an effective risk assessment model will help focus monitoring resources on the risks to which TFC has attached a higher priority.

There is not an objective or mathematical formula that can be used to identify or quantify the risk imposed by a particular contract. Risk determination is based on subjective experience.

The four (4) major risk factors that are used in identifying the level of risk and monitoring include product, process, schedule and financial. Risk factors within each of the categories may include:

- (1) impact of contract failure;
- (2) criticality of delivery;
- (3) the complexity and subject matter of the procurement;
- (4) the dollar amount of the procurement, and whether the procurement will result in a major contract;
- (5) the anticipated payment methodology;
- (6) the experience agency staff has with the type of procurement;
- (7) time constraints or the expected duration of the procurement; and
- (8) the type, availability or experience of staff resources required to implement the objectives of the procurement.

The following is a guide to follow when assessing the risk of a potential solicitation for a contract:

- (1) Product.
 - (a) What is the complexity and type of the procurement? Define type (IT, SOW, Commodity)
 - (b) What issues are possible during this procurement?
 - (c) What is the level of competition available for this procurement?
 - (d) Delivery of product and/or services?
 - (e) Does the product adversely impact the environment?
 - (f) Identified vendor experience?
 - (g) Does this procurement include subcontracting?
- (2) Process.
 - (a) What is the agency staff experience?
 - (b) What are the agency staff resources?
 - (c) How certain are agency objectives?
 - (d) What is the risk that agency objectives will not be achieved?

- (3) Schedule.
 - (a) What are the time constraints for the solicitation?
 - (b) What are the internal/external factors affecting schedule risk?
- (4) Financial.
 - (a) What is the estimated dollar amount of the purchase?
 - (b) How will the vendor be paid?
 - (c) What are the risks associated with the payment methodology?

(D) NEEDS/RISK ASSESSMENT PROCESS.

(1) Prior to routing a TFC Purchase Requisition through the TFC Purchase Requisition Process to request the solicitation of a contract, if necessary, or the approval to enter into a contract, the Requesting Division shall perform a Needs/Risk Assessment and provide such assessment with the purchase requisition.

(2) The Director of Procurement will review the needs/risk assessment to determine ways to address any risks that may be presented throughout the procurement process.

(3) The Requesting Division shall use the TFC Needs/Risk Assessment Form (see app. E), unless the division has a specific form or other documentation that has been approved by the Director of Procurement

(4) The initial needs/risk assessment documentation will be maintained by the Procurement Division in the official procurement file.

(E) RISK ASSESSMENT OF AN ON-GOING CONTRACT.

(1) It is good practice to assess risk throughout the life of a contract. Once a contract is executed, a preliminary risk assessment should be conducted to make an initial determination about the level, type and amount of management, oversight and resources will be required to plan and implement the contract from beginning to end. Simply put, as the risk associated with a particular procurement increases, the level and degree of executive management's sponsorship, participation and oversight should be increased by a corresponding level.

A high risk contract such as a cost-plus percentage of profit arrangement, a large construction project or services agreement, or a software development procurement should involve significant executive management sponsorship, participation and oversight. A low risk contract, such as routine purchases of goods or services does not typically require the participation or sponsorship of agency executive management.

(2) When assessing risk at the start of a contract, all risk factors should be identified. Risk factors are indicators that assess the risk of the contract or project objectives not being achieved. General risk factors may include, but are not limited to:

- (a) impact of contract failure;
- (b) criticality of delivery;
- (c) the contractor's past performance (and past performance of similar contractors);
- (d) turnover in key personnel;
- (e) the dollar amount of the contract;
- (f) factors from desk reviews, such as the variance between expected and actual performance;
- (g) significant problems with payment requests;
- (h) results of previous monitoring visits;
- (i) results of monitoring visits completed by other agencies or divisions within the same agency that contract with the same contractor;
- (j) the length of time since the last monitoring visit; and
- (k) how experienced the contractor is with the type of work to be performed.

(3) It is important to note that the risk assessment is a dynamic process that should be updated regularly to reflect the results of monitoring visits, reviews of payment vouchers, desk reviews, etc. For example, if a contractor has fallen significantly behind schedule in delivering services, the risk assessment should be updated to indicate the elevated risk and this impacts how the contract is monitored in the future. Likewise, if a contractor is well ahead of schedule in delivering services, the risk assessment should be updated to indicate the lower level of risk.

(4) The risk management process includes:

- (a) risk identification;
- (b) risk analysis;
- (c) risk evaluation;
- (d) risk treatment and contingency plan; and
- (e) risk monitoring.

(5) Contract management risks are as varied as are the types of contracts. Risk categories common to contract management include:

- (a) product risk;
- (b) process risk;

- (c) financial risk; and,
- (d) schedule risk.

(F) ENHANCED CONTRACT MONITORING.

Section 2261.253 of the Texas Government Code requires state agencies to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. The agency's contract management office or procurement director shall immediately notify the agency's governing body of any serious issue or risk that is identified with respect to a contract monitored under this subsection. This does not apply to memorandums of understanding or agreement, interagency or interlocal agreements or zero dollar contracts.

As set forth in Chapter II (C) of this manual and TFC Commission policies, staff will provide monthly reporting on all contracts to the Commission and will alert the commission if any issues arise involving delivery schedules, corrective action plans and/or liquidated damages on such reports. Should any of the contracts identified in the reports have issues that pose a serious risk to the agency, either the General Counsel or the Director of Procurement will notify the members of the Commission immediately.

CHAPTER VII. Professional Services Contracts

Sections 2254.001–2254.007 of the Texas Government Code permit an agency to retain the services of consultants with particular expertise in various professional fields. TFC most commonly uses professional services contracts to retain the services of certified surveyors, registered professional engineers, appraisers, and architects. While these contracts are awarded without competitive bidding, selection of providers must be based on demonstrated ability, competency, and professional qualifications.

Solicitations for the procurement of professional services are in the form of a Request for Qualifications (“RFQ”). RFQs are drafted by the program area seeking to procure the services with the assistance of the Procurement Division. An RFQ shall adequately set forth the services to be provided. This is very important for two reasons. First, a proper RFQ will provide notice to the potential respondents of the exact services to be provided and the contract provisions, insurance requirements, and other standards to which the selected provider will be held. TFC usually posts the contract template with the RFQ.

Second, if the agency determines in the future that additional services will need to be provided that were not contemplated in the original RFQ, a new RFQ may be required for the additional services. Therefore, it is important to contemplate and include all services that will be needed in the original RFQ.

The Procurement Division is responsible for the oversight and integrity of the procurement process from development of specifications through award. Once proposals are received by the Commission by the required due date, the proposal opening is conducted by the Procurement Division, and the public is invited to attend. Thereafter, a Procurement Division staff member reviews all of the responses to determine that each is “responsive” to the solicitation. In evaluating responses received in a competitive solicitation process, a state agency must determine whether the proposals received meet all of the requirements set out in the specifications issued to all potential respondents. If the agency receives a response that is non-conforming, it must determine whether the irregularity is material.

It is a general rule that responses for government contracts must substantially comply with the requirements of the specifications for responding and the directions provided to potential respondents. A potential respondent is free to not submit a response if it is dissatisfied with the requirements. No useful purpose is served if a respondent can ignore the required specifications: one who chooses his own course is in effect no respondent at all.

In short, when responses are submitted for a government contract, immaterial irregularities can be waived as informalities, but responses with material defects must be rejected. It is also very important that respondents who comply faithfully and scrupulously with the specification requirements should not, in effect, be penalized by the errors of less careful respondents who fail to follow correct procedures. Courts have continuously held that a missing signature on a response as well as exclusion of required documents and/or categories of information are “material.”

Next, an appropriate evaluation team is assembled, and the Procurement Division prepares an Evaluation Team Brief, Nondisclosure Statements, and a Scoring Matrix to be utilized by the team.

Upon completion, the Procurement Division verifies the evaluation team scores, tabulates the responses, and produces a ranking of the evaluated vendors.

At this point, the Procurement Division will meet with the appropriate Commission program area to determine the next step, which may include: (i) interviews and/or oral presentations with the top scoring respondents resulting in a second round of scoring and a new tabulation; and/or (ii) negotiation with the top scoring respondent to determine reasonable fees. Upon selection of the potential provider, references are contacted and insurance and bonds, if required, are compiled and verified, which is then reviewed by the Legal Services Division.

In selecting a professional service provider, an agency shall: (i) select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and (ii) attempt to negotiate with that provider a contract at a fair and reasonable price. The professional fees under the contract must be consistent with and not higher than, the recommended prices and fees published by the applicable professional associations and may not exceed any maximum provided by law. The appropriate agency staff reviews the final fee proposals to make sure they are in accordance with state law and sign-off on all contracting and procurement documents before they are forwarded for final execution by the Executive Director.

In limited circumstances, TFC may enter into IDIQs for professional services. These contracts are solicited pursuant to Sections 2254.001–2254.007 of the Texas Government Code, and are usually for a two (2) year term with an optional two (2) year renewal term. IDIQs are generally solicited for the following disciplines, including but not limited to: (i) mechanical electrical and plumbing; (ii) architectural and engineering design; (iii) geotechnical and construction materials testing; (iv) surveying; (v) environmental engineering; (vi) heating, ventilation and air conditioning testing and balancing; (vii) appraising; and (viii) fire protection engineering and inspecting.

IDIQs may be used for projects in cases such as: (i) a situation in which the delay of agency action could have a detrimental effect on the agency or a client agency; (ii) a situation in which an imminent threat to public health and safety exists; and/or (iii) a reasonably unforeseeable situation. In addition, IDIQs may be used for small projects under \$25,000.00 in which the Commission would not be required to undergo a solicitation under the Texas Government Code. (See the Architectural and Engineering Contract Template and the IDIQ Contract Template(s) located on the shared drive, G:\Contracts\TEMPLATES.)

CHAPTER VIII. Consultant Contracts

Sections 2254.021–2254.041 of the Texas Government Code permit an agency to contract for services of outside consultants in limited circumstances.

(A) DEFINITIONS.

(1) “Consulting service” means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

(2) “Major consulting services contract” means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000.00.

Tex. Gov’t Code § 2254.021.

(B) EXCEPTIONS.

Certain types of services are not considered consulting services:

(1) certain licensed professionals including accountants, appraisers, architects, land surveyors, medical doctors, optometrists, and professional engineers;

(2) attorneys/law firms;

(3) state employee training—consultants providing education and training programs for state employees are subject to Sections 656.041–656.049 of the Texas Government Code; and

(4) information resources—services involving the acquisition of “information resources,” which may be related to computer hardware or software or a combination thereof, are subject to extensive rules by the Department of Information Resources.

(C) DEMONSTRATION OF SUBSTANTIAL NEED.

An agency may enter into a consulting services contract only where there is a substantial need and the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with another state agency. In selecting a consultant, an agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(2) if other considerations are equal, give preference to a consultant whose principal place of business is in the [S]tate or who will manage the consulting contract wholly from an office in the [S]tate.

Tex. Gov't Code § 2254.027.

(D) SPECIAL REQUIREMENTS FOR CONSULTING AND PROFESSIONAL SERVICES CONTRACTS IN EXCESS OF \$14,000.

Section 2254.006 of the Texas Government Code requires an agency to notify the Legislative Budget Board within ten (10) days of entering into a consulting or professional services contract, including an amendment, modification, renewal, or extension of the contract, in an amount greater than \$14,000.00.

(E) MAJOR CONSULTING SERVICES CONTRACTS.

There are special requirements for a consulting services contract for which it is reasonably foreseeable that the amount of the contract, including an amendment, modification, renewal, or extension of the contract, will exceed \$15,000.00. *Id.* §§ 2254.021(2), 2254.028(a). There are strict procedural requirements for major consulting contracts that if not followed will render such a contract void. *Id.* § 2254.028(b). Unless an emergency waiver is obtained from the Governor as provided in Texas Government Code, Section 2254.025, a major consulting services contract requires a finding of fact issued by the Governor that the services are necessary and cannot be performed by the agency with its own staff. *Id.* § 2254.028(a)(3).

(1) **PROCEDURAL REQUIREMENTS.** Texas Government Code, Chapter 2254, Subchapter B provides the following steps that must be followed prior to entering into a major consulting services contract:

(a) **NOTICE OF INTENT.** Notice of Intent to enter into a major consulting services contract must be given by the agency to the Governor's Budget and Planning Office before entering into such a contract. A contract may not be entered into prior to the issuance of a finding of fact by the Governor, or in the event of an unforeseen emergency, a limited waiver has been issued by the Governor. An "unforeseen emergency" is a situation that suddenly and unexpectedly causes a state agency to need

the services of a private consultant including the issuance of a court order, an actual or imminent natural disaster, and new state and federal regulations.

(b) **INVITATION FOR OFFERS.** An invitation for offers for a major consulting services contracts must be posted on the Electronic State Business Daily at least thirty (30) days before entering into such a contract. The invitation for offer shall: (i) invite consultants to provide offers of consulting services to the agency; (ii) identify the individual employed by the agency who should be contacted by a consultant intending to provide an offer; (iii) specify the closing date for the receipt of offers; and (iv) describe the procedure by which the agency will award the contract. If the services relate to services previously provided by a consultant, the agency must disclose that fact in the invitation for offer. If an agency intends to award the contract to a consultant that previously provided the services, unless a better offer is received, the agency must disclose the intention in the invitation for offer.

(2) **POST CONTRACT REQUIREMENT.**

(a) After entering into a major consulting services contract for which an invitation for offers was issued, a notice of award shall be posted on the Electronic State Business Daily if the value is expected to exceed \$25,000.00.

(b) No later than ten (10) days after entering into a major consulting services contract, notice of award shall be provided to the Legislative Budget Board.

(c) Pursuant to the Texas Government Code Section 2254.036(b), copies of all documents, films, recordings, or reports compiled by the private consultant pursuant to consultant contracts shall be filed with the Texas State Library by the TFC Records Division.

(3) **RENEWAL OF MAJOR CONSULTING CONTRACT.** If a major consulting services contract is being renewed for an amount in excess of \$15,000.00, the agency must follow all the procedures for a “major consulting services contract.”

(4) **RENEWAL OF NON-MAJOR CONSULTING CONTRACT.** If an agency intends to renew or amend a non-major consulting services contract where the amount of the original contract and the renewal or amendment will have a reasonable foreseeable value in excess of \$15,000.00, the agency must follow the procedures for a major consulting services contract.

CHAPTER IX. Outside Counsel Contracts

Section 402.0212 of the Texas Government Code provides that a contract for legal services between an attorney, other than a full-time employee of the agency, and a state agency in the executive department, other than an agency established by the Texas Constitution, must be approved by the Office of the Attorney General (“OAG”) to be valid. Outside counsel contracts are intended to provide legal services for a particular project or on a subject requiring specialized knowledge or experience that the OAG does not have. If the OAG is unable to provide the specialized support needed by the requesting agency, outside counsel may be retained.

(A) REQUEST TO RETAIN.

If an agency requires legal services from outside counsel, it must first submit to the OAG a completed Request to Retain Outside Counsel form. The request form and any supporting documentation should be sent to general.counsel@texasattorneygeneral.gov. Within ten (10) business days after receiving the request, the OAG will notify the agency in writing that its request to retain has either been approved or denied, or that additional information is required to make a decision.

(B) COMPETITIVE PROCUREMENT PROCESS.

Unless an exemption is granted by the OAG, an agency is required to obtain outside legal services through a competitive procurement process, under conditions prescribed by the Attorney General and found in Chapter 57, Title 1, Part 3 of the Texas Administrative Code. The request for qualifications (“RFQ”) must be published on the ESBD for a minimum of thirty (30) calendar days. The RFQ may be published before or after the Request to Obtain Outside Counsel has been submitted to the OAG. Since the OAG will not review or approve an agency’s RFQ, the agency is not required to provide a copy of the RFQ to the OAG.

If an agency would like an exemption from the RFQ process requirements, it must provide the OAG with a reasonable justification in writing for the exemption in its Request to Retain Outside Counsel.

(C) OUTSIDE COUNSEL DISCLOSURE STATEMENT—CONFLICTS OF INTEREST.

Effective June 5, 2014, Sections 57.4 and 57.5 of Title 1, Part 3, Chapter 57 of the Texas Administrative Code were amended to provide a formalized process for the disclosure of potential conflicts of interest by selected outside counsel.

Section 57.4(d) and (e) state:

(d) Conflict of Interest.

(1) After selecting the Outside Counsel, the Agency shall require the law firm to submit a written disclosure statement identifying every matter in which the firm represents, or has represented, within the past calendar year, any entity or individual in any litigation matter in which the entity or individual is directly adverse to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed state agency

officials in connection with their official job duties and responsibilities. “Litigation” means the matter has been filed in the public record in either state or federal court.

(2) If a disclosure statement is submitted, it must include a short description of the nature of the matter and the relief requested or obtained in each matter and any identifying cause or case number.

(e) The Agency shall determine given the disclosure statement whether to continue with its choice of Outside Counsel.

Section 57.5(e) states:

(e) Agency shall submit to the OAG the disclosure statement previously submitted by the selected Outside Counsel to the Agency. If the Agency is satisfied in its choice of Outside Counsel selected, the Agency shall submit to the OAG an affirmative statement that it is satisfied in its choice of selected Outside Counsel notwithstanding the information contained in the disclosure statement.

Therefore, before entering into a contract with a selected outside counsel, the agency must obtain the required disclosure from the outside counsel and be prepared to submit that and the agency’s affirmative statement to the OAG when the agency forwards the outside counsel contract to the OAG for approval.

(D) APPROVAL BY THE OAG OF THE OUTSIDE COUNSEL CONTRACT.

After obtaining authorization to retain outside counsel and completion of the RFQ process, an agency may enter into a contract with its selected outside counsel. However, that outside counsel contract must be approved by the OAG in order to be valid and enforceable. The OAG’s standard Outside Counsel Contract template which must be used by state agencies can be found at <https://www.texasattorneygeneral.gov/agency/publications>. If an agency determines that a change to the contract template is required in a particular instance, the agency must request, in writing, and receive permission for the OAG to make the change before the modified contract is used.

The agency and selected outside counsel will complete and sign the contract before submitting the contract to the OAG for review. The OAG only requires one signed copy of the contract to be submitted. The contract and any supporting documentation should be sent to general.counsel@texasattorneygeneral.gov. After reviewing the contract, the OAG will either approve it and return it to the agency or notify the agency that the contract has been rejected.

The outside contract must include the following.

(1) The limitation of liability amount of the contract. Legal service fees and expenses cannot exceed the total contract amount.

(2) The start and end date of the contract. It is preferred that the contract term end on or before August 31st of a biennium. Contracts for litigation legal services may be allowed to end, regardless of the biennium, upon “the conclusion of the litigation.”

(3) Addendum B—Timekeeper Rates. Unless expressly approved by the First Assistance Attorney General in advance, hourly rates for attorneys shall not exceed \$535/hour,

while hourly rates for paralegals shall not exceed \$225/hour. In addition, outside counsel shall not bill for administrative staff, law clerks, or interns. A rate range for each timekeeper classification can be used instead of specifically identifying each timekeeper by name and hourly rate. A rate range provides more flexibility during the term of the contract than specifically identifying each timekeeper. The agency and outside counsel are permitted, but not required, to pay for travel time by setting travel rates. An attorney's travel rate may not exceed half of that attorney's standard hourly rate under the contract. If the travel rates are not set in the contract, outside counsel may not charge or seek reimbursement for time spent traveling on agency matters.

(4) OAG Contract number. The OAG establishes a contract number for each outside counsel contract which must be noted on all submissions to the OAG.

(5) An attorney must be licensed by the State Bar of Texas in order to provide legal service and advice concerning Texas law, regardless of whether the attorney is actually located in the State of Texas. If a contract will require outside counsel to provide legal services and advice on Texas law, then a Texas licensed attorney must be utilized and named in Addendum B of the contract.

(6) If an outside counsel bills for allowable expenses, copies of actual receipts must be submitted. The following is a list of some of the expenses that are not reimbursable: gratuity, alcohol, non-coach class airfare, routine copying charges, fax charges, routine postage, office supplies, telephone charges, local travel including mileage, parking and tolls, all delivery services incurred by internal staff, air-conditioning, electricity and other utilities, and internet charges.

(E) INVOICES FOR LEGAL SERVICES AND EXPENSES.

Invoices for services performed under an outside counsel contract cannot be paid by the agency, regardless of the source of funds used, without the prior approval of the OAG. Review and submittal of invoices to the OAG shall be in accordance with the terms of the contract and Chapter 57 of Title 1, Part 3 of the Texas Administrative Code. Therefore, after an agency reviews and approves an outside counsel invoice in accordance with the administrative rules, it must seek approval from the OAG to pay the invoice. Within ten (10) business days of the agency's receipt of a correct and complete invoice, the agency must submit a completed Request for Voucher Approval form, a copy of the invoice and all other information required to be submitted by the administrative rules to OCCInvoice@texasattorneygeneral.gov.

Once the Request for Voucher Approval is received and reviewed by the OAG, the invoice will either be approved or rejected. If approved, the OAG will issue a Voucher Approval to the agency. The agency may then enter the payment information into the Uniform Statewide Accounting System. If an invoice is rejected, or if the OAG has questions regarding an invoice, it will contact the agency to attempt to resolve the issue.

(F) ADMINISTRATIVE FEE.

Pursuant to Subsection 402.0212(c) of the Texas Government Code, outside counsel must pay an administrative fee to the OAG for the review of invoices. The fee is non-refundable and outside counsel may not charge or seek reimbursement from the agency for the fee.

The administrative fee is due to the OAG on the date that the outside counsel submits its first invoice to the agency. For outside counsel contracts that cross the state's fiscal biennium(s),

separate administrative fees are due to the OAG for every fiscal biennium covered under the term of the contract.

The administrative fee is set on a sliding scale, based on the contract cap amount, as follows:

LIMITATION OF LIABILITY AMOUNT	ADMINISTRATIVE FEE
Less than \$2,000.00 but more than \$0.00	\$100.00
Equal to or greater than \$2,000.00 but less than \$10,000.00	\$200.00
Equal to or greater than \$10,000.00 but less than \$50,000.00	\$500.00
Equal to or greater than \$50,000.00 but less than \$150,000.00	\$1,000.00
Equal to or greater than \$150,000.00 but less than \$1,000,000.00	\$1,500.00
Equal to or greater than \$1,000,000.00	\$2,000.00

If the outside counsel contract is amended and the original limitation of liability amount is increased to an amount that would require a higher fee, the outside counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee.

Outside counsel will submit the administrative fee to the following address:

Outside Counsel Invoice
Office of the Attorney General
P.O. Box 13175
Austin, Texas 78711-3175

Checks or money orders must be made payable to the “Office of the Attorney General” and reference the OAG contract number.

(G) OUTSIDE COUNSEL CONTRACT AMENDMENTS.

Any changes to the outside counsel contract must be supported by an amendment approved by the OAG. OAG Amendment templates to be used by agencies may be found at <https://www.texasattorneygeneral.gov/agency/publications>. The amendment and any supporting documentation should be sent to general.counsel@texasattorneygeneral.gov.

CHAPTER X. Interagency and Interlocal Agreements

(A) INTERAGENCY CONTRACTS—THE INTERAGENCY COOPERATION ACT.

Texas Government Code Chapter 771, the Interagency Cooperation Act, provides that a state agency may agree to contract with another state agency for the provision of necessary and authorized services and resources. A contract entered into pursuant to the Act must specify:

- (1) the kind and amount of services or resources to be provided;
- (2) the basis for computing reimbursable costs; and
- (3) the maximum cost during the period of the agreement or contract.

In addition, all interagency contracts must be approved by the administrator of each agency that is a party to the agreement.

Pursuant to the powers and duties of the Commission set forth in the Texas Government Code and its charge as “custodian” of state property, the Commission is called upon by many state agencies, through interagency contracts, to perform services related to the space planning and minor construction, maintenance, building construction and other related services for state buildings. In addition, the Commission itself relies on a number of other state agencies to procure services either as required by statute, such as telephone and certain information technology services, or because in many cases it results in significant cost savings, such as quick copy services. Interagency contracts are based on reimbursable costs and do not include additional costs or mark-ups for profit. Interagency contracts include memorandums of agreement, memorandums of understanding, and letter agreements.

For services requested by a state agency through the TFC work order process in which a state agency will pay for such services, such as minor construction work, TFC may issue a TFC Maintenance Letter Agreement (“MLA”) as opposed to an interagency contract for such services through the program area. These agreements do not follow the process set forth in the Manual and are not maintained in the Legal Services Division and are not entered into the TFC Contract Database. A list of all MLAs is retained by the appropriate program area.

Pursuant to Section 51.955 of the Texas Education Code, a state agency may not contract or spend appropriated funds with an institution of higher education if the contract includes a provision precluding public disclosure of any final data generated or produced in the course of the contract unless the premature disclosure of such data would adversely affect public safety, the protection of intellectual property rights of the university, publication rights in professional scientific publication or valuable confidential information of the university or a third party.

(B) INTERLOCAL CONTRACTS—THE INTERLOCAL COOPERATION ACT.

Interlocal cooperation contracts are agreements between a state agency and a local government or between two (2) or more local government agencies, such as cities or counties. Such contracts are authorized and regulated by Chapter 791 of the Texas Government Code, the Interlocal

Cooperation Act, and generally relate to the provision of governmental functions and services. An interlocal contract must:

- (1) be authorized by the governing body of each party to the contract;
- (2) state the purpose, terms, rights and duties of the contracting parties;
- (3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party; and
- (4) payment is in an amount that fairly compensates the performing party for the services or functions performed under the contract.

Parties to an interlocal contract must comply with the requirements of Chapter 2161 of the Texas Government Code regarding HUBs. Interlocal contracts may be renewed annually.

(C) INTERAGENCY AND INTERLOCAL CONTRACT ROUTING.

All interagency and interlocal contracts are routed through the Commission's contract procedures process. This ensures that appropriate agency staff is reviewing the proposal to determine that:

- (1) it is an appropriate procurement of services, if the Commission is the receiving agency, or an appropriate project in which the Commission has the proper staff and time to commit, if the Commission is the performing agency;
- (2) the fees associated with the agreement are proper, in existence and subsequently encumbered; and
- (3) all of the provisions of the agreement are legally enforceable and that the agency will not enter into an agreement that requires or permits it to exceed its duties and responsibilities or the limitations of its appropriated funds.

Appropriate staff includes program area staff and management, procurement staff, fiscal staff, and legal staff. Finally, all interagency and interlocal contracts are approved and executed by the Executive Director. (See Interagency Cooperation Contract Template and Interlocal Cooperation Contract Template located at [G:\Contracts\TEMPLATES](#).)

CHAPTER XI. Construction Contracts

Pursuant to Chapter 2166 of the Texas Government Code, Building Construction and Acquisition and Disposition of Real Property, the Commission is authorized to construct state buildings, structures or appurtenant facilities or utilities and add an addition to, or alter, rehabilitate, or repair an existing state building, structure, or appurtenant facility or utility. In addition, the Commission is responsible for protecting the State's interest during the actual construction of a project subject to Chapter 2166.

Pursuant to this authorization, the Commission may enter into a variety of contracts for construction-related services to accomplish and complete state construction projects. The types of contracts executed by the agency for construction-related services include contracts for construction, remediation, moving services, and other services not falling within the "professional services" category.

Chapter 2269 of the Texas Government Code, Contracting and Delivery Procedures for Construction Projects, sets forth the contracting methods to be used for government construction projects. Once a contracting method has been selected and approved either by the Commission or by the Executive Director in accordance with Commission policy, staff determines whether to publish a request for bids, proposals, or qualifications and determines the criteria to be used in the evaluation process. Construction-related services must be solicited in accordance with Chapters 2155, 2156, and 2157 of the Texas Government Code. In selecting a vendor to provide construction-related services, the evaluation criteria generally includes company information, experience and qualifications, proposed services or methodology, budget compliance, schedule compliance, safety record, a quality control program, and references.

The Commission's Procurement Division is responsible for the oversight and integrity of the procurement process from the development of specifications through the award. In addition to the evaluation criteria to be included in the solicitation, the Procurement Division will assist FDC with specification development including a general scope of work, any supporting technical documentation, proposal information such as solicitation response requirements, required HUB information, schedules, and general and other specific terms and conditions to be included in the contract award.

It is very important that the solicitation is complete and clearly addresses all of the services and requirements that will be requested of the selected vendor. Otherwise, if the agency determines in the future that additional services will be necessary for the project and such services were not included in the original solicitation, these additional services will have to be bid under a new solicitation. In addition, if an agency materially alters a term or terms of a contract after its award to the bidder offering the best value to the State, it has failed to adhere to both the requirements and purpose of competitive bidding. When a contract is materially altered after it has been awarded, in effect, all bidders have not had an opportunity to bid upon the same terms and conditions. Likewise, if a contract term is materially altered after it is awarded, there is no guarantee that the state agency has secured the best work and materials at the lowest price.

The Texas Supreme Court describes the purposes and requirements of competitive bidding as follows:

‘Competitive bidding’ requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar specifications. Its purpose is to stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests and benefit of the taxpayers and property owners. There can be no competitive bidding in a legal sense where the terms of the letting of the contract prevent or restrict competition, favor a contractor or materialman, or increase the cost of the work of the materials or other items going into the project.

Texas Highway Comm’n v. Texas Ass’n of Steel Imps., Inc., 372 S.W.2d 525, 527 (Tex. 1963) (quoting *Sterrett v. Bell*, 240 S.W.2d 516, 520 (Tex. Civ. App.—Dallas 1951, no writ)). Pursuant to Section 2155.083 of the Texas Government Code, each state agency is required to post a procurement that will exceed \$25,000 in value on the Internet, through the ESBD.

During the posting period, pre-proposal conference(s) will be held. At this time, questions and clarifications are addressed. In addition, any questions and clarifications submitted by potential vendors and corresponding agency responses will be posted in an addendum(s) to the solicitation on the ESBD to ensure they are addressed and available to all potential bidders in an open and public forum.

Once the Commission receives submitted proposals by the required due date, the proposal opening is conducted by staff of the Procurement Division, and the public is invited to attend. Thereafter, a Procurement Division staff member reviews all of the responses to determine that each is “responsive.” In evaluating responses received in a competitive solicitation process, a state agency must initially determine whether the bids received meet all of the minimum requirements set out in the specifications issued to all potential respondents. If the agency receives a response that is non-conforming, it must determine whether the irregularity is material.

It is a general rule that responses for government contracts must substantially comply with the requirements of the specifications for responding and the directions provided to potential respondents. A potential respondent is free to not bid if the respondent is dissatisfied with the requirements. No useful purpose is served if a respondent can ignore the required specifications: one who chooses his own course is in effect no respondent at all.

In short, when responses are submitted for a government contract, immaterial irregularities can be waived as informalities, but responses with material defects must be rejected. It is also very important that respondents who comply faithfully and scrupulously with the specification requirements should not, in effect, be penalized by the errors of less careful respondents who fail to follow correct procedures. Courts have continuously held that a missing signature on a response as well as exclusion of required documents and/or categories of information are “material.” Further, all submissions that meet the minimum requirements set forth in the specifications must be considered responsive and must be evaluated with the other responsive submittals. State law only allows for responses to be rejected if they do not “materially” comply with the requirements set forth in the solicitation. In a situation where submissions were legally responsive but not of the quality that the Commission was seeking, the Commission could reject all of the bids and republish the solicitation.

Next, an appropriate evaluation team is assembled, and the Procurement Division prepares an Evaluation Team Brief, Nondisclosure Statements, and a Scoring Matrix to be utilized by the team. During the evaluation stage, the Procurement Division separates the pricing information (quantitative criteria) from the remainder of the response (qualitative criteria) and tabulates the pricing scores independently from the evaluation team and evaluation criteria. This is to ensure impartiality on the part of the evaluation team when scoring the qualitative criteria. Upon completion, the Procurement Division verifies the evaluation team scores, tabulates the responses, and produces a ranking of the evaluated vendors.

Current Commission policy regarding scoring of RFPs uses a formula in evaluating responses to RFPs that weighs price as 60% of the total score with the remaining 40% being based on the other evaluation criteria. In some circumstances, however, it may be necessary to alter these percentages based on the scope and circumstances surrounding a particular project. In these instances, staff would need to seek and secure the approval of the Procurement Director to change the standard 60/40 formula.

Numerous legislative directives exist directing state agencies to consider factors other than price when evaluating bids and awarding contracts. Section 2155.074 of the Texas Government Code requires each state agency to purchase goods and services that provide the best value for the State. This section also states that the most important considerations are price and meeting specifications. Thus, price and specifications are considered to be at least equal in importance. The section goes further to list all of the other factors that may be considered in making a purchasing decision. Section 2156.007 of the Texas Government Code requires the Commission and each state agency to award a contract to the bidder offering the best value for the State while conforming to the specifications required. The section also specifically discusses utilizing a bidder's safety record as a factor. Finally, there is a list of factors to be considered in addition to price.

The statutes listed clearly indicate that the legislature disfavors evaluations and awards based solely on price. In addition, the statutes do not give any particular weight to price nor do they elevate price over other factors, thus there is no legal requirement to weigh price more heavily than other factors and in some circumstances it may be in the best interest of the State to not do so.

During all agency solicitation processes, the Commission is very careful to comply with all state ethics requirements. In addition to ensuring that all state and Commission contracting and procurement requirements and processes are adhered to, safeguards are in place to ensure that ethics guidelines are also followed. First, all employees that are employed by TFC are required to complete an "Outside Employment/Board Member Notification Form" if they have any involvement with an entity outside of the Commission (*see app. H*). This disclosure notifies the agency of any outside affiliation that is or could potentially create a future "conflict of interest." This form is reviewed by senior management as well as the Legal Services Division to determine if a conflict exists. Second, all employees that are involved in an outside solicitation process are required to sign a Nondisclosure Statement certifying their involvement in the process is in accordance with all state laws, including all state and agency ethics requirements (*see apps. G and I*). Finally, all agency solicitations and contracts contain all of the provisions required by the Texas Government Code that outside contractors must certify to prior to performing work for the State of Texas. Examples of these certifications include prior state employment and revolving door restrictions, child support and tax payment certifications, and a certification that respondent had no involvement with the preparation of the specifications or the solicitation.

In addition, Chapter 2262 of the Texas Government Code requires a state agency to submit solicitation documents and contract documents for contracts of state agencies that have a value of at least \$5 million to the Contract Advisory Team (“CAT”). The CAT review may result in recommendations for the agency’s consideration when finalizing its solicitation.

At this point, the Procurement Division will meet with the program area to determine the next step, which includes: (1) request pricing from five or fewer Respondents for CMR 2-step solicitations; (2) interviews and/or oral presentations with the top scoring respondents, which results in a second round of scoring and a new tabulation; and/or (3) a best and final offer (“BAFO”) may be requested, which results in a new tabulation based on the percentage breakdown of pricing to qualifications criteria; and (4) subsequent negotiation and/or BAFO with the top scoring respondent. Upon selection of the potential vendor, the Procurement Division contacts submitted references and compiles and verifies all insurance and bond information required for the contract, which is then reviewed by the Legal Services Division. (See Construction Services Contract Template; Construction Manager-at-Risk Contract Template; and TXMAS Contract Template located at <G:\Contracts\TEMPLATES>.)

CHAPTER XII. Maintenance, Service, and Other Agreements

TFC provides many services, such as elevator maintenance, custodial, grounds maintenance, and other services that require the use of third-party contractors. In most cases, these contracts will be drafted by the Legal Services Division in conjunction with the requesting program area prior to the solicitation for such services.

In addition, throughout the agency, contracts may be entered into and agreements may be reached that are not drafted by the Legal Services Division. Examples of such contracts include Memoranda of Understanding or Agreement, Federal Grant Agreements, and Cooperative Agreements. These documents must be forwarded to the Legal Services Division for review and sign-off, in accordance with the Contract Request Procedures, and be entered into the TFC Contracts Database for reporting purposes.

Contracts such as small maintenance agreements, hotel and conference agreements, and other biddable service agreements will be reviewed and maintained by the Procurement Division. The Procurement Division staff will request the review of these documents by Legal Services, if necessary.

When requesting the preparation of a contract form template from Legal Services, the Request for Creation of a TFC Form Contract Procedure listed above in Chapter I, Section D must be followed.

When requesting the preparation of a Contract for award from Legal Services, the Contract Request procedure listed above in Chapter I, Section A must be followed.

After a fully executed TFC Contract Request Form has been received, the Legal Services Contract Intake Procedures listed above in Chapter I, Section C must be followed.

After a Contract has been fully executed and services are taking place, the Requesting Division may need “Additional Services” to take place based on pricing listed in the Compensation and Fees Exhibit. A separate document called a Delivery Release is used to request these Additional Services from the vendor. Once the Delivery Release has been fully executed and released by the Procurement Division an email will be sent to the appropriate TFC staff letting them know that the Delivery Release has been released.

CHAPTER XIII. Information Technology Contracts

State agencies are required to procure information technology (“IT”) products and services, as well as telecom services, through the Department of Information Resources (“DIR”). If a state agency wants to procure an IT commodity outside of a DIR contract or service, it must first obtain an exemption from DIR. Texas Government Code Section 2157.068 defines a “commodity” as commercial software, hardware or technology services.

(A) COOPERATIVE CONTRACTS.

The Cooperative Contracts Program is designed to generate savings for government entities using taxpayer funds by efficiently leveraging volume buying power to lower the IT acquisition cost and improve the quality of the state’s investment in technology commodities. Texas Government Code Section 2157.068 establishes DIR’s statutory authority to set administrative fees and allows non-state agencies to purchase from DIR contracts. DIR has an administrative fee cap of up to two percent (2%) for the Cooperative Contracts Program. The Cooperative Contracts Program also includes the Deliverables-Based IT Services (“DBITS”) which provide deliverables-based, outsourced systems integration or application development projects, IT staffing services, information security and other telecom services such as wireless, conferencing, and managed services.

DIR has already performed all State of Texas competitive procurement requirements for Cooperative Contracts or “Master Contracts” so an agency does not have to prepare a solicitation or evaluate responses; however, under Section 2157.068(e-1) and (e-2), a state agency contracting to purchase a commodity item shall use the DIR list of Master Contracts as follows:

- (1) for a contract with a value of \$50,000.00 or less, the agency may directly award the contract to a vendor included on the list without submission of a request for pricing to other vendors on the list;
- (2) for a contract with a value of more than \$50,000.00 but not more than \$1,000,000.00, the agency must submit a request for pricing to at least three [3] vendors included on the list in the category to which the contract relates; and
- (3) for a contract with a value of more than \$1,000,000.00 but not more than \$5 million, the agency must submit a request for pricing to at least six (6) vendors included on the list in the category to which the contract relates or all vendors on the schedule if the category has fewer than six (6) vendors.

An agency may not use a Cooperative Contract to purchase a commodity item if the value of the contract exceeds \$5 million.

Agencies engage directly with vendors that have been awarded “Master Contracts,” without processing requests through DIR. Agencies can choose any awarded vendor as long as the commodity or service being purchased fits within the scope and category of the Master Contract held by the vendor.

(B) STATEMENT OF WORK.

For a Cooperative Contract awarded by DIR that requires a state agency to develop and execute a statement of work to initiate services under the contract, which is always necessary for DBITS, the state agency must:

- (1) consult with the department before submission of the statement of work to a vendor; and
- (2) post each statement of work entered into by the agency on the agency's Internet website in the manner required by department rule.

“Statement of work” means a document that states the requirements for a contract, including deliverables, performance specifications, and other requirements, specific to the vendor under that contract that are not specified in a contract awarded by DIR for contracts more than \$50,000. A statement of work executed by a state agency under a contract awarded by DIR is not valid and money may not be paid to the vendor under the terms of the statement of work unless the department first signs the statement of work.

(C) DIR CONTRACT EXEMPTIONS.

If, for any reason, a state agency wants to procure an item available from DIR’s contracts program through an avenue other than a DIR contract, the agency must first obtain an exemption from DIR. Before requesting an exemption, an agency needs to determine if a current blanket exemption applies to the IT commodity the agency wishes to procure. However, if an agency proceeds with the purchase of an IT product or service under a blanket exemption, the procurement must be made in accordance with the exact scope, terms, and requirements specified in the blanket exemptions listed below.

(1) **Emergency Procurement Exemption.** State agencies are granted an exemption from the requirement to purchase IT commodities through a DIR contract if a situation arises in which compliance with Texas Government Code Section 2157.068 and/or Title 1, Part 10, Texas Administrative Code Chapter 212 is impractical or contrary to the public interest, and an emergency procurement is warranted to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the State. The scope and duration of the purchases shall not exceed the duration of the emergency.

(2) **Critical Need Exemption.** State agencies are granted an exemption from the requirement to purchase IT commodities through a DIR contract if an unforeseeable circumstance occurs that requires immediate attention, but does not qualify as an Emergency Procurement as defined in Title 1, Part 10, Texas Administrative Code Chapter 212. This exemption is for procurements not to exceed \$1,500 and that are necessary to restore operation or to correct severely impaired operations due to an equipment failure.

(3) **TIBH Set-Aside Exemption.** State agencies are granted an exemption from the requirement to purchase IT commodities through a DIR contract if those commodity IT items are offered in the Texas Industries for the Blind and Handicapped catalog and designated as a product that is set aside from competitive bidding and offered through a SPD term contract.

(4) **Minimum Threshold Procurements.** State agencies are granted an exemption from the requirement to purchase IT commodities through a DIR contract for procurements not to exceed \$1,000.

(5) **Commodity Item Exceeding \$5 Million.** State agencies are granted an exemption from the requirement to purchase through a DIR contract when purchasing commodity products and/or services when the value of the contract exceeds \$5 million.

(6) **Software Maintenance Exemption.** State agencies are granted an exemption for the procurement of software maintenance, if the software maintenance is proprietary, and not available on DIR contract. State agencies are advised to check the website prior to the purchase, as DIR adds new software titles on a regular basis.

(7) **Job Posting Services Exemption.** Internet job posting not offered under any current DIR contract for class code 915-51.

See DIR Cooperative Contracts Blanket Exemption List, <http://dir.texas.gov/>. If a blanket exemption does not exist, or if the scope, terms, and requirements of an existing blanket exemption do not meet an agency's needs, then a state agency must request a one-time exemption by completing and submitting a DIR Exemption Request Form and providing basic information pertaining to the proposed procurement and an explanation of the reason for requesting the exemption. Reasons for a one-time exemption and the required validation information for an exemption include, but are not limited to the following: cost, necessary terms and conditions are not available, funding source restrictions, compatibility with existing technology infrastructure, proprietary restrictions, and other extenuating circumstances or requirements that would justify why an IT commodity cannot be procured through a DIR contract.

(D) QAT PROCESS.

The Quality Assurance Team ("QAT") implements a consistent and repeatable approach for quality assurance review of technology projects within the State of Texas. Projects are continually assessed to help reduce the likelihood that a project will not deliver a quality solution based on the schedule, budget, and scope commitments made to state leadership. The 73rd Legislature (1993) enacted Article V, Section 133 of the General Appropriations Act. This Act established the QAT comprised of representatives from the Legislative Budget Office, the State Auditor's Office, and DIR to approve and review major information resources projects. The 74th Legislature continued emphasis on quality assurance by including an Article IX rider in the General Appropriations Act that established a quality assurance review process that must be followed for all major information resources projects. Such a rider has been continued in all subsequent General Appropriation Acts.

The quality assurance review process supports the primary purpose of the QAT, which is to review the status of major information resources projects and to make recommendations to the legislature to reduce the risk of project overruns and failures. QAT defines project risk as the likelihood that a project will not deliver a quality solution based on the schedule, budget, and scope commitments made to state leadership. QAT conducts quality assurance review for projects designated as major information resources projects. A major information resources project, as defined in Texas Government Code Section 2054.003(10), is:

(1) any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed \$5 million and that:

(a) requires one (1) year or longer to reach operations status;

- (b) involves more than one (1) state agency; or
 - (c) substantially alters work methods of state agency personnel or the delivery of services to clients; and
- (2) any information resources technology project designated by the legislature in the General Appropriations Act as a major information resources project.

The QAT has published the [Quality and Assurance Team Policy and Procedures Manual](#) that outlines the policies and procedures for agencies to follow for the quality assurance review process.

(E) TFC IT SERVICES CONTRACT PROCESS.

All IT services contracts shall be coordinated through the TFC Information Technology Division who will also serve as the liaison between TFC and DIR for all scope of work approvals and exemptions sought. In addition, the TFC Information Technology Division will coordinate and submit all quality assurance reviews to the QAT. The Legal Services Division will review all IT service contracts at the request of the Director of Information Technology. The determination of whether an IT services contract will be by formal contract and routed with a TFC Contract Request Form or done by a purchase order will be made by the Director of Information Technology, the Director of Procurement, and the General Counsel.

CHAPTER XIV. Uniform General Conditions

Pursuant to Texas Government Code, Section 2166.302, the Commission is required to “adopt uniform general conditions to be incorporated into all building construction contracts made by the [S]tate” except as expressly stated otherwise by the legislature. This section also expressly requires that the uniform general conditions (“UGC”) be incorporated into a contract for a project that falls within the statutory list of exclusions to Chapter 2166 outlined in Section 2166.003; in contrast, however, contracts for other projects excluded from the application of Chapter 2166 pursuant to Section 2166.004 are expressly not required to incorporate the UGC. Section 2166.302 further provides that the adoption of the UGC is not necessary for small construction projects. “Small construction projects” is defined in Section 2166.001(8) as “a project that: (A) has an estimated value of less than \$100,000; and (B) requires advance preparation of working plans or drawings.” The current version of the UGC is available on the Commission’s website: [UGC](#).

In addition, the Commission has approved and adopted supplementary conditions (“Supplementary General Conditions”) to modify the UGC when used in building construction contracts to which the Commission is a party. The current version of the Supplementary General Conditions is available on the Commission’s website: [Supplementary General Conditions](#).

Finally, in the event that further changes to the UGC are considered necessary for a specific project, such changes shall be made through special conditions with the approval of the General Counsel and the Deputy Executive Director of the Requesting Division.

CHAPTER XV. Architectural and Engineering Guidelines

According to the current agency business practices, all Commission contracts for professional architectural and engineering services must incorporate the Texas Facilities Commission Architectural/Engineering Guidelines (“A/E Guidelines”) prepared by the Facilities Design and Construction Division as an exhibit to direct the performance of the services. The current version of the A/E Guidelines is available on the Commission’s website: [A/E Guidelines](#).

CHAPTER XVI. Conflicts of Interest, Ethics, and Interested Parties

(A) CODE OF ETHICS.

A special responsibility is imposed on everyone who is entrusted with the disposition of state funds. All purchasing and contracting staff are required to perform with the highest integrity while constantly being asked to manage state contracts more effectively, secure better economic results, speed up the procurement process, and be innovative in accomplishing our mission. State officials and state employees are entrusted with the safety and welfare of the citizenry. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business.

The nature of state purchasing makes it critical that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing and contracting program requires a clear set of guidelines, rules, and responsibilities to govern the behavior of purchasing and contracting staff. Credibility and public confidence are vital throughout the purchasing and contracting system.

This section sets out the ethical standards of conduct required of TFC employees, vendors, potential vendors, and employees of other state agencies when acting under authority delegated from the Statewide Procurement Division ("SPD"). Every person employed by a public purchasing agency should abide by a code of ethics. In accordance with state law and SPD rule (Title 34, Part 1, Chapter 20, Subchapter C, Section 20.41 of the Texas Administrative Code) agencies, when purchasing under SPD-delegated authority, shall adhere to the following ethical standards:

- (1) A state employee may not:
 - (a) participate in any work on a contract knowing that the employee, or member of that employee's immediate family, has an actual or potential financial interest in the contract, including, but not limited to, prospective employment. The term "participate" includes, but is not limited to, decision making, approval, disapproval, recommendation, giving advice, investigation, or similar action;
 - (b) solicit or accept anything of value from an actual or potential vendor;
 - (c) be employed by, or agree to work for, a vendor or potential vendor; knowingly disclose confidential information for personal gain; or
 - (d) be employed at a pay classification of A17 or B9, Step 1 or higher if he or she is the spouse of an officer, manager, or paid consultant of a Texas trade association of businesses that contracts with the state. (*See your Human Resources representative for verification of the equivalent pay classification which became effective 09/01/97.*)
- (2) A former employee who had a pay classification of A17 or B9, Step 1 (*see above note*) or higher who ceases service or employment with a state agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter (a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge or other proceeding) in which the

former employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the employee's official responsibility (*see* Tex. Gov't Code § 572.054, Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense).

(3) 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 may not accept employment from that person or entity before the second (2nd) anniversary of the date the officer's or employee's service or employment with the state agency ceased.

(4) A vendor or potential vendor may not offer, give, or agree to give a state employee anything of value.

(5) When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions for disposition of the matter. If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

The ethics provisions of the Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, Section 111.20, apply to employees, vendors and potential vendors acting under delegated authority.

(B) CONFLICTS OF INTEREST.

Pursuant to Section 2152.064 of the Texas Government Code, a Commission member, employee or appointee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services, including professional or consulting services, by the Commission or another agency of the state in connection with the Commission's duties concerning: charge and control of state buildings, grounds, or property; maintenance or repair of state buildings, grounds, or property; construction of a state building; or purchase or lease of state buildings, grounds, or property by or for the state. In Title 1, Part 2, Chapter 45, Section 45.5 of the Texas Administrative Code, the Texas Ethics Commission has defined "employee" to mean a TFC employee who exercises discretion in connection with a contract, payment, claim, or other pecuniary transaction under Section 2152.064. In addition, "commission member," "appointee," and "employee" includes the spouse or dependent child of a commission member, appointee, or employee. In addition, Section 45.5 states that Section 2152.064 of the Texas Government Code does not apply to the ownership of stock the value of which does not exceed the lesser of \$25,000 or 5% in any one company, or ownership of shares in a publicly traded mutual fund or similar investment vehicle in which the person does not exercise any discretion regarding the investment of the assets of the fund or other investment vehicle.

This provision applies to all TFC employees. However, during the 84th Legislative Session, the Texas Legislature passed more stringent ethics requirements for state officials and certain state agency employees.

Effective September 1, 2015, pursuant to Section 2261.252 of the Texas Government Code, a state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom the following agency employees or officials have a financial interest:

- (1) a member of the Commission;
- (2) the Executive Director;
- (3) the General Counsel;
- (4) the Director of Procurement; and
- (5) the family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

“Financial interest” means owns or controls, directly or indirectly, an ownership interest of at least one percent (1%) in the person or entity, include the right to share in profits, proceeds or capital gains or could reasonably foresee that a contract with the person or entity could result in a financial benefit to the employee or official. A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage or an ownership interest of less than one percent (1%) in a corporation.

To ensure that TFC is complying with this provision, after a solicitation and prior to the award of a contract to the selected contractor, a procurement staff member will send an award concurrence email to the commission members and the staff listed above with the following notification:

Please respond to this email within 24 hours of receipt if you, or any family member within the 2nd degree by affinity or consanguinity to you, have a financial interest with this vendor. If you do not respond, it will be assumed that no financial interest exists. Financial interest means you, or your family member, owns or controls at least 1% of vendor of it could reasonable be foreseen that the award of the contract to this vendor will result in a financial benefit to any of these people, not including retirement plans, blind trusts or insurance coverage.

In addition, Section 2261.252 requires each state employee or official who is involved in procurement or in contract management for a state agency to disclose to the agency any potential conflict of interest specified by state law or the 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. To comply with this requirement, all TFC staff involved in procurement or contract management on behalf of the agency must sign the TFC Annual Non-Disclosure and Conflict of Interest Certification (*see* app. G) each year. One copy of the signed statement should be given to the employee with a copy to be placed in the employee’s personnel file. If any changes arise during the year which would require disclosure, it is the responsibility of the employee to notify his or her supervisor and the TFC General Counsel.

During all agency solicitation processes, the agency is very careful to comply with all state ethics requirements. In addition to ensuring that all state and Commission contracting and procurement requirements and processes are adhered to, safeguards are in place to ensure that ethics guidelines

are also followed. As stated above, all TFC staff involved in procurement or contract management are required to sign the TFC Annual Non-Disclosure and Conflict of Interest Certification. In addition, all TFC employees are required to complete an Outside Employment/Board Member Notification Form (*see* app. H) if they have any involvement with an entity outside of the Commission. This disclosure notifies the agency of any outside affiliation that is or could potentially create a future “conflict of interest.” This form is reviewed by senior management as well as the Legal Services Division to determine if a conflict exists. All employees that are involved in an outside solicitation process are required to sign a TFC Non-Disclosure Statement and Evaluation Team Brief (*see* app. I) certifying their involvement in the process is in accordance with all state laws, including all state and agency ethics requirements. Upon the selection of a contractor and prior to award, a member of the Procurement staff will send an award concurrence email to the Requesting Division as well as the members of the Commission, the Executive Director, General Counsel, Director of Procurement and Chief Financial Officer asking them to concur with the award and confirming that no one has a conflict of interest with the selected contractor. Finally, all agency solicitations and contracts contain all of the provisions required by the Texas Government Code that outside contractors must certify to prior to performing work for the State of Texas. Examples of these certifications include prior state employment and revolving door restrictions, child support and tax payment certifications, and a certification that respondent had no involvement with the preparation of the specifications or the solicitation.

(C) CERTIFICATE OF INTERESTED PARTIES.

Effective January 1, 2106, Texas Government Code Section 2252.908 and new rules promulgated by the Texas Ethics Commission pursuant to Section 2252.908 require a disclosure of interested parties by contractors with contracts that are required to be approved by the Commission in an open meeting. To comply with the law and new rules, contractors must file Form 1295 with the Texas Ethics Commission (“TEC”) and the Commission.

The filing process and Form 1295 are available on the TEC’s website at <https://www.ethics.state.tx.us/filinginfo/1295/index.php>. The signed Form 1295 and certification of filing must be filed with TFC at the time the business entity submits the signed contract to TFC. No later than thirty (30) days after TFC receives a disclosure of interested parties, TFC shall submit a copy to the Texas Ethics Commission.

Upon the selection of a contractor, a member of the of the Procurement staff will forward the relevant information on the *Disclosure of Interested Parties Form 1295* with a directive that it be completed immediately and returned to the Legal Services Division to review and send final notification to the TEC prior to the final execution of the contract, if possible.

CHAPTER XVII. Invoices

Commission contracts should clearly specify for agency vendors the acceptable form for invoices, including the minimum required information, submitted to the Commission for payment. Invoices shall be processed and paid in accordance with the Texas prompt payment law (“Prompt Payment Act”), Texas Government Code, Chapter 2251. Commission staff assigned to manage a contract is responsible for reviewing invoices submitted in conjunction with the goods or services provided by the vendor. Review of an invoice should include, at a minimum, a comparison of the invoice with the terms of the corresponding contract to ensure adequate information is provided, rates and charges are consistent with the parties’ agreement, and services and hours reflected are accurate. Program staff shall also follow all internal agency procedures established by the Fiscal Administration Division to assure payments are made in a timely and responsible manner.

Invoices may be placed in dispute in accordance with the Prompt Payment Act. Disputing an invoice, however, suspends but does not restart the thirty-day deadline for the Commission to pay an invoice. Accordingly, program area staff must be diligent to identify potential invoice disputes as quickly as possible following receipt of an invoice. In the event of the following:

- (1) a disagreement between the contracting parties arises concerning an invoice;
- (2) program area staff determine an invoice should be placed in dispute under the Prompt Payment Act; or
- (3) a vendor submits a claim pursuant to the Prompt Payment Act.

Commission staff should promptly notify and coordinate with the Legal Services, Procurement, and Fiscal Administration Divisions to ensure the agency’s interests are protected.

In instances concerning a breach of contract or where the contractual relationship has ended, the Commission may under, certain circumstances, place an administrative warrant hold on the vendor to offset damages incurred by the agency. In such instances, Commission staff should promptly notify and coordinate with the Legal Services, Procurement, and Fiscal Administration Divisions to ensure the agency’s interests are protected.

CHAPTER XVIII. Criminal Background Checks and E-Verify

It is the policy of the Texas Facilities Commission (“TFC”) that all contractor employees and subcontractors that will complete any work on-site at a state-owned property may be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by the contractor. Contractor employees and subcontractors who work in case-sensitive areas will be required to submit to a criminal history background check. If requested by TFC, a complete criminal background check shall be completed before any employee performs services at the site. Criminal background checks must be performed by the Texas Department of Public Safety (“DPS”) and must be on the form provided by TFC.

In addition, federal law requires companies to employ only individuals who may legally work in the United States; therefore, employers must verify and show proof that employees are authorized to work. In some cases, contractors will be required to verify the work status of its employees using the U.S. Department of Homeland Security’s E-Verify System (“E-Verify”) in accordance with the U.S. Department of Homeland Security’s procedures.

(A) CRIMINAL HISTORY CRITERIA.

Employers should use the following criminal history criteria when hiring employees to perform work for TFC. Any employee failing to meet the minimum standard will be denied. If special circumstances exist, please contact the TFC representative for clarification.

A conviction or deferred adjudication for one of the following offenses will result in the **permanent disqualification** of a person from eligibility to provide contractual services with TFC:

- (1) any act causing death as defined in Texas Penal Code, and
- (2) any felony or misdemeanor involving arson, burglary, breach of computer security, credit card abuse, counterfeiting, forgery, kidnapping, robbery, stalking, terroristic threat, theft, and any sexual offense designated as a felony in Texas Penal Code.

Additionally, anyone who has a current duty to register as a sex offender, is under indictment, or is a fugitive from justice is disqualified.

For individuals who have a conviction or deferred adjudication for felonies not enumerated above, ten (10) years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with TFC.

For individuals who have a misdemeanor conviction or deferred adjudication for misdemeanors not enumerated above, five (5) years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with TFC.

(B) CRIMINAL BACKGROUND PROCESS.

DPS has entered into an exclusive contract with IdentoGO Centers, formerly L-1 Enrollment Services, operated by MorphoTrust USA. IdentoGO by MorphoTrust is the exclusive live scan fingerprinting provider for DPS. All TFC contractors that are subject to TFC criminal background check requirements must create an account with IdentoGo. Thereafter, all contractor employees

and subcontractors must follow the registration procedures provided by TFC including using the Texas Facilities Commission In State Application (“F.A.S.T. Pass”). In addition, the only F.A.S.T. Pass accepted by DPS for a TFC criminal background check is the form attached hereto, therefore, if an individual does not use the form in Appendix E, he or she may be required to repeat the process at the expense of the contractor.

All instructions can be found on the Identogo website at <http://www.identogo.com> and clicking on the State of Texas. Links on that page include one for online scheduling and a list for the state-wide fingerprinting locations. In addition, all applications and forms are outlined in the *Texas Facilities Commission Criminal Background Checks and Applications Guidelines* (see app. J).

(C) CRIMINAL HISTORY ERROR RESOLUTION.

The Error Resolution Unit (“ER”) is responsible for updating and evaluating possible errors in criminal history records. Potential errors are reported to ER by law enforcement, judicial agencies, as well as private citizens.

If an applicant needs to request that a criminal history record be updated or corrected, the applicant will need to supply certified documents to the ER. Required forms and additional information to assist your applicant in retrieving the proper documentation to submit their requests to the ER can be found at:

http://www.txdps.state.tx.us/administration/crime_records/pages/errorresolution.htm.

(D) WORK VERIFICATION.

TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by its contractors and subcontractors. A contractor shall not place any employee of the contractor at a worksite, nor shall the contractor permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, TFC without first ensuring said employee’s authorization to lawfully work in the United States.

Employees of contractors working for TFC must be U.S. citizens or foreign citizens who have the necessary authorization to work in the United States. Employers may be required to use E-Verify to check the status of employees. The use of E-Verify is at no cost to the contractor.

Contractors may be required to provide TFC with a color photocopy of a valid state driver’s license or photo identification, a color photocopy of the employee’s Social Security Card or resident alien work visa/identification card, and verification of the employee’s residency status through E-Verify.

CHAPTER XIX. Prevailing Wage Rate Determinations

Chapter 2258 of the Texas Government Code governs prevailing wage rates on contracts for construction of public works. Tex. Gov't Code § 2258.002(a). Chapter 2258 does not apply to work performed directly by a public utility company. *Id.* § 2258.002(b). Subchapter B addresses payment of prevailing wage rates, including workers' rights, determinations of prevailing wage rates depending on the geographic location of the work site, payment of prevailing wage rates by subcontractors, and recordkeeping. Specific requirements exist for determining prevailing wage rates for a public work project located in border counties, which is defined as any county bordering the United Mexican States or any county adjacent to a county bordering the United Mexican States. *Id.* § 2258.022(b). Border counties include Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, Kinney, La Salle, Maverick, Pecos, Presidio, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zavala, and Zapata Counties. Any solicitation related to a contract for construction of a public work project and the contract itself must include the appropriate wage rate determination for the project. The bidder to whom the contract is awarded and all of its subcontractors are required to pay wages of at least the rates contained within the wage rate determination for the project.

Subchapter C provides for enforcement and civil and criminal penalties. Upon receipt of a complaint or information alleging prevailing wage rates have not been properly paid on a project for which TFC has executed a contract, TFC is required to make an initial determination "as to whether good cause exists to believe that the violation occurred." *Id.* § 2258.052(a). TFC must issue its initial determination before the 31st day following receipt of the complaint/information of a wage rate violation. *Id.* § 2258.052(b). If the 31st day falls on a Saturday, Sunday, or Monday, the initial determination should be issued the preceding Friday. FDC conducts its investigation by requesting and reviewing payroll information, wage forms, and any other related information it deems necessary to reach a final decision as to its ruling in the initial determination.

TFC administrative rules related to prevailing wage rates are located in Title 1, Part 5, Chapter 123, Subchapter D of the Texas Administrative Code. The rules address TFC determinations of prevailing wage rates through certain wage rate surveys and withholding of penalties by TFC. The process for handling a prevailing wage rate complaint is outlined below.

(A) PREVAILING WAGE COMPLAINT CHECKLIST.

Upon immediate receipt by the agency of an allegation or information that a contractor or subcontractor is not paying its workers the correct pay, such information should be forwarded to the Legal Services Division. Upon receipt by the Legal Services Division, the General Counsel will assign the matter to an attorney. The Legal Services Division attorney handling the matter shall do the following.

- (1) Confirm receipt of the information or complaint with complainant and request the mailing address, if not provided, of workers who are the subject of the complaint.
- (2) In the event the complaint is made by a third party, request that the third party provide written documentation signed by the affected worker that the worker has authorized the complaint to be made on his or her behalf.

- (3) Create a file for the matter.
- (4) Request that FDC confirm that the project in question is one for which TFC is responsible and has executed a contract.
- (5) Identify the project manager assigned to the project in question.
- (6) Send an email to the project manager, direct supervisor, and the Deputy Executive Director including the deadline for TFC to issue its initial determination and the three (3) day advance deadline for FDC to provide the Legal Services Division with a draft determination for review and comment. If FDC has not responded within a few days after the complaint is forwarded, the attorney will follow up with a phone call/email to the project manager and/or supervisor given the short deadline.
- (7) Request FDC to provide the Legal Services Division with a copy of its request for information sent to the general contractor for Legal Services Division's files.
- (8) Send a reminder email to FDC one (1) week prior to the deadline to issue the initial determination.
- (9) Receive and review the initial determination and, if FDC requests, discuss any issues specific to the complaint.
- (10) Direct any comments to FDC or approve the initial determination.
- (11) Confirm that the initial determination is sent to the contractor, subcontractor, complainant, and any affected workers by the deadline in a manner that provides for confirmation of receipt.

CHAPTER XX. Bonds and Insurnace

(A) BONDS.

Chapter 2253 of the Texas Government Code governs performance and payment bonds in public works projects. Section 2253.001(4) defines a “public work contract” to mean “a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.” Section 2253.002 expressly exempts from the requirements of this chapter the following public works contracts: those associated with actions relating to (1) cleanup of certain hazardous waste facilities, Health & Safety Code Ch. 361, Subch. F; (2) enforcement of orders under the Solid Waste Disposal Act, Health & Safety Code Ch. 361, Subch. I; and (3) underground and aboveground storage tanks, Water Code Ch. 26, Subch. I.

Section 2253.021(a) mandates that a governmental entity, including a state agency, that enters into a public works contract with a prime contractor must require execution of a performance bond when the contract exceeds \$100,000.00 and of a payment bond when the contract exceeds \$25,000.00. This requirement must be satisfied prior to commencement of work under the contract. Subsections (b) and (c) of Section 2253.021 expressly delineate the purpose and terms of performance and payment bonds, respectively. Performance bonds are exclusively for the protection of the state agency that awards the public work contract and are conditioned upon good-faith performance of the work according to project plans, specifications, and contract documents. In contrast, payment bonds protect and may be used by entities that have a “direct contractual relationship with the prime contractor or a subcontractor” to supply labor or material for a public works project. Tex. Gov’t Code § 2253.021(c)(1). Both types of bonds must be written to provide coverage for the full amount of the contract. *Id.* § 2253.021(b)(2), (c)(2).

In addition, Section 2253.021 requires bonds to be executed by a corporate surety in accordance with Chapter 3503, Subchapter A of the Texas Insurance Code, made payable to the State, and written on a form that the Attorney General has approved ([see current forms on Commission’s website](#)). *Id.* § 2253.021(d),¹ (e). Section 2253.021 also specifies the contents that must be displayed on the face of the bond or in an attachment, such as: “(1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.” *Id.* § 2253.021(f) (footnote omitted). Finally, Section 2253.021(g) prohibits a governmental entity from requiring that a contractor obtain the required surety bond from a particular insurance or surety company, agent, or broker.

Moreover, Section 2253.022 extends these bond requirements to an insurance company that is fulfilling its obligation by arranging for loss replacement, rather than by a cash payment directly to the governmental entity; these requirements, however, do not extend to a surety company who is complying with an obligation under a bond that had been issued for the benefit of the

¹ Article 7.19–1, Vernon’s Texas Insurance Code was repealed in 2005 and codified as Subchapter A of Chapter 3503, Texas Insurance Code. Acts 2005, 79th Leg., ch. 727, §§ 3 (adding ch. 3503), 18(a)(5) (repealer), 2005 Tex. Gen. Laws 1752, 2156–57, 2187.

governmental entity. In the event a state agency does not obtain a payment bond as required by the chapter, the agency essentially takes on the liability of a surety. Section 2253.027(a)(1) expressly provides that the state agency assumes the same liability that a surety would have if the payment bond had been issued and presented to the entity. Also, Section 2253.027(a)(2) permits a payment bond beneficiary to assert a lien on money due to the prime contractor in the same manner and to the same extent as liens asserted under Chapter 53 of the Texas Property Code governing mechanic's, contractor's, or materialman's lien.

Chapter 2253 also addresses a contract party's right to bond information and creates a corresponding obligation on the governmental entity to furnish such information. *Id.* § 2253.026. Subchapter C establishes various notice requirements among the contracting parties, and Subchapter D provides for claims against the required performance and payment bonds. In particular, Section 2253.071 authorizes withholding final payment to a contractor until final completion if the contractor abandons the contract or the contractor's default results in termination of the contract. According to Section 2253.072, the State has no liability for costs or expenses of litigation arising from a payment bond. Section 2253.073 permits suits on payment bonds by a beneficiary seeking the unpaid balance due; and Sections 2253.073 and 2253.074 provide a basis for the recovery of attorney's fees. Subchapter D further addresses assignment of claims against a payment bond, restricts the maximum recovery to the amount of the subcontract, and establishes venue as any county in which work was located. Section 2253.078 imposes a 1-year statute of limitations for suits on a payment bond from the date notice for a claim is mailed in accordance with Chapter 2253, and a 1-year statute of limitations for suits on a performance bond from the date of final completion, abandonment, or termination of the public work contract. Finally, Section 2253.079 makes it a criminal offense to file a false and fraudulent claim against a bond required under Chapter 2253.

(B) INSURANCE.

Contractors shall carry insurance in the types and amounts set forth by TFC in the contract or procurement document. No contractor shall commence work for TFC until it has obtained the required insurance and until such insurance has been reviewed by TFC.

Insurance shall be evidenced by delivery, to TFC, of certificates of insurance (*see* app. K) executed by the insurer or its authorized agent stating coverages, limits, expiration dates, and compliance with all applicable required provisions. Upon request, TFC shall be entitled to receive, without expense, copies of the policies and all endorsements.

Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

Contractor shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of the contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

Contractors shall maintain coverage for the time period set forth in the contract. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to a project. Contractor shall, on at least an annual basis, upon any policy expiration/renewal, or any substantive change, provide TFC with an insurance certificate as evidence of such insurance

coverage. Insurance is the responsibility of the Requesting Division. Upon receipt by the mailroom or a Requesting Division of each updated certificate provided by a contractor, the certificate shall be forwarded to the TFC Insurance Analyst for review and then to the Legal Services Division to be included in the official contract file. No contract, assignment, amendment, etc. will be executed without an updated certificate of insurance in the official contract file.

TFC shall be included as an additional insured, where applicable. It is intended that policies required in a contract, covering both TFC and a contractor, shall be considered primary coverage as applicable. A contractor shall not cause any insurance required under a contract to cancel nor permit any insurance to lapse during the term of a contract. Finally, a waiver of subrogation in favor of TFC shall be provided in all policies.

(C) INSURANCE ANALYST BOND REVIEW PROCEDURES.

All bond packages must be routed to the TFC Insurance Analyst for review and approval prior to the commencement of work. Upon immediate receipt of a bond package by the agency, such bond package should be forwarded to the TFC Insurance Analyst for review and approval.

Upon receipt, the TFC Insurance Analyst will verify the total contract amount and the effective date of the contract with the associated TFC Project Manager or TFC Contract Administrator to ensure that the bond is for the same amount and date. Any discrepancies in the value or date of a bond will require a revision. A minor discrepancy in the bond value, however, may be reviewed and approved by the Deputy Executive Director of the Requesting Division by email to the General Counsel.

In addition, the TFC Insurance Analyst will review the bond documents and verify the following:

- (1) the upper left corner is completed to show the proper county;
- (2) the principal and insurance fields are completed;
- (3) the contract amount is completed;
- (4) the course of work, project number, etc. are completed;
- (5) the bond is dated and signed by the principal and surety;
- (6) the bond has the embossed seal (per carrier indicated);
- (7) the bond has a power of attorney that is not expired and has the embossed seal (per carrier indicated); and
- (8) the bond has the claim notice (per carrier indicated).

Once reviewed and verified by the TFC Insurance Analyst, a copy of the approved bond package will be forwarded to the Legal Services Division, either in hard copy or by email for the original contract file, and the original bond package, due diligence paperwork, and any correspondence will be maintained in a file created by the TFC Insurance Analyst.

(D) INSURANCE ANALYST INSURANCE REVIEW PROCEDURES.

All certificates of insurance (“COI”) for agency contracts must be routed to the TFC Insurance Analyst for review and approval prior to execution of a contract (*see app. K* for sample COI). Upon immediate receipt of a COI by the agency, such COI should be forwarded to the TFC Insurance Analyst. If a COI is received by the Procurement Division at any point in the associated solicitation process, the COI should be forwarded to the TFC Insurance Analyst with a copy of the associated contract insurance provisions. Upon receipt by the TFC Insurance Analyst for review, the following procedures will be followed:

(1) The TFC Insurance Analyst will review all COIs to verify that all information is complete and in accordance with the requirements set forth in the contract. In addition, the TFC Insurance Analyst will pull and review policies, as necessary, to ensure compliance.

(a) A “COI Checklist” is completed for each certificate reviewed (*see app. L*).

(b) Additional due diligence is completed to verify “active State of Texas” and A.M. Best ratings.

(c) All discrepancies are sent to the vendor contact or broker for corrections, revisions, and/or updates.

(d) Any requests that vary from the contract terms are sent to the General Counsel and the Deputy Executive Director of the Requesting Division for recommendations and/or approval.

(e) Any review of policies will be documented on the COI Checklist to be forwarded with the completed COI or by an email sent to the Legal Services Division for the official contract file.

(2) After review and approval of a COI, the TFC Insurance Analyst will sign off on the TFC Contract Request Form and forward the form to the Legal Services Division. A copy of the COI, the COI Checklist, and any other relevant information pertaining to insurance will be included with the TFC Contract Request Form sent to the Legal Services Division.

(3) Upon receipt by the agency of a renewal COI, such COI shall be immediately forwarded to the TFC Insurance Analyst for review and approval. Upon approval, the TFC Insurance Analyst will forward a copy of the renewal COI and the COI checklist to the Legal Services Division for the original contract file. In addition, the TFC Insurance Analyst will update the insurance information in the TFC Contract Database and upload a copy of the renewal COI to G:\Contracts. The TFC Insurance Specialist will email a copy of a renewal COI to the Project Manager and/or Requesting Division contact.

(4) All copies of policies, and attestation letters and other correspondence, if required, will be maintained by the TFC Insurance Analyst.

CHAPTER XXI. HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENTS

A historically underutilized business (“HUB”) is a for-profit entity that has not exceeded the size standards prescribed by Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D Section 20.294, and has its principal place of business in Texas, and is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran (with at least 20% disability rating), who reside in Texas and actively participate in the control, operations and management of the entity's affairs.

Agencies are required to make a good faith effort to utilize HUBs for state contracts in accordance with the goals specified in the State of Texas Disparity Study. These goals can be achieved through contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with Texas Government Code, Chapter 2161, Subchapter F and Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 1.

In accordance with Texas Government Code Section 2161.252 and Texas Administrative Code Section 20.285, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

If subcontracting opportunities are probable, each state agency's invitation for bids or other purchase solicitation documents for construction, professional services, other services, and commodities with an expected value of \$100,000 or more shall state that probability and require a HUB Subcontracting Plan (“HSP”).

For all contracts over \$100,000 in which a state agency has determined that subcontracting opportunities are probable, a HSP must be completed and returned with the bid or proposal, at the appropriate time, or the proposal may be considered non-responsive.

If at any time during the term of a contract there is a change in the use of subcontractors by a contractor, a new/updated HSP is required. In addition, if a HSP is required under a contract, a HSP Progress Assessment Report (“PAR”) must be submitted monthly with each invoice providing TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations under the contract. It is the responsibility of the contract administrator or project manager to ensure that the applicable forms are submitted and forwarded to the Director of HUB through the appropriate process to be reviewed and approved.

All HSPs and PARs are maintained by the Director of HUB and not in the official contract file. In addition, only the forms to be used are exhibits to a contract, not completed HSPs and PARs.

APPENDIX A. TFC Formal Procurement and Vendor Selection / Award Process for Goods, Services, Professional Services, and Consulting Services

The TFC Procurement Division is responsible for the oversight and integrity of the procurement process from specification development through award. Professional and Consulting Contracts are solicited in accordance with TGC2254; Construction contracts are solicited in accordance with TGC2166 and TGC2267; other goods and services are solicited in accordance with TGC2155, 2156, 2157, and/or any other applicable statute the goods/services dictate. Following is a brief outline of the process:

1.0 Specification Development

- 1.1 Solicitations are developed using standard IFB, RFP, or RFQ templates provided by the TFC Procurement Division.

These templates are located on the TFC Portal: <https://portal.tfc.texas.gov>; Under Forms and Documents on the right, choose 'Procurement' and the 'Documents'; the templates are listed under the heading 'Solicitation Templates'.

- 1.2 For formal (>\$25K) procurements, a risk and needs assessment should be completed prior to developing a scope of work.
- 1.3 The risk and needs assessment, the scope of work, and any other technical aspects of the specifications are provided by the using Program, and are developed and incorporated into the solicitation templates with the assistance of the Procurement Division.
- 1.4 Procurements >\$100K require a HUB Subcontracting Plan to be incorporated into the solicitation. The procurement program will work with the using program and the TFC Historically Underutilized Business (HUB) Coordinator to define possible subcontracting opportunities that will be listed in the solicitation.
- 1.5 Formal procurements may have a contract developed by Legal Services incorporated into the solicitation that also contain elements of the technical aspects and scope of work. The using program, the procurement program, and Legal Services work together to develop the contract.

- 1.6 The procurement program incorporates all required elements into the solicitation.

2.0 ‘Invitation for Bid’ Best Value Criteria

- 2.1 ‘Invitation for Bid’ (IFB) best value criteria is first meeting the specification, and second price, as bids are typically based upon exact specifications that leave little or no room for interpretation in order to insure uniformity of conformance to specifications. IFB’s are primarily used to procure goods. IFB’s shall be administered in accordance with TGC 2155.063, 2269.101, and any other applicable TGC as the goods and/or services dictate.

IFB’s should always contain defined minimum qualifications that the responding bidder must meet in order for the bidder to be considered ‘responsive’.

3.0 ‘Request For Proposal’ Best Value Criteria

- 3.1 ‘Request for Proposal’ (RFP) best value criteria include price as well as other relevant criteria. The specified evaluation criteria shall be posted in the solicitation document, per TGC2155.075. RFP’s are used to procure complex services, or a combination of goods and services. The evaluation criteria approach brings further value to the solicitation process when specifications are not fully developed or completely defined, and promotes a team approach to create a final specification. RFP’s combine the weighted elements of pricing and qualifications to determine which vendor brings the best value to the State, and are scored using a one hundred **100** point scale as detailed below. RFP’s are administered in accordance with TGC 2156.121, 2269 Subchapter D, and any other applicable TGC as the goods and/or services dictate.

3.1.1 Pricing (quantitative) component.

3.1.1.1 Typically, sixty (60) points is assigned for pricing on RFP’s

3.1.1.2 The pricing is scored by the Procurement Division, and tabulates the pricing scores independently from the other Evaluation Team members and evaluation criteria. Pricing is not to be divulged to the other Evaluation Team members until the initial evaluation is complete.

3.1.1.3 The pricing component is scored on a percentage basis in relation to lowest submitted pricing from qualified vendors. An example of this scoring method is listed below:

Vendor with lowest submitted pricing	60 pts awarded
Vendor with 10% higher pricing	54.5 pts awarded
Vendor with 50% higher pricing	40 pts awarded
Vendor with 100% higher pricing	30 pts awarded

3.1.1.4 The pricing component is scored on Excel utilizing a formula to minimize errors and ensure accuracy.

3.1.1.5 The Excel formula used to calculate the pricing tabulation is listed below:

$$=(\text{Lowest Price}/\text{Vendor Price}) * 60 \text{ Points}$$

The 60 would be replaced with the stated point value

3.1.2 Subjective (qualitative) component

The evaluation criteria noted below are standard; deviations are allowed within the subjective criteria as the specific solicitation requirements dictate. Below are the recommended criteria.

3.1.2.1 Forty (40) points are assigned to Company Qualifications. Typically, vendor's qualifications scores should total a minimum of twenty (20) points to qualify for award.

3.1.2.2 The Procurement Division may facilitate/proctor the evaluation team members during this phase of the evaluation. This is to insure impartiality and minimize opinionated discussion during the evaluation that could influence the scores of the evaluation team members.

3.1.2.3 The forty (40) point Company Qualifications evaluation component is made up of the following criteria (except Leases):

3.1.2.3.1 Company Information <0 pts>

Company description

Ownership information

Physical and Mailing address

Other company locations/offices

Primary contact

Telephone & Fax number of primary contact

Email address of primary contact

3.1.2.3.2 Relevant Experience & Qualifications <20 pts>

Contractor Relevant Experience:

- A. Complete and submit the Contractor's Qualifications Form.
- B. Names of top management and key employees and each person's duties.
Include the background and experience of these key employees
Provide an Organizational Chart with roles and responsibilities of key individuals assigned to support the project.
- C. **Demonstrate that the respondent has successfully been in business, or the principals shall have had ownership/executive management in a previous company with comparable type experience, for the services solicited in the RFP.**

- D. Demonstrate Company's or Individual's relevant experience to the type of work solicited in the RFP.**
- E. Any other**

Contractor Minimum Qualifications:

- A. Out of State contractors doing business in Texas shall have a Certificate of Authority to do business in Texas. A copy of the certificate shall be submitted with the proposal.**

3.1.2.3.3 Methodology

<15 pts>

A. Proposed methodology:

A detailed plan outlining the methodology intended to be employed by the respondent that demonstrates the processes of implementation regarding the requirements of the RFP Scope of Work into a realized and finished project. This shall include, but not be limited to 1) processes and techniques used to understand the Statement of Work, 2) problem solving, 3) value engineering, 4) maintaining budgets, 5) maintaining schedules, 6) staff sizing and roles, 7) company workload in proportion to the project outlined in the Statement of Work, and 8) coordination of work with subcontractor's and/or consultants.

B. Budget/Schedule Compliance:

Budget and Schedule compliance should be demonstrated using the Exhibit C, Contractor's Qualification Form:

For the 5 most recent projects, contractor shall demonstrate experience in meeting completion date schedules by providing the original project duration and final project duration on their last five projects. Provide appropriate explanation on the causation when a variance of 5% is experienced.

For the same 5 projects as above, contractor shall demonstrate experience in maintaining project budgets by providing the awarded project budget and the final project budget. For construction, variances of 4% for new construction and 6% for renovation projects shall be explained for the causation in exceeding these percentages.

3.1.2.3.4 Quality Assurance / Quality Control / Safety <5 pts>

The respondent shall provide the name and job title of the person in the organization who oversees the quality assurance program. The respondent shall also provide a description of the firm's quality assurance program. TFC reserves the right to require a copy of the Quality Control Manual and Quality Assurance Processes, which, if contracted, will become a contract document.

Vendor shall describe its quality assurance program, quality requirements and means of measurement. Provide process flow charts on how quality is maintained and achieved.

The respondent shall describe the firm's policy regarding establishing quality control processes similar to ISO 9000 and other in-place controls for adherence to budget, quality, safety and schedule.

Contractors Safety Record: Provide the companies workers' compensation experience modification rate - EMR - for the last five years as part of the submittal. This shall be submitted by your insurance carrier on their letterhead. Also, indicate the name and job title of the person in your organization who manages your safety program. Provide a description of your firm's safety program. TFC reserves the right to require a copy of your safety manual, which after award will become a Contract Document, if your firm's proposal is scored within the highest range of proposals.

3.1.2.3.5 References

<P/F>

Respondents shall identify current, completed and other projects or consulting assignments on the Exhibit C Contractor's Qualification Form. At least two (2) relevant projects shall be identified with references and contact information. Respondent shall also provide the reference and contact information for the five (5) most recent projects included in the Contractor's Qualification Form.

Actual references are verified only for the interviewed vendors.

Negative responses from Owners or A/E firms which are familiar with contractor's performance, depending on problems encountered, may be grounds for disqualification.

3.1.2.3.6 Litigation

<P/F>

On a separate sheet, provide details of all pending litigation. List all litigation that your company has been involved in within the last three (3) years. Contractors involved in litigation with Owners or Architect/Engineer firms may be disqualified.

3.1.2.3.7 Financial Report

<P/F>

On a separate sheet, demonstrate proof of sound financial condition. Include your latest annual and quarterly report.

4.0 ‘Request for Qualifications’ (RFQ) Best Value Criteria

4.1 ‘Request for Qualifications’ (RFQ) best value criteria excludes price, as the responding vendors are scored and recommended for award based upon demonstrated qualifications. There is a total possible score of **100** points.

4.2 RFQ’s are used to procure:

4.2.1 professional services, as defined by TGC2254: SELECTION OF PROVIDER; FEES. (a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award: (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price. (b) The professional fees under the contract: (1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and (2) may not exceed any maximum provided by law.

4.2.2 Construction Manager-At-Risk 2-Step Process, as defined by TGC 2269.253: SELECTION PROCESS. (e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

4.1.1 Company Information <0 pts>

Company description

Ownership information

Physical and Mailing address

Other company locations/offices

Primary contact

Telephone & Fax number of primary contact

Email address of primary contact

4.1.2 Relevant Experience & Qualifications <45 pts>

Contractor Relevant Experience:

- A. Complete and submit the Exhibit C, A/E Request for Qualifications Form. The form can be obtained electronically at the TFC website:

<http://www.tfc.state.tx.us/communities/facilities/prog/construct/formsindex>

Document no. 20, Index of Forms.

Include personnel proposed to be assigned to key positions on the project staff, identify by job title, and list duties and responsibilities.

Names of top management and key employees and each person's duties. Include the background and experience of these key employees

Provide an Organizational Chart with roles and responsibilities of key individuals assigned to support the project.

Contractor Minimum Qualifications:

- B. Out of State contractors doing business in Texas shall have a Certificate of Authority to do business in Texas. A copy of the certificate shall be submitted with the proposal.**
- C. Demonstrate that the respondent has successfully been in business, or the principals shall have had ownership/executive management in a previous company with comparable type experience, for the services solicited in the RFQ.**
- D. Demonstrate company's or individual's relevant experience to the type of work solicited in the RFQ.**

4.1.3 Methodology

<45 pts>

A. Proposed methodology:

A detailed plan outlining the methodology intended to be employed by the respondent that demonstrates the process of implementation regarding the

requirements of the RFQ Scope of Work into a realized and finished project.

B. Budget/Schedule Compliance:

Budget and Schedule compliance should be demonstrated using the Contractor's Qualification Form:

For the 5 most recent projects, respondent shall demonstrate experience in meeting completion date schedules by providing the original construction duration and final construction duration on their last five projects. Provide appropriate explanation on the causation when a variance of 5% is experienced.

For the same 5 projects as above, respondent shall demonstrate experience in maintaining construction budgets by providing the awarded budget and the final completion budget. Variances of 4% for new construction and 6% for renovation projects shall be explained for the causation in exceeding these percentages.

4.1.4 Quality Assurance / Quality Control / Safety <10 pts>

Provide the name and job title of the person in your organization who oversees your quality assurance program. Provide a description of your firm's quality assurance program. TFC reserves the right to require a copy of your Quality Control Manual and Quality Assurance Processes, which, if contracted, will become a contract document.

Vendor shall describe its quality assurance

program, quality requirements and means of measurement. Provide process flow charts on how quality is maintained and achieved.

The respondent shall describe the firm's policy regarding establishing quality control processes similar to ISO 9000 and other in-place controls for adherence to budget, quality, safety and schedule.

Contractors Safety Record: Provide the companies workers' compensation experience modification rate - EMR - for the last five years as part of the submittal. This shall be submitted by your insurance carrier on their letterhead. Also, indicate the name and job title of the person in your organization who manages your safety program. Provide a description of your firm's safety program. TFC reserves the right to require a copy of your safety manual, which after award will become a Contract Document, if your firm's proposal is scored within the highest range of proposals.

4.1.5 References

<P/F>

Respondents shall identify current, completed and other projects or consulting assignments on the Exhibit C, Request for Qualifications Form. At least two (2) relevant projects shall be identified with references and contact information. Respondent shall also provide the reference and contact information for the five (5) most recent projects included in the Exhibit C, Request for Qualification Form.

Actual references are verified only for the recommended vendor.

Negative responses from Owners and other firms which are familiar with respondent's performance, depending on problems encountered, may be grounds for disqualification.

4.1.6.1 Litigation

<P/F>

Provide details of all pending litigation. List all litigation that your company has been involved in within the last three (3) years. Respondents involved in litigation with owners or Architect/Engineer firms may be disqualified.

5.0 Solicitation and Award Recommendation Process

- 5.1 After specification and contract development and an approved TFC requisition authorizing the funds for the project are completed, the Procurement Division posts the solicitation to the Electronic State Business Daily (ESBD) according to TGC2155.083 (minimum posting times apply). RFP's for lease space require an additional posting in the Texas Register and advertisement of the solicitation notice in at least one newspaper local to the services being performed.
- 5.2 Pre-bid or Pre-proposal conferences are held (if mandatory, a minimum of two (2) conferences are held in order to promote competition).
- 5.3 Questions and clarifications submitted by vendors are addressed in an equal and public forum by posting addenda to the solicitation on the ESBD.
- 5.4 Submittals are received by TFC by the required due date. The bid or proposal opening is considered a public meeting.
- 5.5 With the oversight of TFC Executive Management, the end user, with the assistance of the Purchaser, defines an Evaluation Team. The Evaluation team is determined by assigning the appropriate staff expertise and the best qualified individuals for the project solicited. The Evaluation Team may contain individuals that are under contract with TFC.

- 5.6 The Procurement Division qualifies the responses in order to determine which are 'responsive', meaning the required documents are submitted and signed.
 - 5.6A For solicitations where an HUB Subcontracting Plan (HSP) is required, the HSP shall be removed from the responses and forwarded to the HUB Program for review and approval.
- 5.7 For RFP's, the Procurement Division removes the pricing from the responses and scores the pricing independently from the other Evaluation Team members and evaluation criteria.
- 5.8 The Procurement Division prepares the Evaluation Team Brief, Nondisclosure Statements, and Evaluation Scoring Matrix for the Evaluation Team.
- 5.9 The Procurement Division collates the responses, facilitates an in-service training brief to the Evaluation Team regarding the evaluation protocols, and may proctor/facilitate the Evaluation Team during the qualitative criteria evaluation phase.
- 5.10 The TFC Purchaser will request the TFC Procurement Director or alternate TFC Purchaser review the tabulation spreadsheet to confirm that the original TFC Purchaser's formulas and data entry are correct, and that the qualitative evaluation scores are within an acceptable range of subjectivity.
- 5.11 The Procurement Division verifies the evaluation team scores and produces an initial tabulation from a combination of the pricing (quantitative) and the subjective (qualitative) scores.
 - 5.11.1 Representative(s) from a client agency may review the responses and the initial tabulation, separately from the TFC evaluation team and after the initial tabulation is produced, at the Texas Facilities Commission office located at 1711 San Jacinto Blvd.
 - 5.11.2 Representative(s) from a client agency may participate in Oral Presentations and/or Interviews of qualified respondents, as an observer and not as an active scoring participant.

5.11.3 Representative(s) from a client agency may review the final tabulation, separately from the TFC evaluation team and after the interviews are completed and the final tabulation is produced.

5.12 The Procurement Division meets with the end user/Project Manager to determine the next step:

Options: *NOTE: the following are options, and the course of action determined by the solicitation specifics, and the amount and quality of competition.*

5.12.1 One response: optional interview, direct negotiation and Best and Final Offer (BAFO) with the respondent.

5.12.2 Multiple responses: ask all respondents for revised pricing through a request for a Best and Final Offer (BAFO) prior to interview. This may produce a revised score of the pricing (quantitative) evaluation criteria component.

5.12.3 Multiple responses: once the initial evaluation is complete, interviews and/or oral presentations with the acceptable proposals/top scoring respondents. This will produce a revised/final score of the subjective (qualitative) evaluation criteria component.

5.12.4 Multiple responses: Purchases not made under TGC2269: Negotiation, Value Engineering discussions, and a Best and Final Offer (BAFO) is requested from the vendors participating in the interview process. This may produce a new score of the pricing (quantitative) evaluation criteria component.

5.12.5 Multiple responses: Purchases made under TGC2269: Negotiation, and Value Engineering discussions, may be requested from the top scoring vendor participating in the interview process. If an agreement cannot be reached with the top scoring respondent, then that vendor is formally excused from the negotiation process and discussions are then held with the next highest scoring respondent until a mutually acceptable agreement can be reached.

5.12.6 One response: Purchases made under TGC2254: no interview, and direct negotiation with the respondent to determine reasonable and customary fees.

5.12.8 Multiple responses: Purchases made under TGC2254: negotiate with the top scoring respondent to determine reasonable fees. If TFC and the top ranked vendor cannot arrive at a mutually agreed upon reasonable and customary fee schedule, the top ranked vendor is excused and discussions continue with the next highest scoring respondent until an agreement can be reached.

5.13 The Procurement Division produces a final tabulation and ranking, based upon the re-scored tabulations from the interview and/or BAFO. This tabulation is then verified per Step 5.10.

5.14 The TFC Insurance Coordinator verifies insurance and bonds (if required).

5.15 The Using Program verifies references for the vendor recommended for award.

5.16 The Procurement Division recommends award through an email concurrence process. The following individuals must approve the award concurrence:

5.16.1 **Procurement Director, with all TFC Commissioners listed on the email for information purposes. This is so that a conflict of interest can be identified as soon as possible. Should a conflict be identified, the TFC Commissioner(s) shall notify the Procurement Director within twenty four hours after receiving the award concurrence email.**

5.16.2 End user/Project Manager

5.16.3 End user Program Manager/Director

5.16.4 End user Program DED

5.16.5 Procurement Officer (Chief Financial Officer)

5.16.6 General Counsel

5.16.7 Executive Director (non-Commission required approvals)

5.17 The Using Program authors the Commission Agenda Action Item Memo for procurements in the following amounts:

5.18.1: FDC/Major Construction: > or = \$1M

5.18.2: FDC/Professional services: > or = \$500K

5.18.3: FMO maintenance services > or = \$500K

5.18 The Commission Agenda Action Item Memo is reviewed and approved by TFC Executive Management and TFC General Counsel.

5.19 The award recommendation is placed on Commission agenda.

5.20 Commission approves award recommendation.

5.21 The Procurement Division sends the following to the using program so that a contract request form can be prepared and routed for contract execution by TFC Legal Services:

5.21.1 Awarded vendor's VID, company/firm name, point of contact, telephone, fax, email, contract amount, term, and Vendor Performance Report form.

5.21.2 Solicitation and all attachments, including addenda, the developed contract, compensation and fees, BAFO's/negotiated amounts, etc.

5.21.3 Awarded vendor's submittal in response to the solicitation

5.21.4 Awarded vendor's approved HUB Subcontracting Plan (HSP)

5.22 In accordance with the TFC Contract Routing Procedure, the vendor contract is executed.

5.23 Pre-services meeting is held with the awarded vendor.

5.23.1 TFC HUB Administrator is included in the pre-construction meeting to review the currently filed Exhibit A, HUB Subcontracting Plan, to review the required Progress Assessment Report submittal process, and/or to review any future phased subcontracting plans to discuss outreach and required Good Faith Effort.

5.24 Notice-To-Proceed is issued to vendor.

5.25 Vendor begins work.

5.26 Using program assumes primary responsibility of the vendor and project, with the assistance of the Procurement Division when required (Status meetings, Corrective Action Plans, Vendor Performance Reports, etc.).

APPENDIX B. Contract Request Form, FDC



Texas Facilities Commission

CONTRACT REQUEST FORM

date initiated _____

Project Manager _____ Tel: _____		CONTRACT TYPE: TXMAS Construction CMR Indefinite Delivery Indefinite Quantity (IDIQ) New Assignment Amendment Renewal Professional(PRO) Outside Counsel (OC) Consultant(CSL) Interagency(IAC) Interlocal(ILC) Indefinite Quantity(IDQ) Memo of Understanding(MOU) Memo of Agreement (MOA) Other _____	
Project Name: _____			
Project No: _____			
Vendor		FOR IDIQ/IDQ or PROFESSIONAL SERVICE CONTRACTS	
Name _____	Contact Name cncncncn	Original Contract No. _____	IDIQ/IDQ Assignment No.: _____
ID/No _____	Contact Address _____	Contract Award Date: _____	IDIQ/IDQ Amendment No.: _____
Tel _____	City/State _____ Zip _____	Contract Amendment No: _____ <small>enter number of IDIQ/IDQ Assignment which is being amended if applicable</small>	
Fax _____			
FOR IAC's and ILC's		FUNDING SUMMARY	
Original Contract No.: _____ Amendment No. (if applicable) : _____		Original Contract Amount \$0.00	
Agency Contact Name: _____		Total of Previous Assignments/Amendments \$0.00 % of orig: _____ #DIV/0!	
Agency Contact Phone Number: _____		This Transaction \$0.00 % of orig: _____ #DIV/0!	
Contract Amount to be paid to TFC _____		New Total Contract Amount: \$0.00 #DIV/0!	
Contract Dates from _____ to _____			
DESCRIPTION OF SERVICES:			
<div style="border: 1px solid red; padding: 10px; margin: 10px auto; width: 200px;"> INSURANCE: COIs: _____ POSIR: _____ COI Attestation: _____ TDI: _____ A.M. Best: _____ Notes: _____ </div>			
PAYMENT RESPONSIBILITY:			
Requisition # _____ Original PO# (if applicable) _____			
POCN # (if applicable) _____			
Signatures/Approvals:			
By signing this form I certify that I, nor any family member within the 2nd degree by affinity or consanguinity, have a financial interest in this Vendor.			
By signing this form, the Director of Procurement certifies that TFC complied with the TFC Contract Manual and the CPA's Contract Management Guide.			
Project Manager _____ Date _____	Confirmed w/ Fiscal to be within Project Budget	Fiscal _____ Date _____	
Contract Admin. Manager _____ Date _____	Within Approval Authority of Exec Director	Funding Source: Fund _____ Org _____	
Director, Project Management _____ Date _____	Does not exceed 6% of Base Contract or Assignment	Procurement _____ Date _____	
Deputy Executive Director, FDC _____ Date _____	Cumulative amount does not exceed 25% of Base Contract or Assignment	HUB _____ Date _____	
	All Tracking Entries Made	Insurance Analyst _____ Date: _____	
	Services Previously Authorized by Expedited Extra Services order	Legal Services _____ Date: _____	
To Be Completed by Procurement			
Comptroller Check _____ Vendor Performance: _____ Date: _____ Good Standing: _____ Date: _____ Not In Good Standing: _____ Date: _____ EPLS: _____ Date: _____		HUB VENDOR Yes _____ No _____ Black _____ Asian _____ Woman _____ Hispanic _____ Native American _____ Disabled Service Veteran _____	
		Texas Market Place: Yes _____ No _____ Date: _____ Texas Register: Yes _____ No _____ Date: _____	

Contract Request Form - Rev. 8/24/2015

APPENDIX C. Contract Request Form, General



Texas Facilities Commission

CONTRACT REQUEST FORM

Project Manager: _____		Phone Number: _____		Date initiated : _____	
Project Name: _____		CONTRACT TYPE: New Amendment Renewal			
Project No.: _____		Service Construction Interagency Interlocal MOU MOA			
Vendor / Agency Information			Contracts w/ funds being paid out		
Vendor ID Number: _____		Original Contract #: _____		Amendment #: _____	
Vendor/Agency Name: _____		Original Contract Amount: _____		\$0.00	
Address Line 1: _____		Previous Amendment(s) Amount: _____		\$0.00	
Address Line 2: _____		Other Amount: _____		\$0.00	
City, State & Zip: _____		This Amendment Amount: _____		\$0.00	
Point of Contact: _____		TOTAL Amendment Amount: _____		\$0.00	
Phone #: _____		TOTAL CONTRACT AMOUNT: _____		\$0.00	
Email: _____					
To be completed by Fiscal Administration:			Contract w/ funds being received in		
Funding Source: Fund: _____ Org: _____		Original Contract #: _____		Amendment #: _____	
Funds within Project Budget: Yes: _____ No: _____		Contract Amount to be paid to TFC: _____		\$0.00	
CONTRACT DATES: FROM: _____		TO: _____			
DESCRIPTION OF SERVICES:					
Req. # _____ Original PO# _____					
Signatures/Approvals:					
<small>By signing, I certify that I, nor any family member within the 2nd degree of affinity or consanguinity have a financial interest with this vendor.</small>					
Project Manager _____ Date _____		Procurement _____ Date _____			
Contract Manager _____ Date _____		By signing, the Director of Procurement certifies that TFC complied with the TFC Contract Manual and the CPA's Contract Management Guide.			
Director _____ Date _____		HUB _____ Date _____			
Deputy Executive _____ Date _____		Insurance Specialist _____ Date _____			
Fiscal _____ Date _____		INSURANCE: COIs: _____ TDE: _____ A.M. Best: _____ Notes: _____			
		Legal Services _____ Date _____			
To be completed by Procurement:					
Comptroller Check		HUB? Yes No		Checked the Vendor	
Good Standing: _____ Date: _____		Black Woman		Performance System? _____	
Not In Good Standing: _____ Date: _____		Native American		Initials: _____	
EPLS: _____ Date: _____		Hispanic Asian		Texas Market Place Yes No	
				Date: _____	
				Texas Register Yes No	
				Date: _____	
ALL OBLIGATIONS OF \$25,000 OR MORE MUST BE ADVERTISED ON THE TEXAS MARKET PLACE					

Rev. 8/2015

APPENDIX D. TFC Contract Close-Out Checklist



TFC CONTRACT CLOSE-OUT CHECKLIST

Contractor Name: _____		TFC Contract Number: _____	
Contract Type: <input type="checkbox"/> Professional Service <input type="checkbox"/> Construction <input type="checkbox"/> Interagency <input type="checkbox"/> Interlocal <input type="checkbox"/> MOU/MOA <input type="checkbox"/> IT <input type="checkbox"/> Service Agreement <input type="checkbox"/> Other			
Contract Dates From: _____		To: _____	
Program Area/Division: _____			
Project Manager/Contract Administrator: _____		Phone #: _____	
1.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	All products or services required were provided to TFC.	
2.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Documentation adequately shows receipt and formal acceptance of all contract items.	
3.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	No claims or investigations are pending on this contract.	
4.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Any TFC furnished property (such as equipment, badges, and/or keys) was returned to TFC.	
5.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	All actions related to contract price revisions and changes are concluded.	
6.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	All invoices have been paid.	
7.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	If a partial or complete termination was involved, action is complete.	
8.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Any required contract audit is now complete.	
9.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Any Vendor Performance Report has been completed and submitted to the Procurement Division, if necessary.	
10.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Any "Lessons Learned" meeting outlining issues/concerns with the contract has been completed and documented.	
Prepared by: _____		Date: _____	

*Legal Services Division Form
August 2014*

APPENDIX E. TFC Needs/Risk Assessment Form

CONTRACT MANAGER/REQUESTOR:		REQ. #	REQ. TOTAL \$ AMOUNT:		
RISK TYPE	RISK FACTOR	POINTS	LEGEND	POINTS ASSIGNED	WEIGHT
P R O D U C T	What is the complexity and type of the procurement? Define type (IT, SOW, Commodity) <i>optional comments here</i>	0	not complex; clear defined specs; materials only		
		1	some complexity (i.e. materials and services); defined specs		
		2	moderately complex; not all requirements defined		
		3	complex; specs not defined; Vendor defines		
		4	unknown	*	
	What issues are possible during this procurement? <i>optional comments here</i>	0	no issues identified; clear specs and vendor failure minimal		
		1	minimal issues identified; vendor experience mitigates risk		
		2	moderate issues identified; vendor assumes some risk		
		3	issues identified; vendor assumes most of the risk		
		4	unknown	*	
	What is the level of competition available for this procurement? <i>optional comments here</i>	0	competition plentiful		
		1	competition minimal		
		2	competition/vendor base unidentified		
		3	competition/vendor base unknown		
		4	Sole Source; unidentified competition; specialty procurement	*	
	Delivery of product and/or services <i>optional comments here</i>	0	no issues identified; clear specs and vendor failure minimal		
		1	minimal issues identified; vendor experience mitigates risk		
		2	moderate issues identified; vendor assumes some risk		
		3	issues identified; vendor assumes most of the risk		
		4	unknown	*	
	Does the product adversely impact the environment and/or future generations <i>optional comments here</i>	0	no		
		1	minimal		
		2	moderate		
		3	potentially hazardous material		
	4	hazardous material with clause for certified disposal	*		
Identified vendor experience <i>optional comments here</i>	0	none identified nor required; delivery dictates acceptance			
	1	minimal experience required (1-3 years)			
	2	moderate level of experience required (3-5 years)			
	3	extensive vendor experience (>5 years)			
	4	unknown	*		
Does this procurement contain subcontracting? <i>optional comments here</i>	0	none identified nor required			
	1	minimal required; no HSP			
	2	HSP required			
	3	HSP required; construction; A/E			
	4	HSP required; CMR; A/E	*		
Subtotal				*	
P R O C E S S	Agency staff experience <i>optional comments here</i>	0	routine TFC purchase		
		1	routine purchase; not routine for TFC		
		2	not routine purchase for TFC and CM		
		3	new purchase for TFC		
		4	new purchase for TFC and CM	*	
	Agency staff resources <i>optional comments here</i>	0	agency resources plentiful (ample redundancy in place)		
		1	agency resources limited (little redundancy in place)		
		2	agency resources minimal (no redundancy)		
		3	agency resources not available (none available; must assign)		
		4	agency resources not available (none available; must contract)	*	
	How certain are agency objectives? <i>optional comments here</i>	0	organizational objectives are clear; risks and needs identified		
		1	organizational objectives are clear; multi department input		
	2	organizational objectives include multi department input			
	3	organizational objectives are unclear			
	4	unknown	*		
What is the risk that agency objectives will not be achieved <i>optional comments here</i>	0	organizational objectives are clear; risks and needs identified			
	1	organizational objectives are clear; multi department input			
	2	organizational objectives include multi department input			
	3	organizational objectives are unclear			
	4	unknown	*		
Subtotal				*	
S C H E D U L E	What are the time constraints for the purchase <i>optional comments here</i>	0	routine purchase; no time constraint		
		1	routine purchase; compressed time constraint		
		2	expedited purchase		
		3	critical purchase with compressed timeframe		
		4	critical purchase with critical time frame	*	
	Internal/External factors affecting schedule risk <i>optional comments here</i>	0	routine purchase; no identified internal or external risks		
	1	routine purchase; no internal risk; some external (vendor) risk			
	2	routine purchase; internal risk and external risk (agency/vendor risk)			
	3	critical purchase; internal risk and external risk (agency/vendor risk)			
	4	critical purchase; unknown risks both internal and external	*		
Subtotal				*	
F I N A N C I A L	What is the estimated dollar amount of the purchase? <i>optional comments here</i>	2	formal purchase with UGC (-\$25,000.00)		
		4	formal purchase without UGC (-\$25,000.00)		
		6	formal purchase with HSP (-\$100,000.00)		
		8	major contract (-\$1,000,000.00)		
		10	C/ATRAD review (-\$10,000,000.00)	*	
	How will the vendor be paid? <i>optional comments here</i>	0	firm fixed		
		1	time and materials		
		2	cost plus		
		3	Professional Services		
		4	Construction/Construction Manager at Risk	*	
What are the risks associated with the payment methodology? <i>optional comments here</i>	0	firm fixed: paid as quoted			
	1	time and materials: some monitoring and validation			
	2	cost plus: extensive monitoring and validation			
	3	Professional Services: extensive			
	4	Construction/Construction Manager at Risk: extensive	*		
Subtotal				*	
GRAND TOTAL				0	

MONITORING LEVELS OF EFFORT	
0 - 15	none (commodity) or minimal monitoring (inspection and acceptance)
16 - 31	desk review
32 - 47	desk review; qtrly rvw with vendor
48 - 63	desk review; qtrly rvw with vendor; site visits
64 and up	desk review; qtrly rvw with vendor; site visits; urgent meeting

APPENDIX F. TFC Vendor Performance Evaluation



TFC VENDOR PERFORMANCE EVALUATION

Contractor Name: _____ TFC Contract Number: _____

TFC Purchase Order Number: _____

Contract Type: ☐ Professional Service ☐ Construction ☐ Interagency ☐ Interlocal ☐ MOU/MOA ☐ IT
☐ Service Agreement ☐ Other ☐ Purchase of Commodities

Contract Dates From: _____ To: _____

Program Area/Division: _____

Project Manager/Contract Administrator: _____ Phone #: _____

Please provide an overall summary based on the categories listed below. If you have complaints about the vendor, please be aware that supporting documentation is required and should be uploaded and submitted with this document. The agency must be able to provide dates, names, and what was said and done by whom and when; also, if/how/when the negative issue(s) was/were resolved.

Please check the following boxes that apply.

DELIVERY ISSUES

Note: You must enter a resolution Code (see below) if any Delivery Issues are checked.

- | | |
|--|---|
| <input type="checkbox"/> (005) Late Delivery | <input type="checkbox"/> (008) Failure to deliver |
| <input type="checkbox"/> (006) 1 st Written notice issued for late delivery | <input type="checkbox"/> (010) Delivery made at wrong destination |
| <input type="checkbox"/> (007) 2 nd Written notice issued for late delivery | |

PERFORMANCE ISSUES

Note: You must enter a Resolution Code (see below) if any Performance Issues are checked.

- | | |
|---|--|
| <input type="checkbox"/> (014) Failure to identify shipments per contract terms | <input type="checkbox"/> (095) Failure to supply performance bond within required time |
| <input type="checkbox"/> (016) short/over weight or count | <input type="checkbox"/> (100) Unsatisfactory installation |
| <input type="checkbox"/> (018) Vendor shipped incorrect merchandise | <input type="checkbox"/> (102) Service not performed within specifications |

Legal Services Division June 2015

- | | |
|--|---|
| <input type="checkbox"/> (020) Failure to replace damaged goods | <input type="checkbox"/> (110) Incorrect invoices |
| <input type="checkbox"/> (021) Slow replacement of damaged goods | <input type="checkbox"/> (111) Failed inspection (CPA use only) |
| <input type="checkbox"/> (022) Failure to pick up incorrect shipment | <input type="checkbox"/> (113) Failure to comply with terms/conditions of contract including reverse auction documentation (Give details below) |
| <input type="checkbox"/> (023) Improper product packaging | <input type="checkbox"/> (114) Failure to comply with requirements of HUB Subcontracting Plan (HSP) (Give details below) |
| <input type="checkbox"/> (024) Failure to follow palletizing instructions | <input type="checkbox"/> (120) Failure to provide proof of insurance or maintain insurance |
| <input type="checkbox"/> (038) Poor product performance | <input type="checkbox"/> (121) Failure to provide report(s) |
| <input type="checkbox"/> (040) Failure to promptly notify CPA/Agency/Co-op Member concerning manufacturer discontinuation of an item | <input type="checkbox"/> (122) Misrepresentation of qualifications (Give details below) |
| <input type="checkbox"/> (042) Repair parts not available | <input type="checkbox"/> (123) Falsification of/fraudulent submittals (Give details below) |
| <input type="checkbox"/> (050) Inspection – Random (CPA use only) | <input type="checkbox"/> (124) Failure of workforce to meet specifications |
| <input type="checkbox"/> (051) Inspection – Requested (CPA use only) | <input type="checkbox"/> (125) Incorrect allocation of work (Give details below) |
| <input type="checkbox"/> (052) Inspection – Receiving Agency | <input type="checkbox"/> (126) Failure to respond to emergencies as required (Give details below) |
| <input type="checkbox"/> (083) Failure to meet specifications (Give details below) | <input type="checkbox"/> (127) Failure to close out project as specified |
| <input type="checkbox"/> (085) Poor product quality | <input type="checkbox"/> (128) Certification not received on time |
| <input type="checkbox"/> (087) Failure to respond to letter, phone call, or email | <input type="checkbox"/> (129) Failure to comply with code of conduct as specified |
| <input type="checkbox"/> (090) Poor customer service (Give details below) | <input type="checkbox"/> (130) Other (give details below) |
| <input type="checkbox"/> (091) Unauthorized substitution | |

RESOLUTION CODES

Please enter at least one Resolution Code for the Delivery or Performance issues selected above.

Satisfactory Resolution Codes

(Does not negatively affect the score(s))

- ☐ (202) Complaint withdrawn (Give reason below)
- ☐ (205) Item met specification via inspection
- ☐ (207) Delivery made after vendor was notified
- ☐ (208) Service met specifications
- ☐ (209) Performance corrected
- ☐ (210) Material or item replaced
- ☐ (212) Equipment performance corrected
- ☐ (217) Performance bond received

Unsatisfactory Resolution Codes

(Negatively affects the score(s))

- ☐ (201) Late Delivery
- ☐ (206) Vendor failed to receive purchase order on time
- ☐ (211) Damages assessed
- ☐ (213) Failure to pay assessed damages
- ☐ (225) Shipment rejected (Give reason below)
- ☐ (228) Item canceled from contract (Vendor failure-vendor initiated)
- ☐ (229) Item canceled from contract (Vendor failure-State initiated)
- ☐ (235) Entire contract canceled (Vendor fault)

Legal Services Division June 2015

- | | |
|---|---|
| <input type="checkbox"/> (220) Invoice corrected | <input type="checkbox"/> (237) Damages paid |
| <input type="checkbox"/> (230) Item canceled from contract (No fault of vendor) | <input type="checkbox"/> (253) Performance not corrected, CPA action taken (CPA use only – give reason below) |
| <input type="checkbox"/> (234) Item/entire order canceled (No fault of vendor) | <input type="checkbox"/> (262) Order not complete (Give reason below) |
| <input type="checkbox"/> (236) Entire contract canceled (No fault of vendor) | <input type="checkbox"/> (263) Manufacturer fault (Give reason below) |
| <input type="checkbox"/> (249) Order completed | <input type="checkbox"/> (264) Resolved and documented (Vendor fault – Give reason below) |
| <input type="checkbox"/> (251) Correct shipment received | <input type="checkbox"/> (265) Substitution not approved by awarding agency |
| <input type="checkbox"/> (255) Substitution approved by awarding agency | <input type="checkbox"/> (266) Item/entire order canceled (Vendor fault) |
| <input type="checkbox"/> (256) Insurance requirements received | <input type="checkbox"/> (267) Delivery not corrected by vendor |
| <input type="checkbox"/> (258) Certification received | <input type="checkbox"/> (268) HUB Subcontracting Plan rejected |
| <input type="checkbox"/> (259) Resolved and documented (No fault of vendor – Give reason below) | <input type="checkbox"/> (269) Failure to provide required documentation (Vendor fault) |
| <input type="checkbox"/> (260) Vendor failed to receive purchase order on time (Agency or postal fault) | <input type="checkbox"/> (270) Vendor failed to respond to complaint |
| <input type="checkbox"/> (299) Other (Give reason below) | <input type="checkbox"/> (298) Other (Give reason below) |

EXCEPTIONAL PERFORMANCE

Please enter a detailed explanation of the exceptional performance.

- | | |
|--|--|
| <input type="checkbox"/> (301) Shipment made early upon agency/co-op member request | <input type="checkbox"/> (309) Provided technical/training/set-up assistance when not required |
| <input type="checkbox"/> (303) Product upgrade substitution suggested and accepted at no additional cost to the agency | <input type="checkbox"/> (311) Voluntary price reduction for large order |
| <input type="checkbox"/> (305) Exceptional customer service response | <input type="checkbox"/> (399) Vendor commended |
| <input type="checkbox"/> (307) Exception service provided for return of products | |

Detailed explanation (Please be specific):

Resolution Comment:

Prepared by: _____ Date: _____

Legal Services Division June 2015

APPENDIX G. TFC Annual Non-Disclosure and Conflict of Interest Certification



ANNUAL NON-DISCLOSURE AND CONFLICTS OF INTEREST CERTIFICATION

I am an employee of the Texas Facilities Commission (the "Commission"). My duties require that I participate in the Commission's procurement and contract management processes. The terms, "procurement process" and "procurement," as used in this document mean activities associated with the solicitation of proposals, offers, or bids for goods and services from vendors and the fair and objective selection of vendors to fulfill a Commission need for goods and services and any resulting contracts. As such, I am entrusted with the disposition of State funds and required to perform my duties with the highest level of integrity. The nature of the procurement function makes it critical that I remain independent, free of obligation or suspicion, completely fair and impartial, and free from the perception of impropriety, which can be as harmful as misconduct itself. Credibility and public confidence are vital throughout the Commission procurement process. It is with this in mind that the following certification is set forth:

I hereby certify that I understand premature or unauthorized disclosure of information regarding a proposed procurement irreparably harms the State's interests and may constitute a violation of Chapter 39 of the Texas Penal Code, the antitrust laws of the United States and the State of Texas, and the Texas Public Information Act (Chapter 552, Texas Government Code). Therefore, I agree to be bound by the commitments contained in this document and have received a copy for my files.

The word "participate" as used in this document means taking action as an employee through drafting, decision, approval, disapproval, recommendation, giving advice, investigation or similar action.

I agree that I will not participate in any procurement if I have, or if I am aware that any member of my immediate family has, an actual or potential financial interest, including employment or prospective employment, in any contract that may result from that procurement. The term "immediate family" as used in this certification means: one's parents, wife or husband, children, brothers and sisters regardless of whether residing together.

I agree that I will not participate in any procurement if I have, or if I am aware that any member of my immediate family has, an actual or potential financial interest, including employment or prospective employment, in a business or organization that that may be a respondent (a respondent may be called a proposer, an offeror, a bidder or other like term), or a subcontractor to a respondent, for that procurement.

When participating in a procurement of goods or services, I will act on my own accord in accordance with the duties entrusted to me by the State of Texas and not act under duress. I will not participate in a procurement if I am currently employed by, or if I am receiving any compensation from, or if I will be the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in return for favorable consideration of a respondent to the procurement. I will not bring to the procurement any preconceived position on the relative merits of any responses that may be received during any procurement; nor will I bring to the procurement an established personal preference or position on the worth or standing of any respondent participating in any procurement.

I agree that I will not solicit or accept anything of value from an actual or potential Commission vendor that might reasonably tend to influence me in the discharge of my official duties, or that I know or should know is being offered with the intent to influence my official conduct. I also agree that I will not accept cash, a negotiable instrument, or any item with a value of five dollars (\$5.00) or more from an actual or potential vendor.

I agree that I will not discuss or disclose to anyone, other than a fellow participant in a procurement with a need to know, information pertaining to the procurement until it is completed. The procurement is considered complete after award of the contract, resolution of any protests and litigation relating to the procurement, and full execution of the resulting contract or cancellation of the solicitation. Generally, bid protests must be filed within ten (10) working days after award of the contract.

Once a decision is made to solicit offers to potentially award a contract, I will not communicate outside the ordinary procurement process with any potential respondent to that solicitation on any matter directly related to that specific solicitation. I will instead refer them to the Director of Procurement for the Commission.

 Printed Name: _____

 Date of Execution

Title: _____

APPENDIX H. Outside Employment/Board Member Notification Form



TEXAS FACILITIES COMMISSION OUTSIDE EMPLOYMENT/BOARD MEMBERSHIP NOTIFICATION FORM

SECTION I – To be completed by employee.

1. Last Name:	2. First Name:	3. Program Area/Division:
4. Classification Title:	5. Pay Group:	6. What is your employee status? <input type="checkbox"/> New Hire or <input type="checkbox"/> Current Employee
7. Describe your duties for TFC:		
8. Do you currently work for pay outside of TFC? <input type="checkbox"/> Yes <input type="checkbox"/> No		9. Are you planning to engage in outside employment for pay within the next twelve months while working at TFC? <input type="checkbox"/> Yes <input type="checkbox"/> No
10. Do you currently serve on a board or commission? <input type="checkbox"/> Yes <input type="checkbox"/> No If so, are state funds used to support this organization? <input type="checkbox"/> Yes <input type="checkbox"/> No		
11. If you: (a) are self-employed under a corporate or assumed name (b) have accepted or plan to accept other outside employment, or (c) serve on a board or commission, please include: (Employer's/board's or commission's name and business address, description of duties and days of week and hours of employment.)		
12. Employee Certification I hereby certify that: My duties in connection with the outside employment described above (if any) will not conflict with or infringe on my duties with or responsibilities for the Texas Facilities Commission. I understand that, if the circumstances reflected on this form change, I have a duty to resubmit this form, and that I must advise my Deputy Executive Director or Division Director in writing before I accept any further outside employment. I further certify that I have read the Personnel Handbook for the Texas Facilities Commission, and I am aware that I may consult with the agency's General Counsel if I have any questions concerning those standards. If I become aware of any facts which might lead any person to believe that I might have a conflict of interest, or to question the independence of my judgment in the performance of my duties for TFC, I will promptly advise my Deputy Executive Director or Division Director of those facts, in writing. All of the statements made herein are true and correct to the best of my knowledge. Employee Signature: _____ Date: _____		

SECTION II – Legal Division

Will employee's current and/or future outside employment conflict with agency policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Legal Division: _____	Date: _____

SECTION III – Senior Management

Will employee's current and/or future outside employment conflict with agency policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Deputy Executive Director/Division Director: _____	Date: _____

SECTION IV – Human Resources Certification

Human Resources Director: _____	Date: _____
---------------------------------	-------------

APPENDIX I. TFC Non-Disclosure Statement and Evaluation Team Brief

TFC NON-DISCLOSURE STATEMENT & EVALUATION TEAM BRIEF

RFP / RFQ # 303-X-XXXXX

TITLE HERE

DATE

NON-DISCLOSURE STATEMENT

I, _____, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein.

I am acting at the request of the Texas Facilities Commission as a participant in the solicitation referenced above.

I am acting of my own accord and am not acting under duress. I am not currently employed by, nor am I receiving any compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any submittal or involved respondent in return for favorable consideration. I have not established a personal preference or position on the worth or standing of any respondent participating in this action that will prevent my fair evaluation of the submittals against the criteria.

I agree not to disclose or otherwise divulge any information pertaining to the solicitation process, contents, status, or ranking of any submittals to anyone other than the evaluation team leader or other evaluation team members. I understand the terms "disclose or otherwise divulge" to include, but are not limited to, reproduction of any part or portion of any submittal, or removal of same from designated areas without prior authorization from the evaluation team leader. I agree to perform any and all evaluations of said submittals in an unbiased manner, to the best of my ability, and with the best interest of the State of Texas paramount in all decisions.

I further disclose that I have no knowledge of any of the competitive offers submitted for consideration in response to this solicitation.

EVALUATION TEAM BRIEF

Voting Members

Evaluator Names Here

Non-voting Member

Purchaser

Members Responsibilities:

Rev. 03/21/2013

- Sign Non-Disclosure Form. This form states that you do not have a personal interest in any of the respondents. You will not divulge any information concerning the proposal/evaluation to anyone who is not a part of the team.
- **Evaluate/score each proposal independently and impartially.**
- Questions between team members are allowed. A member with technical expertise in the project may help the team members better understand whether the respondent met the requirements of the RFP/RFQ. However, **team members should not influence other team members' scoring by giving individual opinions or sharing their scoring.**
- If a team member has questions on a submittal, request the purchaser to contact the respondent, get an explanation and share the response with all team members.
- Purchaser will be responsible for tabulating scores for the team.
- If a respondent/contractor contacts you concerning their submittal or scoring, refer the contact to the purchaser, **name here.**
- Project Manager / Contract Manager review of solicitation specifics and objectives

Evaluation Criteria Worksheet

Team members will evaluate **Company Information, Relevant Experience and Qualifications, Methodology, Demonstrated Ability to Comply with Budget /Schedule Requirements, Quality Assurance, Quality Control, and Safety.** The Litigation History will be evaluated by the Project Manager only.

Team members will score based on the criteria provided. **Provide comments if the submittal you scored failed to meet requirements or minimally addressed requirements.**

Be sure to put your name and firm name on each sheet.

Please fill in the score for the criteria and the total score for each proposal.

Signature

Printed Name

Date

Rev. 03/21/2013

APPENDIX J. Criminal Background Checks and Applications Guidelines

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

TEXAS FACILITIES COMMISSION CRIMINAL BACKGROUND CHECKS AND APPLICATION GUIDELINES

It is the policy of the Texas Facilities Commission ("TFC") that all contractor employees and subcontractors that will complete any work on-site at a state-owned property may be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by the contractor. Contractor employees and subcontracts who work in case-sensitive areas shall be required to submit to a criminal history background check. If requested by TFC, a complete criminal background check shall be completed before any employee performs services at the site. Criminal background checks must be performed by the Texas Department of Public Safety ("DPS") and must be on the form provide by TFC.

I. CRIMINAL HISTORY CRITERIA

Employers should use the following criminal history criteria when hiring employees to perform work for TFC. Any employee failing to meet the minimum standard will be denied. If special circumstances exist, please contact the TFC representative for clarification or further consideration.

A conviction or deferred adjudication for one of the following offenses will result in the **permanent disqualification** of a person from eligibility to provide contractual services with Texas Facilities Commission:

- (i) any act causing death as defined in Texas Penal Code; and
- (ii) any felony or misdemeanor involving arson, burglary, breach of computer security, credit card abuse, counterfeiting, forgery, kidnapping, robbery, stalking, terroristic threat, theft, and any sexual offense designated as a felony in Texas Penal Code.

Additionally, anyone who has a current duty to register as a sex offender, is under indictment or is a fugitive from justice is disqualified.

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

For individuals who have a conviction or deferred adjudication for felonies not enumerated above, 10 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the TFC.

For individuals who have a misdemeanor conviction or deferred adjudication for misdemeanors not enumerated above, 5 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the TFC.

II. CRIMINAL BACKGROUND PROCESS

DPS has entered into an exclusive contract with Identogo Centers, formerly I-1 Enrollment Services, operated by MorphoTrust USA. Identogo by MorphoTrust is the exclusive live scan fingerprinting provider for DPS. All TFC contractors that are subject to TFC criminal background check requirements must create an account with Identogo in accordance with the Identogo Account Application and requirements attached hereto as "Attachment A". Thereafter, all contractor employees and subcontractors must follow the registration procedures attached hereto as "Attachment A" including using the *Texas Facilities Commission Service Code 11G6ZN*. All necessary instructions and information to schedule a fingerprint appointment is included in Attachment A. In addition, the only service code accepted by DPS for a TFC criminal background check is the service code provided in Attachment A, hereto, therefore, if an individual does not use the service code in Attachment A, he or she may be required to repeat the process at the expense of contractor. Contractors can begin the process by simply clicking on this link:

<https://uenroll.identogo.com/servicecode/11G6ZN>

Additionally, forms and instructions can be found on the Identogo website at <http://www.identogo.com> by clicking on the State of Texas. Links on that page include one for online scheduling and a list for the state-wide fingerprinting locations. The waiver form for the criminal background check is attached hereto as "Attachment B". In the event Contractor needs to set up a new account, please refer to the attached link for instructions: <http://www.i1enrollment.com/state/forms/tx/566718664f05a.pdf>.

III. CRIMINAL HISTORY ERROR RESOLUTION

The Error Resolution Unit ("ER") is responsible for updating and evaluating possible errors in criminal history records. Potential errors are reported to ER by law enforcement, judicial agencies, as well as private citizens.

If an applicant would like to make a request that a criminal history record be updated or corrected, the applicant will need to supply certified documents to the ER. Required forms and additional information submit a correction request to the ER can be found at:

http://txdps.state.tx.us/administration/crime_records/pages/errorresolution.htm.

IV. TFC CONTACTS

For any questions involving the TFC criminal background check process, please contact the following:

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

Tommy Oates, Deputy Executive Director

Office: 512-463-3057

Cell: 512-463-3376

Email: tommy.oates@tfc.state.tx.us

Shawn Finley, Manager

Office: 512-463-1668

Cell: 512-848-3111

Email: shawn.finley@tfc.state.tx.us

Sharee Johns, Team Lead

Office: 512-463-6157

Cell: 512-961-2928

Email: sharee.john@tfc.state.tx.us

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

ATTACHMENT A**Facilities Commission (ORI Facilities Commission/Service Code 11G6ZN)**

The general process for electronic fingerprinting is:

1. Schedule an appointment to be electronically fingerprinted by MorphoTrust USA at one of their IdentoGo enrollment centers.
 - Internet based scheduling is the quickest and most convenient way to obtain a fingerprint appointment.
 - a. **You may begin the process now by simply clicking on this link:**
<https://uenroll.identogo.com/servicecode/11G6ZN>
 - b. Provide all required pre-enrollment data and select a convenient date and time for your appointment
 - If you prefer to schedule over the telephone, you must:
 - a. Have your Service Code ready (11G6ZN), then call 888.467.2080;
 - b. MorphoTrust will prompt you for the Service Code (11G6ZN);
 - c. Provide all required pre-enrollment data and select a convenient date and time for your appointment
2. Arrive at your scheduled appointment with your photo identification and fee
 - If you plan on bringing a form of identification other than a valid (unexpired) TX Driver License, please refer to the Department of Public Safety's acceptable document types here: <http://www.tl1enrollment.com/state/forms/tx/55fc619a7f7aa.doc>
 - MorphoTrust accepts Visa/MasterCard/Discover/American Express, business checks, money orders and coupon codes (employer accounts) at the time of service.
 - Please note that personal checks and cash are **not accepted**.
3. Your fingerprints will be submitted electronically to DPS and the FBI. You will not receive a printed fingerprint card.
4. At the conclusion of your appointment, the MorphoTrust enrollment agent will provide you with an IdentoGo receipt stating that you were fingerprinted.
 - Do not throw away the receipt;
 - You may check status on your submission by clicking on this link:
<https://uenroll.identogo.com/servicecode/11G6ZN> and then;
 - Click "Check Status"

Fingerprints provided for this application shall be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation, in accordance with applicable statutes.

Texas Facilities Commission---Criminal Background Checks and Application Guidelines

ATTACHMENT B



IdentoGO
By MorphoTrust USA

Facilities Commission

Texas Fingerprint Service Code Form

Service Name: Facilities Commission

To schedule your ten-minute fingerprint appointment, simply visit
<https://uenroll.identogo.com> and enter the following Service Code

11G6ZN

Service Code is unique to your hiring/licensing agency. Do not use this code for another purpose.

Background Check Waiver

I certify that all information I provided in relation to this criminal history record check is true and accurate. I authorize the Texas Department of Public Safety (DPS) to access Texas and Federal criminal history record information that pertains to me and disseminate that information to the designated Authorized Agency or Qualified Entity with which I am or am seeking to be employed or to serve as a volunteer, through the DPS Fingerprint-based Applicant Clearinghouse of Texas and as authorized by Texas Government Code Chapter 411 and any other applicable state or federal statute or policy.

I authorize the Texas Department of Public Safety to submit my fingerprints and other application information to the FBI for the purpose of comparing the submitted information to available records in order to identify other information that may be pertinent to the application. I authorize the FBI to disclose potentially pertinent information to the DPS during the processing of this application and for as long hereafter as may be relevant to the activity for which this application is being submitted. I understand that the FBI may also retain my fingerprints and other applicant information in the FBI's permanent collection of fingerprints and related information, where all such data will be subject to comparisons against other submissions received by the FBI and to further disseminations by the FBI as may be authorized under the Privacy Act of 1974 (5 USC 552a). I understand my fingerprints will be searched by and against civil, criminal and latent fingerprints in the Next Generation Identification (NGI) system. I understand I am entitled to obtain a copy of any criminal history record check and challenge the accuracy and completeness of the information before a final determination is made by the Qualified Entity. I also understand the Qualified Entity may deny me access to children, the elderly, or individuals with disabilities until the criminal history record check is completed. If a need arises to challenge the FBI record response, you may contact the agency that submitted the information to the FBI, or you may send a written challenge request to the FBI's Criminal Justice Information Services (CJIS) Division at FBI CJIS Division, Attention: Correspondence Group, 1000 Custer Hollow Road, Clarksburg, WV 26306.



Don't have access to the Internet? You can still schedule an appointment by calling 888.467.2080

APPENDIX K. Certificate of Insurance ("COI")

<b style="font-size: 1.2em;">CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY)																				
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.																						
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).																						
PRODUCER	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">CONTACT NAME:</td> </tr> <tr> <td>PHONE (A/C, No, Ext):</td> <td>FAX (A/C, No):</td> </tr> <tr> <td colspan="2">E-MAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="text-align: center;">INSURER(S) AFFORDING COVERAGE</td> </tr> <tr> <td colspan="2">INSURER A:</td> </tr> <tr> <td colspan="2">INSURER B:</td> </tr> <tr> <td colspan="2">INSURER C:</td> </tr> <tr> <td colspan="2">INSURER D:</td> </tr> <tr> <td colspan="2">INSURER E:</td> </tr> <tr> <td colspan="2">INSURER F:</td> </tr> </table>		CONTACT NAME:		PHONE (A/C, No, Ext):	FAX (A/C, No):	E-MAIL ADDRESS:		INSURER(S) AFFORDING COVERAGE		INSURER A:		INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
CONTACT NAME:																						
PHONE (A/C, No, Ext):	FAX (A/C, No):																					
E-MAIL ADDRESS:																						
INSURER(S) AFFORDING COVERAGE																						
INSURER A:																						
INSURER B:																						
INSURER C:																						
INSURER D:																						
INSURER E:																						
INSURER F:																						
INSURED	NAIC #																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">COVERAGES</td> <td style="width: 30%;">CERTIFICATE NUMBER:</td> <td style="width: 40%;">REVISION NUMBER:</td> </tr> </table>			COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:																	
COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:																				
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.																						
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS															
	GENERAL LIABILITY						EACH OCCURRENCE \$															
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$															
	CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>						MED EXP (Any one person) \$															
							PERSONAL & ADV INJURY \$															
							GENERAL AGGREGATE \$															
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COM/OP AGG \$															
	POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>						\$															
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$															
	ANY AUTO						BODILY INJURY (Per person) \$															
	ALL OWNED AUTOS						BODILY INJURY (Per accident) \$															
	HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$															
							\$															
	UMBRELLA LIAB						EACH OCCURRENCE \$															
	EXCESS LIAB						AGGREGATE \$															
	DED <input type="checkbox"/> RETENTION \$						\$															
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>															
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$															
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$															
							E.L. DISEASE - POLICY LIMIT \$															
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)																						
CERTIFICATE HOLDER				CANCELLATION																		
				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.																		
				AUTHORIZED REPRESENTATIVE																		

© 1988-2010 ACORD CORPORATION. All rights reserved.

ACORD 25 (2010/05)

The ACORD name and logo are registered marks of ACORD

APPENDIX L. COI Checklist

Certificate of Insurance Checklist

Date Reviewed _____

Contract Name/# _____ Proj # _____
 Cont/Vend/Cons _____ Proj Mgr/Purchaser _____

Insurance Requirements	Notes
General Requirements: COI date: _____ Agency listed as Holder <input type="checkbox"/> Requires revision <input type="checkbox"/> _____ Any policy expiring in 30 days of review <input type="checkbox"/>	
General Liability: term date: _____ Occurrence Made <input type="checkbox"/> Claims Made <input type="checkbox"/> \$ _____ Per Occurrence \$ _____ General Aggregate \$ _____ Products/ Completed Operations Aggregate \$ _____ Medical \$ _____ Fire Legal AI Status <input type="checkbox"/> WOS <input type="checkbox"/> 30DNOC <input type="checkbox"/> Gen Ag per Project <input type="checkbox"/> <div style="text-align: right;">Meets Minimum Requirements: _____</div>	<div style="text-align: right;">StofTX: _____ AMBest: _____</div>
Automobile Liability: term date: _____ Any <input type="checkbox"/> Owned <input type="checkbox"/> HNOA <input type="checkbox"/> \$ _____ CSL AI Status <input type="checkbox"/> WOS <input type="checkbox"/> 30DNOC <input type="checkbox"/> <div style="text-align: right;">Meets Minimum Requirements: _____</div>	<div style="text-align: right;">StofTX: _____ AMBest: _____</div>
Umbrella: term date: _____ Umbrella <input type="checkbox"/> Excess Liability <input type="checkbox"/> \$ _____ Each Occurrence \$ _____ Aggregate \$ _____ Retention AI Status <input type="checkbox"/> WOS <input type="checkbox"/> 30 DNOC <input type="checkbox"/> Follow Form Umbrella <input type="checkbox"/> <div style="text-align: right;">Meets Minimum Requirements: _____</div>	<div style="text-align: right;">StofTX: _____ AMBest: _____</div>
Workers Compensation: term date: _____ Workers Compensation <input type="checkbox"/> Employers Liability <input type="checkbox"/> Statutory <input type="checkbox"/> \$ _____ BI by Accident \$ _____ BI by Disease/ Policy \$ _____ BI by Disease/ Employee WOS <input type="checkbox"/> Exec/ Officer Exclusions <input type="checkbox"/> <div style="text-align: right;">Meets Minimum Requirements: _____</div>	<div style="text-align: right;">StofTX: _____ AMBest: _____</div>
Other Insurance Requirements: term date: _____ Professional Liability <input type="checkbox"/> \$ _____ Per Occ _____ Ag Environmental Impairment/ Pollution <input type="checkbox"/> \$ _____ per Claim Crime Coverage <input type="checkbox"/> \$ _____ Employee Dishonesty \$ _____ Money & Securities \$ _____ Forgery & Alterations <div style="text-align: right;">Meets Minimum Requirements: _____</div>	<div style="text-align: right;">StofTX: _____ AMBest: _____</div>
Property Insurance: term date: _____ Replacement Cost <input type="checkbox"/> All Risk <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Installation Floater <input type="checkbox"/> Building <input type="checkbox"/> Personal Property <input type="checkbox"/> <div style="text-align: right;">Meets Minimum Requirements: _____</div>	<div style="text-align: right;">StofTX: _____ AMBest: _____</div>

Approved _____