

**T E X A S   S T A T E**

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**Soil & Water**

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**CONSERVATION BOARD**

September 2019

Contract Management Handbook

The Texas State Soil and Water Conservation Board works in conjunction with local Soil and Water Conservation Districts to encourage the wise and productive use of natural resources. It is our goal to ensure the availability of those resources for future generations, so that all Texans' present and future needs can be met in a manner that promotes a clean, healthy environment and strong economic growth.

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## Introduction

### Purpose

The Texas State Soil and Water Conservation Boards (TSSWCB) Contract Management Handbook (*handbook*) complies with Texas Government Code §2261.256 and is consistent with the guidance found in the *State of Texas Contract Management Guide (Guide)* managed by the Comptroller's Office. The purpose of this handbook is to establish consistent contract management policies and procedures for TSSWCB staff. There may be policies contained in the *Guide* that are not found in this document. In the event that this document contradicts mandatory requirements of the *Guide*, the *Guide* shall prevail. These standardized processes are intended to promote the efficient use of resources and to provide transparency and accountability into the TSSWCBs expenditure of funds.

This handbook supplements but does not replace existing statutory requirements. It is not intended to be a manual on the law of its contracts or constitute legal advice. It is a companion to the TSSWCB's individual division level Operations Manuals.

### Ethics

Employees of the TSSWCB are expected to adhere to the highest standards of conduct. This includes adherence to the Ethics Policies as stated in the TSSWCB Employee Handbook. Therefore, all employees involved in procurement and contracting activities must act in ethical, impartial, transparent, and professional manner. Any erosion of public trust or perception of impropriety is detrimental to the integrity of the procurement and contracting process.

### Conflicts of Interest

To avoid conflicts of interest state agencies shall require all potential contractors to disclose, in their responses to solicitations, any actual or potential conflicts of interest in their proposed provision of services or other performance under any contracts resulting from the solicitations. Respondents should also be required to update information throughout the terms of any contracts resulting from the solicitations.

## Training and Professional Certification

### Certified Texas Contract Manager (CTCM)

The Texas Comptroller of Public Accounts (TCPA) administers a system of training, continuing education, and certification for state agency contract management personnel. This same law also requires the TSSWCB to ensure that its Contract Managers complete the training and certification developed by the TCPA.

### Continuing Education Hours

Certifications issued by TCPA after January 1, 2018 will be issued for three (3) years for Certified Texas Contract Developers and Certified Texas Contract Managers.

Continuing education for procurement professionals renewing a three (3) year certification are required to take twenty-four (24) hours of SPD-sponsored in-person or online continuing education. One (1) of the twenty-four (24) hours must be ethics, to maintain certification. In addition, one (1) hour may be a non-SPD-sponsored elective of your choice.

If renewing under a dual certification, procurement professionals are required to take thirty-six (36) hours of SPD-sponsored in-person or online continuing education. One (1) of the thirty-six (36) hours must be ethics, to maintain certification. In addition, two (2) hours may be a non-SPD-sponsored elective of your choice.

Certified procurement professionals are also required to take the Renewal Refresher course offered by SPD once every three years in order to maintain certification. The Renewal Refresher course does not count towards continuing education hours. The Renewal Refresher course must be completed no earlier than two years following the date of initial certification or last renewal. Renewal Refresher courses completed prior to two years following the date of initial certification or last renewal will not be considered applicable to the Renewal Refresher requirement.

Certifications Issued Prior to January 2018: Procurement professionals certified prior to January 2018 renewing a five (5) year certification may renew under the previous requirement of 80-hours of continuing education provided the training meets the previous policy and time line for renewals. Procurement professionals renewing a five (5) year certification may also elect to renew under the current continuing education requirements stated above. Your expiration date remains the same with either option. Once a certification is renewed, all current rules and procedures apply.

If you allow your certification to expire, an extension may be requested within thirty (30) calendar days from the date of expiration. If the Division approves the extension, you have sixty (60) calendar days from the date of extension approval to complete the requirements for renewal. If you fail to meet the renewal requirements, your certification will not be renewed.

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

## **Contract Management**

Contract Managers perform the daily activities associated with managing a contract. Those activities include planning, involvement in the procurement process, contract formation, and contract oversight. For each contract or group of similar contracts a Contract Manager may perform the following functions as needed:

- Contract start up activities and participation in the contract creation process;
- Ensure the agency objectives are met throughout the planning and life of the contract;
- Implements, maintains, and manages contract management processes documented in the *Guide and Handbook*;

- Work with General Counsel to address and resolve any legal concerns or disputes with the contractor;
- Receive and respond to communications between the agent and the contractor as needed during contract formation;
- Document changes to the contract;
- Maintain appropriate records;
- Document significant events;
- Monitor contractor progress and performance to ensure conformance to contract requirements;
- Exercise remedies when contractor performance is deficient;
- Perform contract closeout process.

## Planning

The contract planning process helps staff to identify the need for the contract, prepare the statement of work, determine the correct contracting method, and draft the solicitation of contract. Thorough and consistent planning are major components to ensuring a contract is successful. All contracts will consist of a scope of work, a concise performance-based roadmap for success.

A project manager will evaluate the plan of work for project goals, timeline, deliverables, tasks, budget, and identify potential problems. Most importantly they should open a communication line to the contractor and identify themselves as the Project Manager. Both parties will work together to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties.

## Procurement and Grant Review

The Contract Manager will assist in reviewing the procurement document to select a vendor for the project. The Contract Manager will also be involved in the vendor proposal evaluation process used to select the vendor. At a minimum, vendor selection criteria will include contractor qualifications; contractor experience; financial capability; proposed services, including work plan and methodology; and cost. The procurement document must also state the methods to be used to monitor contractor performance.

## Contract Formation

The purpose of any written contract is to serve as a reference document that records the terms of the agreement to prevent misunderstanding and conflict and creates a legal, binding and enforceable obligation. TSSWCB contracts include standard provisions that are applicable to most contracts. These provisions include administrative provisions, financial provisions, the statement of work, contract term (including termination and dispute resolution) provisions, provisions that relate to the rights of ownership of work products and provisions that allocate risk. Once a contract document has been drafted and approved the contract can be sent to the vendor for signature.

## **Contract Administration**

### **Contract Management System**

Contract Administration is performed in partnership with the Project Manager and Contract Manager assigned to each contract. Executed contract documents are maintained in a paper file format as well as electronically.

### **Monitoring Performance**

Monitoring the performance of the contractor is a key function of proper contract management. The purpose of performance monitoring is to ensure that the contractor is performing all duties in accordance with the contract and for the agency to be aware of and address and developing problems or issues. Site visits, phone calls, and quarterly performance reports are a common way to monitor a contractor's performance. These monitoring methods can be used as frequently as daily, monthly or quarterly. It is most likely that all three will be utilized at varying frequency throughout the project timeline based on the cost, quality of deliverables, and timeline outlined in the scope of work.

### **Risk Assessment and Enhanced Monitoring**

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

By assessing risk and allocating monitoring resources accordingly, TSSWCB can more effectively focus limited resources on contracts that pose the highest risk to the State. A risk-based approach does not mean lower risk contracts are not monitored; rather more complex or higher risk contracts may receive more frequent or in-depth monitoring. Risk must be assessed on an ongoing basis in order to identify and account for changes that require an adjustment in the prioritization of contract monitoring activities.

Enhanced monitoring is an increased level of monitoring, beyond the regular monitoring normally used. Such increased monitoring may include, but is not limited to: frequency of site visits, meetings, and documentation requirements deemed necessary by the agency to assess progress of the contractor toward meeting the identified goals and outcomes.

### **Following Contract Execution**

Once a contract has been executed the work of monitoring that specific contract begins. A monitoring schedule should be developed and followed throughout the contract. Monitoring of a contract is a team approach between the Project Manager and the Contract Manager.

## Payment Approval

The costs incurred by the contractor should be in accordance with the contract rate schedule. Invoices should be reviewed by project manager to ensure that the contractor's billing coincides with the contractor's scope of work. Cost incurred or invoices submitted, in and of themselves, are insufficient indicators of the contractor's necessity. All items submitted to the agency for reimbursement must align with the most current scope of work prior to approval. If the agency believes that the requested payment exceeds the contractor scope, an explanation should be requested from the contractor prior to approval of the invoice. Payment should be withheld pending agency satisfaction with the contractor's documentation. If you still have a request for reimbursement after 30 days make sure to contact your supervisor.

## Activity Reports

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

## Change Management

Throughout the term of the contract it may become necessary to make changes to the contract. These changes can be minor, administrative changes such as a change of address or they can be substantial changes that affect the price and timeline. There are two ways to amend a contract. One is a bilateral amendment, in which all parties to the contract agree that a modification is necessary because the scope of work, the term of the contract, or some other provision of the contract needs to be altered. The second is the right to unilaterally modify the contract. In this case, terms and conditions in the original contract set forth the situations under which the agency may exercise a right to modify the contract without the contractor's consent.

## Administrative Changes

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

- Billing instructions and payment address
- Clerical corrections
- Personnel assigned to the contract
- Other adjustments as permitted by specific contract language

## Substantive Changes

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

- Price
- Delivery schedule

- Specification
- Terms and Conditions

## **Dispute Resolution**

Dispute resolution is covered by statute under Texas Government Code Chapter 2260 and it covers some of the contract claims against the state. The goal of any dispute resolution process is to resolve all problems before they escalate to the next level. To avoid escalation of problems to the next level and make sure the agency has not exacerbated any problems, it is imperative that agency personnel respond promptly to all contractor inquiries. The steps to take are to first identify the problem, then research the facts using both sides and all relevant sources. Next evaluate the facts in conjunction with the terms and conditions of the contract to determine the appropriate course of action. Proper dispute resolution is a core skill of a successful contract manager. Identification of problems early and effective communication with a contractor can prevent obstacles in the future. Contract termination is a last resort and rarely needs to be done.

## **Termination**

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

### **Termination for Convenience**

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

### **Termination for Default**

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

- Contract Number
- Contract period
- Effective date of termination
- Reference to the termination clause
- A statement of facts justifying the termination

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

### **Contract Administration File**

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

### **Contract Closeout**

The contract close-out process is a 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 closings. 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 material has been returned. All final payments have been made to the contractor.