Contract Management Handbook

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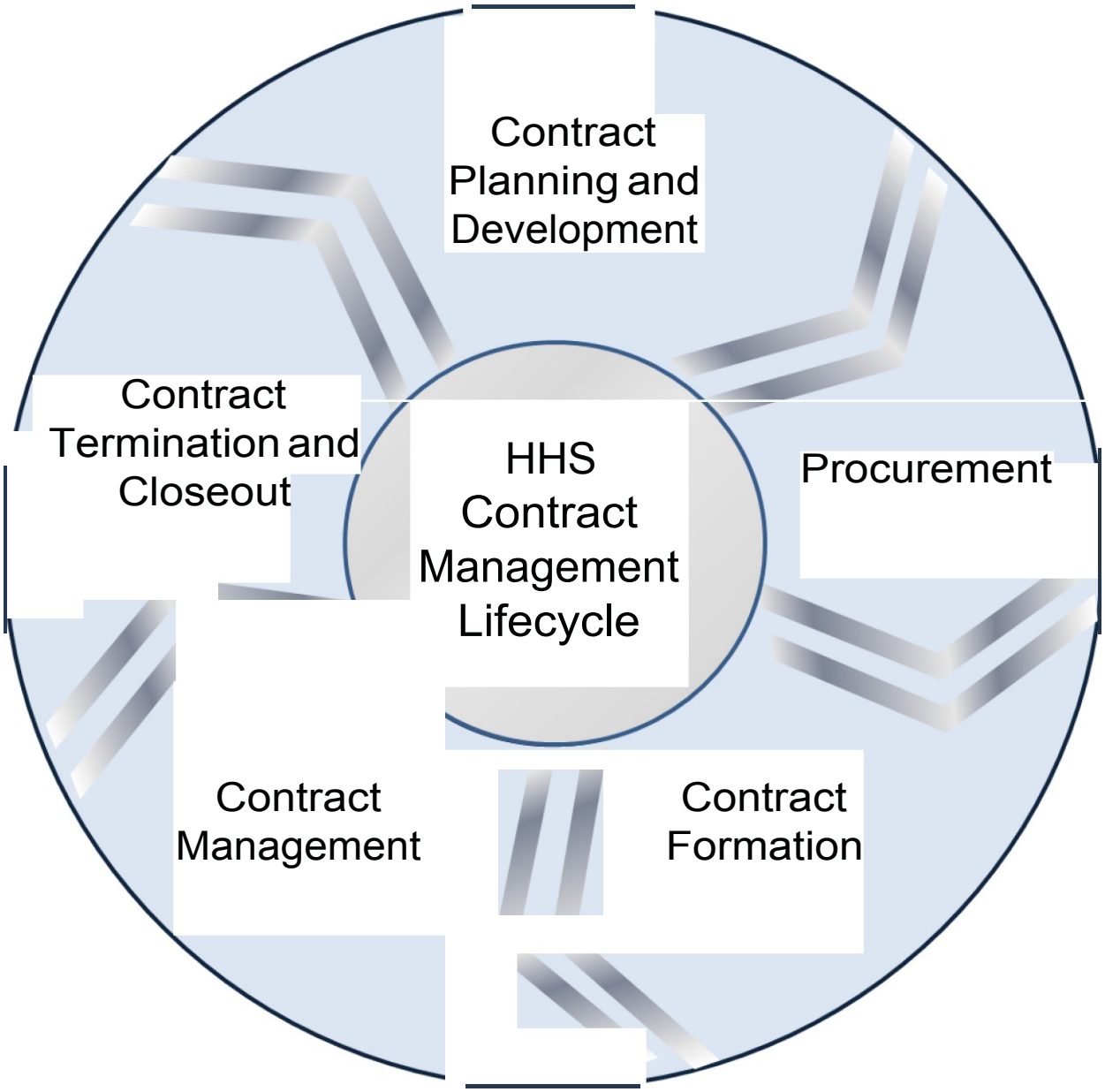

Contract Planning and Development
Procurement
Contract Formation
Contract Management
Contract Termination and Closeout
HHS Contract Management Lifecycle

1 General Provisions

1.1 Introduction and Purpose of the Contract Management Handbook

The Health and Human Services (HHS) Enterprise refers to the HHS agencies: DADS, DARS, DFPS, DSHS, and HHSC. Together, the Enterprise administers and manages more than 108,500 contracts with about $60.2 billion in associated spending, as shown in the chart *HHS Enterprise Contracts and Expenditures*. While contract numbers and expenditures vary year-to-year, the Enterprise oversees a vast number of contracts with significant public funds flowing through them.

HHS Enterprise Contracts and Expenditures*		
HHS Agency	**Number of Contracts**	**Amount Spent**
DADS	9,664	$317,407,861
DARS	1,748	$499,864,067
DFPS	2,627	$2,469,124,130
DSHS	8,984	$1,358,504,096
HHSC	85,520	$55,573,093,864
Total	**108,543**	**$60,217,994,017**

*Estimated based on available data as of March, 2015. Prepared by HHSC Strategic Decision Support.

Many HHS contracts present significant areas of business and service delivery risk to the Enterprise and Texans. Effective contract management is the lynchpin of quality contracting which ensures that clients get needed services and the State gets what it pays for.

The State has a longstanding interest in improving state agency procurement and contract management. Legislation led to the creation of the Contract Management Guide and the State Procurement Manual, maintained by the Comptroller of Public Accounts (CPA), and applicable to all state agencies.

Additionally, the legislature directed HHSC to develop this HHS Enterprise Contract Management Handbook to be followed by the HHS agencies.

1.2 Purpose of the Contract Management Handbook

The purpose of this handbook is to establish consistent contract management policies and procedures that must be followed by HHS agencies. Additionally, best practices are included to provide guidance for managing HHS contracts.

HHS agencies must ensure that their respective rules, policies, and procedures do not conflict with the requirements in this handbook. HHS agencies may request exceptions to this handbook as described in the Exceptions section below.

This handbook provides a baseline for policies and procedures that support:

- Ethical standards of conduct for contracting staff;
- Contracting activities from planning to closeout;
- Contract management requirements and best practices;
- Risk assessment and issue resolution;
- Risk-based contract monitoring;
- Application of sanctions and remedies;
- Escalation of contract performance issues; and
- Contract termination and lessons learned.

HHS agencies can develop additional policies and procedures for implementing requirements, including requirements in this handbook, to best meet their organizational structure, program requirements, and business needs. HHS agencies may exceed this handbook's minimum requirements.

Procurement and Contracting Services (PCS) will regularly update this handbook, based on changes in

contracting laws, regulations, and policies. Additionally, PCS will continue to incorporate recommendations from auditors, the Sunset Advisory Commission, and relevant oversight committees.

1.2.1 Applicability of this Contract Management Handbook

This handbook applies to the management of contracts into which HHS agencies enter, including:

1. Contracts for the purchase of good or services[i] ;
2. Professional Services Contracts including consultant contracts[ii];
3. Interagency Contracts[iii],
4. Interlocal Contracts[iv];
5. Sole source, proprietary, and emergency purchase contracts[v];
6. Purchase orders;
7. Grants;
8. Client service contracts;
9. Administrative contracts;
10. Enrollment contracts;
11. Statewide term contracts[vi];
12. Cooperative or "piggy back" contracts;
13. Construction contracts[vii];
14. Utility contracts;
15. Memoranda of Understanding (MOU);
16. Memoranda of Agreement (MOA);
17. Letter agreements;
18. Revenue generating contracts; and
19. Other agreements that bind an HHS agency in any manner.

1.2.2 Exceptions to Requirements in this Handbook

The HHS agency executive team member responsible for the contracting area may request written permission from the associate commissioner for COS, or the designee, for exceptions to specific requirements in this handbook, if allowable under HHS policies, circulars, and legislative requirements.

Exception requests must include the following:

- Identification of the handbook section for the requested exception;
- Statement of the issue or concern resulting from implementation of the requirement;
- Recommended alternative policy or procedure that would replace the requirement; and
- Fiscal or staffing impact resulting from implementing the proposed alternative.

After consulting with the HHS agency, the associate commissioner for COS, or the designee, must respond to the exception request in writing and either:

- Approve the request;
- Approve the request with modification; or
- Deny the request.

Both the HHS agency and PCS must maintain documentation of the exception request and the final decision.

1.2.3 HHS Agency Roles and Responsibilities

HHS agency staff serve a critical role in different phases of the contract lifecycle and may assume more than one role during different lifecycle phases. For example, HHS agency program staff may participate in developing the statement of work, then provide technical assistance to the contractor and finally, assist with contract closeout. The contract manager serves in a leadership role in all phases of the contract lifecycle and is the primary point of contact for the management of the contract after contract execution.

In roles, program staff must coordinate with the contract manager to:

- Work on contract development, and other lifecycle phases;
- Ensure contract manager has easy access to information about the contract;
- Work on contract amendments, waivers, and renewals;
- Request any changes to the statement of work, including changes to the service level agreement, requirements, or deliverables
- Report monitoring findings and information on risk and issues;
- Apply sanctions and remedies; and
- Participate in "lessons learned" during closeout, if needed.

The table below, *HHS Agency Roles and Responsibilities*, outlines the key roles of HHS agency program staff, procurement staff, and contract managers during key phases of the contract lifecycle.

HHS Agency Roles and Responsibilities	
Key Contract Lifecycle Function	**Responsible Party**
1. **Planning and Development:** Identify contracting needs, objectives, strategies, timelines, deliverables, performance measures, and contract management needs.	**Program staff or contract manager,** in consultation with procurement staff, contract manager or program staff, HHS legal, HHS risk and compliance management, and other subject matter experts.
2. **Procurement:** Follow procurement statutes and rules and fairly select the most qualified contractors.	**Procurement staff** in consultation with program staff, contract manager, HHS legal, and if needed HHS Ethics Office.
3. **Contract Execution:** Develop contracts that provide best value, and that contain clear measures, terms, and conditions needed to hold contractors accountable for performance.	**Contract Managers** in consultation with program staff, contractor, and if needed with procurement staff, HHS legal, and other subject matter experts.
4. **Contract Management:** Conduct risk assessments, develop monitoring plans, effectively monitor outcomes to enforce contract requirements and terms, file maintenance, record keeping, and payment approval.	**Contract Managers** in consultation with program staff, monitoring staff, contractor, and if needed with procurement staff, HHS legal, HHS Ethics Office, and other subject matter experts.
5. **Contract Termination and Closeout:** Conclude the contract, complete the contract management file, and report on the contractor's performance.	**Contract Managers** in consultation with program staff, monitoring staff, contractor, procurement staff, and if needed with, HHS legal, and other subject matter experts.

For additional information on roles and responsibilities during the procurement, see: HHS Circular C-037.

1.2.4 Procurement and Contracting Services (PCS)

PCS conducts procurements and contracting services for the HHS Enterprise. HHS agency staff, including contract managers, work with PCS staff to plan procurements, develop solicitation documents, evaluate proposals, conduct negotiations, and determine final award. PCS assists with the execution of contracts while HHS agency staff carry out contract management activities through closeout. See the HHS Procurement Manual for more details on the procurement process.

PCS also conducts the following activities:

- Oversees selected HHS Enterprise contracts;
- Maintains procurement files via HCATS;
- Facilitates routing and approval of contracts and amendments;
- Develops procurement and contracting policies and procedures;
- Provides technical assistance to HHS agencies and programs;
- Provides continuing education training for certified procurement and contracting staff; and
- Supports contracting work groups and special initiatives.

1.2.5 Responsible, Accountable, Consulted, and Informed (RACI) Matrix

The RACI matrix is useful for assigning roles and responsibilities for any programs or functions, including procurement and contract management. The matrix describes the participation of various individuals or entities in completing tasks or deliverables for a project. Definitions of the RACI matrix elements are:

- **Responsible (R):** The individual or entity performing the work and participating in the decision-making process.
- **Accountable (A):** The individual or entity ultimately accountable for completing the work and for making decisions with the participation of responsible individuals.
- **Consulted (C):** The individual or entity consulted by the responsible individual during the completion tasks or when making of a decision.
- **Informed (I):** The individual or entity that is informed of a decision or completion of a task.

HHS agency staff may collaborate within their program areas to identify all responsibilities and tasks involved in phases of the contract lifecycle, and to assign roles to the appropriate staff. The chart below provides an example of an RACI Matrix, which can be completed with any level of detail needed.

Key Contract Lifecycle Responsibilities				
Phase	**R**	**A**	**C**	**I**
Planning	Program manager	Program executive	• Contract manager • Procurement staff • HHS risk and compliance management * • Information technology*	• HHS legal* • Information technology*
Contract Development	Contract manager	Program executive	• Program manager • Procurement staff • HHS legal • Information technology*	• HHS risk and compliance management* • HHS Ethics Office*
Procurement	Procurement staff	Procurement executive	• Contract manager • Program staff • HHS legal • HHS Ethics Office* • Information technology*	• HHS risk and compliance management*
Contract Management	Contract manager	Program executive	• Program staff • Monitoring staff • HHS risk and compliance management • Contractor	• Procurement officer • HHS legal* • HHS Ethics Office* • Information technology*

*Consulted or informed as needed depending on type and complexity of procurement and contract.

1.3 Ethics and Standards of Conduct

All Enterprise employees involved in purchasing and contracting must act in an ethical, impartial, transparent, and professional manner according to HHS Enterprise policy. State employees must uphold ethical values when carrying out their official duties. Because HHS goods and services are purchased using public funds, it is critical that all involved staff remain independent and free from the perception of impropriety. Any erosion of public trust or hint of impropriety is detrimental to the integrity of the purchasing and contracting process.

1.3.1 HHS Ethics Office

The HHS Ethics Office is available to consult and assist with any ethical issues or concerns at any time during the procurement or management of the contract. A critical part of contracting is to ensure compliance with all confidentiality and conflict of interest disclosure forms and requirements. Required disclosures should be discussed and signed early in the procurement process.

1.3.2 HHS Ethics Rules for Agency Staff Involved in Contracting

As required in rule, all HHS agency staff involved in procurement and contracting activities must act in the best interest of the state and avoid any activity that could potentially impair their ability to carry out their duties with independence and objectivity. Failing to abide by these rules or to disclose a potential conflict of interest could result in dismissal or referral to law enforcement. [viii]

In addition, HHS agencies may have their own ethics or conflict of interest provisions in statue. Agencies should ensure that their policies reflect these provisions and that staff adhere to them.

1.3.3 HHS Ethics Policies and Employee Conduct

The purpose of the HHS Ethics Policy is to ensure that HHS agency staff maintain the highest standards of conduct in the performance of their duties and while serving clients and the taxpayers of Texas. All HHS agency staff must be familiar with the ethics policy and comply with it.

The HHS Human Resources Manual, Chapter 4, Employee Conduct, discusses standards of conduct, work rules, and other requirements for HHS employees. Violation of these policies can result in disciplinary action including dismissal and in some cases, referral to state or federal law enforcement agencies.

1.3.4 State Employee Conflicts of Interest

POLICY

HHS agency staff may not accept anything, regardless of value, from contractors or prospective contractors. A contractor or potential contractor must not offer, give, or agree to give an employee anything of value. Statute prohibits state employees from accepting a benefit from a person the employee knows, or should know, is subject to the employee's agency's regulation, inspection, or investigation.[ix] The solicitation or acceptance of a benefit from a person or entity that a state employee knows is interested in, or may become interested in, a contract, purchase, or payment, is also prohibited.

As required by statute, state employees are prohibited from accepting employment from a person or entity for two years after leaving employment with the state, if the employee participated on behalf of the agency in a procurement or contract negotiation involving that person or entity[x].

HHS agencies may have stricter conflict of interest policies and procedures that contract managers must abide by

.

1.3.5 Reporting Ethics Violations

All HHS agency staff have a duty to report any potential ethics or standard of conduct violations to the Ethics Office. A contract manager has an obligation to remain vigilant for signs of potential violations of ethics rules, policies, and standards of conduct. A contract manager must use the following options for reporting and investigating known, alleged, or suspected fraud or other illegal activities in the Enterprise.

- **Reporting to Immediate Supervisor:** An HHS employees may report any potential or known ethical or standard of conduct violations to their immediate supervisor. Contact may be verbal or written and may be made by anyone having knowledge. The supervisor must report all allegations to the HHS agency's ethics advisor for a preliminary review and determination as to the necessity for proceeding with an investigation of the reported fraud or illegal activity. The ethics advisor may consult with the HHS Ethics Office, Office of Chief Counsel, Human Resources Department and any other agency staff as appropriate for advice and assistance. If an investigation is warranted, the ethics advisor or supervisor must report the matter to the Office of Inspector General for further action.

- **Reporting to Office of Inspector General or State Auditor's Office:** An HHS employee may report fraudulent or other illegal activities anonymously, or if reporting to the supervisor would be unproductive, to: Office of Inspector General's Fraud, Waste, and Abuse Hotline by calling 1-800-436-6184 or by submitting the form located at: https://oig.hhsc.state.tx.us/WafRep/. Anonymous reports can also be submitted to the State Auditor's Office by calling the Fraud, Waste, and Abuse Hotline at 1-800-TX-AUDIT or by completing the form located at: www.sao.state.tx.us/siu/hotline.html

1.3.6 Computer-based Training for Contracting and Procurement Staff

All HHS contract managers must complete the HHS Ethics Training for Contracting and Procurement Personnel computer-based training (HHS Ethics CBT). [xi] The HHS agency's commissioner or designee determines any additional staff that must complete this training and should include those with:

- Procurement and contract approval authority, including executive management, financial and legal staff;
- Procurement responsibilities, including bid/proposal evaluators;
- Contract management and monitoring responsibilities;
- Contract oversight and support responsibilities; and
- Those with discretion to select services or providers for clients (e.g., caseworkers).

New employees, including interagency transfers involved with contracting, must complete the HHS Ethics CBT within 60 days of their employment start date. Staff are required to complete the CBT every two years thereafter. For intra-agency transfers, managers must determine if the new job duties require completing the CBT within 60 days of entry into the new position. As an alternative, transferring employees may provide documentation of completion of the HHS Ethics CBT within the last two years.

1.3.7 HHS Ethics Rules for Contractors

As required in rule, contractors interested in working with the Enterprise must implement standards of conduct for their own employees that are at least as restrictive as those applicable to internal contract management staff. Respondents must sign all required ethics and disclosure forms and HHS agency staff may consider a respondent's standards of conduct when evaluating the award of a contract. In addition, a contractor that violates the rules may be barred from receiving future contracts and must be reported to the Comptroller of Public Accounts for statewide debarment.[xii]

1.3.8 Contractor Conflict of Interest

Statute prohibits agencies from entering into employment, professional services, or consulting services contracts with former or retired employees before the first anniversary of the last date on which the individual was employed by the agency.[xiii]

HHS agencies may have stricter conflict of interest policies and procedures that contract managers must abide by. HHS agency contract terms and conditions must contain provisions related to organizational conflicts of interest, restrictions on recruitment of state employees, and kick-backs, such as:
Respondents must:

- Warrant that providing services will not constitute an actual or potential conflict of interest nor reasonably even create the appearance of impropriety;
- Disclose any current, former, or proposed employees who are current or former employees of the state;
- Disclose proposed personnel who are related to current or former employees of the state; and
- Warrant that they have not given, nor intend to give, any gift or thing of value to employees participating in the solicitation.

1.3.9 HHS Agency and Contractor Relationship

While HHS agency staff and contract managers must fulfill their responsibilities, contractors must in turn fulfill their contractual obligations. Maintaining cooperative relationships with contractors is important to successful contracting outcomes. However, HHS agencies must maintain an ethical arms-length business relationship with contactors. In addition, the HHS agency must be recognized as the final authority and decision maker on all matters.

1.4 Legal Consultation

HHS legal staff provides legal assistance, guidance, and review including:

- Providing input on the proposed procurement method and approach;
- Reviewing the statement of work for purchases of $25,000 or more;
- Reviewing any changes to the HHS agency terms and conditions;
- Interpreting and ensuring compliance with state and federal contracting laws and regulations (e.g., approvals from Centers for Medicare and Medicaid Services (CMS), Food and Nutrition Service (FNS), Compliance with Codes of Federal Regulations (CFR), etc.);
- Advising PCS and the agency on contracting with a debarred party;
- Supporting PCS and the agency in dispute resolution, including mediations with contractors;
- Developing a letter for contract remedy with the agency and PCS;
- Assisting the agency and PCS on contract termination or suspension, including reviewing settlement claims when terminating a contract for cause.

2 Planning and Development

2.1 Procurement and Contract Planning Process

POLICY

Identifying and defining the need begins the contract lifecycle and provides the basis for the contract.

By clearly defining the need at the beginning of the lifecycle, the following outcomes should be achieved:

- Facilitate effective prioritization of the required funding to make the purchase;
- Promote common agency-wide understanding of the need;
- Identify type and level of service required to meet the need;
- Identify contract objective;
- Provide framework to develop the statement of work, solicitation, evaluation, and contract documents;
- Determine whether or not confidential information will be exchanged under the contract, identify the Information Owner and Designee, and assess the information security risk level; and
- Provide necessary information to determine how performance and quality of goods or service delivery will be measured, documented and tracked.

Factors that must be considered when assessing need:

- State or federal laws, rules, or regulations;
- HHS agency or enterprise policy;
- Executive commissioner or other applicable official directive.
- Potential benefits of the procurement and contract, including to clients, and the state;
- Any potential ethical or conflict of interest/disclosure issues that may arise;
- Any potential risks to the HHS agency or the enterprise that may result if the need is not met;
- Level of priority or importance of the need;
- Availability of funding, staff, expertise, and other resources to meet the need;
- Cost-effectiveness of the goods and services;
- Availability of funds;
- Any legal concerns or potential issues;
- Availability of other sources to meet the need; and
- Leveraging based on existing opportunities to reduce cost or resources.

2.1.1 Procurement & Contract Planning Questionnaire (PCPQ)

Before purchasing goods or services, each HHS agency must identify and document that a true need exists by completing the Procurement & Contracting Planning Questionnaire (PCPQ), Form 401.
The PCPQ:

- Is required for new services and services that are being re-procured.
- Must be submitted to PCS with the requisition.
- Is required for all purchases, including small purchases, open enrollments, emergency, sole source, and proprietary purchases.

2.1.2 Procurement Initiation/Approval to Advertise

Before purchasing goods or services, and again before advertising the solicitation, each HHS agency must document approval to purchase by completing the Procurement Initiation/Approval to Post Form 146. Form 146:

- Is required for new services and services that are being re-procured.
- Must be submitted to PCS with the requisition.
- Is only required for purchases that exceed $25,000 for the initial term of the contract, not including renewals.
- Is not required for all IT purchases including DIR contracts for $25,000 and over; Delivery Based Information Technology Services (DBITS) and Information and Communications Technology (ICT) Cooperative Contracts (commonly referred to as Go Direct).
- Is not required for revenue contracts, established contract releases, contract amendments, building leases, emergency purchases, sole source/proprietary purchases, or professional memberships.

2.1.3 Emergency Purchases

To initiate a non-competitive emergency purchase of $5,000 or more, the HHS agency must submit HHS-PCS.01 Justification for Emergency Purchase to PCS with its requisition. See the HHS Procurement Manual for more details.

An emergency is a situation requiring the state agency to make the purchase as quickly as possible in order to:

- Prevent a hazard to life, health, safety, welfare, or property, or
- Cause undue additional cost to the state.[xiv]

2.1.4 Sole Source/Proprietary Purchases

To initiate a non-competitive sole source or proprietary purchase of $5,000 or more, the HHS agency must submit HHS-PCS.02 Justification for Proprietary/Sole Source Procurement to PCS with its requisition. See the HHS Procurement Manual for more details.

- A proprietary product or service is manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.[xv]
- A sole source purchase is a purchase that is directed to a specific vendor, even though the goods and services may be available from other vendors. A sole source procurement must be directed to a single vendor for a valid reason.

All sole source and proprietary purchases over $25,000 must be posted to the Electronic State Business Daily (ESBD) for a minimum of 14 days.

2.2 Procurement Lead Times

POLICY

For each procurement, the PCS purchaser, in coordination with the contract manager and HHS agency program staff, will develop a timeline. The timeline should include all key milestones for completing the procurement within required deadlines. When establishing the timeline, consider all factors that may impact timing including:

1. **HHS agency budget approval:** Budget must verify the availability of funds at the planning stage and prior to contract execution.

2. **Procurement & Contract Planning Questionnaire, Form** PCS 401**:** This form documents the need for the purchase and identifies risk associated with access to client data and must be completed prior to the PCS purchaser beginning the procurement process.

3. **Procurement initiation and approval to advertise Form PCS 146:** For purchases of $25,000 or more**,** this form must be signed by the HHS agency and a PCS executive prior to the PCS purchaser beginning the procurement process and again before the solicitation can be advertised.

4. **Justification for Sole Source, Proprietary, or Emergency Purchases:** When the purchase will exceed $5,000, the HHS agency must include the appropriate justification form.

5. **Delegation from the CPA:** For administrative purchases over $100,000, PCS must obtain a written delegation from the Comptroller of Public Accounts (CPA) prior to making the purchase.

6. **Preparation of the solicitation document:** In addition to the time needed for HHS agency preparation and approval, also consider the time required for PCS to finalize the solicitation document. PCS is responsible for ensuring the document is complete, allows for competition, and follows all applicable statutes, rules, and procedures.

7. **Draft procurement or RFI:** Add additional time for the release of a draft procurement document on ESBD for comments or a request for information (RFI) from potential contractors. In some instances, federal funding sources require draft solicitations to be posted prior to posting the final solicitation.

8. **HUB program office:** For contracts of $100,000 or more, the HUB office must review the draft documents to determine if subcontracting opportunities are probable and identify the applicable class and item codes for the procurement.

9. **HHS legal:** Legal must review the procurement documents for all purchases of $25,000 or more. Additional time should be added if legal will need to draft or prepare contract documents.

10. **Contract Advisory Team Review and Delegation** (**CATRAD):** Procurements that result in contracts with an expected value of $10 million or more require review by the Contract Advisory Team Review and Delegation (CAT).

11. **Electronic State Business Daily (ESBD):** PCS must submit notice of any procurement valued over $25,000 on the ESBD website[xvi]. Sole source or proprietary purchases over $25,000 must be posted for 14 days. A 30 day solicitation period is typical for most RFPs. Formal IFBs usually require 14 or 21 days depending on any applicable ESBD requirements. However, if the procurement is very complex and requires respondents to submit significant documentation or complex pricing, additional time for the solicitation period should be allowed.

12. **Screening and evaluation of responses:** The time needed for screening and evaluating responses will depend on the type and complexity of the procurement. Complex RFPs may have an evaluation team, oral presentations, discussions, and best and final offers.

13. **Contract negotiation and formation:** Timeframes will vary depending on the type and complexity of the procurement.

14. **Contract execution:** The timeframe will differ significantly between a purchase order and a contract. Additionally, contracts of $1,000,000 or more require completion of the Contract Routing Form PCS 201 and signature by the executive commissioner.

15. **Consultant contract greater than $15,000:** The HHS agency must post notice of a major consulting procurement in the Texas Register at least 30 days before entering into a contract[xvii] and provide notice to the Governor's Office.

16. **Complex contracts:** High risk or complex project may require collaboration with the**:**

    a. **HHS Office of Risk and Compliance Management** to develop a strategic process for risk and issue identification, assessment, communication, and response;
    b. **HHS Ethics Office** to provide guidance as needed, and ensure all HHS ethics policies are followed and appropriate documentation maintained; and
    c. **HHS Office of the Chief Privacy Office**.

2.3 Statement of Work and Scope of Work

POLICY

An important tool in effective contract management is a clearly written and sufficiently detailed statement of work. The statement or scope of work (SOW) is the detailed description of what the agency is purchasing and what the contractor is required to provide in order to satisfactorily perform the work.

It is important that the statement of work**:**

- Secures the best value for the state;
- Be clearly defined;
- Be contractually sound;
- Be unbiased and non-prejudiced toward respondents;
- Encourage innovative solutions to the requirements described, if appropriate; and,
- Allow for free and open competition to the maximum extent reasonably possible[xviii].

A statement of work can be performance based, a design specification, or a mixture of both[xix].

- Performance based specifications focus on outcomes or results rather than process, and the required goods and services rather than how the goods and services are provided.
- Design specifications outline exactly how the contractor must perform the service or how the goods perform.

Resources

The following references provide guidance on preparing the statement of work:

- Preparing the Solicitation, Ch. 3 Comptroller's State of Texas Contract Management Guide
- Specifications, Section 2.17 State of Texas Procurement Manual
- Advanced Specification Writing

PROCEDURES

1. A contract manager must participate in the development of the statement of work.
2. Primary sources for developing the statement of work are:
    a. The needs assessment;
    b. The previous procurement for the service;
    c. The current contract for the service; and
    d. Description of the service maintained by the agency (e.g., in the TAC or agency program handbook).
3. Below are common statement of work provisions. Usage will depend on whether goods or services are being purchased and whether the purchase is to support clients or the agency:

- **Eligible population:** Define and describe the population eligible to receive services under the resulting contract and ensure it is consistent with the eligibility information in the program handbook, as applicable. Identify who will determine eligibility.
- **Client characteristics:** Define the characteristics of the clients to be served under the resulting contract. The intent is to give the contractor information on the population it will be serving. For example, will clients be court ordered into services, receiving services voluntarily, have open abuse and neglect cases.
- **Service authorization and referral process:** Identify how clients will be referred for services provided by the contractor (e.g.., agency, self-referral, contractor outreach) and describe the process, including any forms, through which clients will be referred or approved for services.
- **Deliverables or service description:** Describe the goods or service the agency is purchasing and what the contractor must deliver under the contract. Specifications must be clear and understandable to the respondents and permit competition between goods or services of equal quality.
- **Location of work or service areas:** Describe where the work is to be performed (e.g., region, counties, cities, zip codes) and where people will meet to do the work.
- **Period of performance:** Specify the allowable time for projects, such as start and finish time, number of hours that can be billed per week or month, and anything else that relates to scheduling.
- **Deliverables schedule:** List and describe what is due and when, including any reports the contractor is required to submit.
- **Minimum qualifications:** List the minimum acceptable qualifications for the service provider's staff and organization.
- **Record keeping:** Describe in detail all records the contractor and service providers are required to keep such as referral records, client records, case files, reports, notifications, performance measure supporting documentation, billing records, personnel records, subcontractor files and agreements, licenses, certifications, qualifications, background check results, health records, or investigation records. Specify the format for these records.
- **Applicable standards:** Describe any regulatory, agency, or industry specific standards that need to be followed in fulfilling the contract.
- **Acceptance criteria:** Specify how the agency will determine if the product or service is acceptable.
- **Type of contract and payment schedule:** Define the payment methodology, basis for payment, and invoicing process.
- **Transition and turnover planning:** Identify any transition activities the new contractor will be required to perform in order to be ready to effectively provide services on the contract effective date. Identify any transition activities the new contractor will be required to perform at the end of its contract in order to effectively transition clients and services to a subsequent contractor.

2.3.1 Writing the Statement of Work

Tips to keep in mind when writing a statement of work:

1. **Use simple descriptions:** Write so a person unfamiliar with the good or service can easily understand what the agency is buying.

2. **Avoid acronyms and definitions:** Avoid acronyms and references to definitions contained in other sections of the solicitation, including a glossary. Every section should be self-contained and not require the respondent to refer to numerous sections to understand the requirements.

3. **State requirements once:** The statement of work should not duplicate terms and conditions or other provisions in the solicitation, contract, or terms and conditions.

4. **Use non-proprietary terminology:** Requiring the use of proprietary goods or services limits competition and increases the risk of a bid challenge or allegation that the requirements are slanted to a particular contractor.

5. **Write with the evaluation criteria in mind:** The statement of work must include all of the requirements that will be used to evaluate and choose a contractor. A well-written statement of work will allow the agency to differentiate between competing proposals.

2.4 Contract Performance Standards and Key Measures

POLICY

Contracts must include performance measures that set clear expectations for the contractor and hold contractors accountable for those expectations. Performance measures encourage routine improvement, effectiveness, and efficiency. Strong performance measures allow the Enterprise to:

- Establish performance measures with clearly defined indicators;
- Develop processes for collecting performance data and information;
- Develop processes for analyzing and reporting data and information;
- Conduct quality improvement planning, implementation, and evaluation
- Ensure contract goals, objectives, and strategies align with outcomes;
- Operate efficiently and effectively;
- Maximize resources; and
- Provide data to determine whether contractors are meeting their objectives.

Contracts must specify remedies for noncompliance and should include any incentives for exceeding standards. Performance standards will vary based on the contract and additional standards may be necessary.

Characteristics of Good Key Measures
✓ **Simple**: Can our stakeholders understand it? ✓ **Relevant**: Does it matter to key stakeholders? ✓ **Stable**: Is it usable during business cycles over time? ✓ **Timely**: Is it taken when and where results appear? ✓ **Accurate**: Does it consistently measure what it purports to? ✓ **Used**: Does it change what the agency is doing? ✓ **Informative**: Does it tell us about we are doing, or should be doing? ✓ **Specific**: Does it allow for, or factor out, other measures? ✓ **Unique**: Is it measuring something already measured? ✓ **Cost-effective**: Is measuring worth it, and how good is good enough? ✓ **Non-disruptive**: Does it create ethical, legal or other types of conflicts?

Types of Performance Measures[xx]	
Types and Definitions	**Examples**
1. **Outcome and Effectiveness**: Measureable indicator of the agency's effectiveness in serving its customers and in reaching the mission, goals, and objectives.	• Percentage of provider enrollment applications processed in 30 days • Percentage of licensed providers inspected annually. • Percentage of providers with no violations.
2. **Output:** Measureable indicator of the number or volume of services an agency produces. Used to assess workload and the agency's efforts to address those demands.	• Number of substance abuse beneficiaries in the program. • Number of inspections conducted. • Number of provider applications processed.
3. **Efficiency**: Measureable indicator of productivity expressed in unit costs, units of time, or other ratio-based units. Used to assess the cost-efficiency, productivity, and timeliness of agency operations, outcomes, and outputs.	• Average cost per case. • Average cost per inspection. • Average time for complaint resolution.
4. **Explanatory/Input:** Indicator of factors, agency resources, or requests received that can impact an agency's performance.	• Percentage of medical school graduates entering a primary care residency. • Number of business facilities registered. • Number of cases received.

2.5 Contractor Compensation

POLICY

The method of payment has a direct impact on how the statement of work is written and how the contract is managed. HHS agencies must measure or verify that the work is complete and how much and how often the agency will pay the contractor. Payments should be:

- Consistent with the type of product or service delivered;
- Structured to fairly compensate the contractor and encourage timely and complete performance of work;
- Approximately equal to the value of the completed work; and
- The solicitation should specify the payment type (fees, costs, and price) that is consistent with the type and value of work performed and as defined in the solicitation.

2.6 Cost Benefit Analysis and Cost Estimates

POLICY

Cost-benefit analysis is the evaluation of planned actions to determine what net value they will have for an agency. When an HHS agency plans to procure goods and services over $25,000, the agency should conduct a cost-benefit analysis to justify the procurement and contracting decision. The cost-benefit analysis is behind every business decision because the enterprise should not spend funds unless benefits deriving from the expenditure are expected to exceed the costs. For HHS agencies, the benefits may be financial or non-tangible, such as services provided to clients. Contract Management should consult with their agency leadership to determine when a cost benefit analysis is necessary.

When applicable, the HHS Cost Benefit Analysis Form, CPP0402 must be completed in consultation with contracting leadership and finance staff.

HHS agencies, in consultation with contracting leadership and finance staff, estimate costs and when applicable, should develop a cost-benefit analysis. Even if limited by budget constraints, an estimated cost will provide an idea of the range of services that the agency can include in the statement of work. The cost estimate planning process should be documented and included in the contract management file. Funding considerations for cost estimates may include the following.

In-house cost considerations:

- Adequate resources for the management and monitoring of the contract;
- Number of full-time equivalents required to perform the work for each fiscal year;
- Cost of goods and supplies;
- Professional fees and services, travel, rent and indirect expenses; and
- Method of finance.

Outsourcing costs:

- Estimated number of years for the contract;
- Estimated contractor costs (e.g., salaries, fringe, equipment, etc.); and
- Method of finance.

HHS staff must consult with finance to determine if a project is likely to cross state fiscal years or into another biennium.

2.7 Determination of Payment Type

POLICY

Determination of the appropriate compensation method to make payment to the contractor helps ensure the state receives the best value and is in compliance with the HHSC Guiding Principles for Business Decisions.

HHS agency staff must determine the most effective compensation method or primary payment type during the procurement planning stages. The payment type selected will be one that best ensures:

- Delivery of services;
- Encourages efficiencies and effectiveness of service; and
- Provides the best value to the program and its clients or consumers.

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

HHS utilizes several payment types, including:

- Cost Reimbursement
- Cost Plus Incentive
- Fee-for-Service
- Fixed Price
- Progress
- Rate Based
- Variable Rate
- Blended Variable Rate
- Time and Material
- Contingency Fee

2.8 Determination of Contract Monetary Value

POLICY

HHS agency program staff, in consultation with the contract manager and procurement staff, must base its determination of the proposed length of and compensation during the original term of the contract on:

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

Staff must not artificially split (or parcel) any of these factors in order to avoid the dollar thresholds during the original term of the contract or to circumvent any additional required review submissions such as to the Contract Advisory Team (CAT).

The payment method and source of funds should not be considered in determining whether the estimated total value will exceed dollar thresholds. HHS agency and procurement staff must make a good faith determination as to the estimated total value at the time of planning. PCS procurement staff must be notified before any changes in the estimated amount that would impact or trigger a required review such as CAT review.

2.9 Development of Contracts of $10 Million or More

POLICY

The Contract Advisory Team (CAT) [xxi] assists state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have a value of at least $10 million dollars during the original term of the contract, not including renewal periods.[xxii]

By statute, state agencies must comply with CAT recommendations or provide a written explanation for not complying with the recommendation.[xxiii]

PROCEDURES

- PCS is the point of contact for the CAT review process and will work with the HHS agency to consult with CAT using the automated Contract Advisory Team Review and Delegation (CATRAD) application form.
- The CAT will review the solicitation documents within 30 days of receipt.
- If PCS does not receive a response from the CAT within 30 days of initial receipt of the solicitation documents, PCS and the HHS agency may proceed with the issuance of its solicitation.
- PCS will work with the HHS agency to provide CAT a written explanation of any specific recommendation that is not applicable to the contract under review.

3 Procurement

POLICY

The contract manager plays an important role in supporting the PCS purchaser during the procurement phase of the contracting lifecycle. HHSC Circular C-037 describes many of the procurement steps relevant to this phase, and in the Agency/Program column, C-037 identifies the level of responsibility the contract manager has for each activity.

Additionally, the HHS Procurement Manual contains important information about the role of the contract manager, HHS agency, and PCS during the procurement phase.

3.1 Consulting Contracts

POLICY

By statute, a consulting service is the service of studying or advising a state agency under a contract that does not involve the traditional employer and employee relationship.[xxiv] A major consulting contract is a consulting services contract that may be reasonably foreseen to exceed a value of $15,000[xxv].

Although PCS is responsible for securing consulting services, each HHS agency is responsible for meeting the numerous statutory requirements for these contracts.

A state agency may only contract with a consultant if:

- There is a substantial need for the service; and
- The agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity[xxvi].

In selecting a consultant, HHS agencies must:

- Base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and
- If other considerations are equal, give preference to a consultant whose principal place of business is in the state, or who will manage the consulting contract wholly from an office in the state[xxvii]. However, if the contract is funded wholly or in part with federal funds, contract staff should work consult with legal, as federal law sometimes pre-empts and prohibits the use of local or state geographic preferences, depending on the funding stream[xxviii].

Statute also establishes state agency oversight requirements for the use of private consultants detailed below.[xxix] The Office of the Governor maintains applicable Consultant Contract Guidelines.

PROCEDURES

1. If the consultant contract is over $14,000, the following is required:
    a. **10 Day LBB notification:** The HHS agency must notify the LBB within 10 days of entering into the contract[xxx].
    b. **Final report:** The HHS agency must forward copies of all consultant documents, files, recordings, or reports to the Texas State Library. Final reports must be submitted to the Governor's Budget and Planning Office[xxxi].
2. For major consulting contracts, the following is required:
    a. **Notification of intent and finding of fact:**[xxxii] Prior to submitting the requisition to PCS, the HHS agency must submit the Consultant Contract Notification and Finding of Fact form. After receiving the finding of fact approval letter from the Office of the Governor, the HHS agency will attach the approval letter to the requisition.
    b. **30-Day RFP publication:**[xxxiii] At least 30 days before entering into a major consulting contract, the HHS agency must file the following with the Secretary of State for publication in the Texas Register:

- An invitation for consultants to provide offers of consulting services;
- The PCS purchaser's contact information;
- The closing date for receipt of offers;
- The procedure for awarding the contract;
- If applicable, notification that the services were previously provided by a consultant; and
- If applicable, notification that the agency intends to award to its previous consultant unless a better offer is received.

c. **10-Day LBB notification:** The HHS agency must notify the LBB within 10 days of entering into the contract[xxxiv].

d. **20-Day selection publication:**[xxxv] Within 20 days of contracting with a consultant, the HHS agency must file the following with the Secretary of State for publication in the Texas Register:
   - A description of the activities to be performed by the consultant;
   - The name and business address of the consultant;
   - The total value and the beginning and ending dates of the contract; and
   - The dates on which the deliverables (e.g., reports, documents) are due.

e. **Final report:** The HHS agency must forward copies of all consultant documents, files, recordings, or reports to the Texas State Library. Final reports should be submitted to the Governor's Budget and Planning Office[xxxvi].

3. For renewals, extensions, and amendments, the following are required:

Cost of original contract	Other	30-day RFP Publication	Finding of Fact	10-day LBB Notification	20-day Selection Publication	Final Report
Greater than $15,000	Renewal, Amendment, or Extension < $15,000	No	No	Yes	Yes	Yes
Greater than $15,000	Renewal, Amendment, or Extension > $15,000	Yes	Yes	Yes	Yes	Yes
Less than or Equal to $15,000	Original Amount Plus Renewal, Amendment, or Extension > $15,000	Yes	Yes	Yes	Yes	Yes
Less than or equal to $15,000	Original Amount Plus Renewal, Amendment, or Extension < $15,000	No	No	Yes	Yes	Yes

3.2 HUB Determination

POLICY

To maximize the inclusion of minority, woman-owned, service-disabled veteran businesses in state contracting and to accomplish the HHS agencies' mission, PCS administers the Historically Underutilized Business (HUB) Program Office[xxxvii]. The purpose of the HUB Program Office is to promote full and equal business opportunities in state contracting through openness, fairness, and the highest ethical standards.

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

To make a subcontracting determination, the HUB Program Office will consult with HHS agency program staff, the contract manager, and PCS purchasing staff to ensure a HUB subcontracting plan (appropriate language is included in the solicitation. All interested respondents must submit a completed HSP response with their proposals when subcontracting opportunities are probable.

3.3 Solicitation Conference

POLICY

A solicitation conference is a meeting facilitated by PCS in collaboration with the contract manager and HHS program staff, which is designed to help potential bidders/respondents understand the requirements of a solicitation. These meetings can also be called pre-bid, proposal, or vendor conferences.

HHS agencies may opt to conduct a solicitation conference by working with the PCS purchaser to include notification of the solicitation conference in the procurement document. The PCS purchaser will conduct the conference in coordination with the HHS agency program and contract manager.

Benefits to conducting the solicitation conferences are:

- Allowing potential respondents to address specific questions or concerns;
- Providing for on-site visits by contractors before submitting responses;
- Providing information, schematics, plans, reports, or other data that is not easily accessible from the ESBD; and
- Facilitating subcontracting relationships that may develop through the conference.

Typically, potential contractors are not required to attend the solicitation conference. However, conferences should be mandatory if an on-site visit is required to have a full understanding of the procurement, or if the solicitation is so complex that attendance is critical for respondents to fully understand it. Before including a mandatory solicitation conference in the procurement, the HHS agency should consult with PCS and HHS legal because this requirement may limit competition.

The PCS purchaser will work with HHS agency program staff and the contract manager to answer any questions submitted at the conference and to post the written answers on the ESBD.

3.4 Request for Proposal Evaluation

POLICY

HHS agency program staff and the contract manager will work with the PCS purchaser to develop the evaluation criteria and the evaluation tool and to identify and train the evaluation team.

Evaluation Criteria

All RFPs must contain evaluation criteria evaluation criteria are those requirements included in the solicitation document that will be used to evaluate proposals and determine the best value to the state. It is important that the RFP is clear about the evaluation criteria that will be used and the priority of the evaluation criteria.

In an RFP, the criteria can range in detail from best value factors ranked in order of importance (i.e., broad criteria that will need to be further defined before evaluation) to the inclusion of the weighted evaluation tool (i.e., very detailed evaluation criteria with corresponding weights that will be used as written to evaluate proposals).

The contract manager, in consultation with HHS agency program staff must ensure that the evaluation criteria relates to the requirements in the statement of work.

Evaluation Team

At a minimum, an RFP evaluation team should consist of three to five agency stakeholders representing different subject matter areas related to the final product or service. The contract manager should ensure appropriate subject matter representation on the team, including program, contract management, finance, IT, and others as needed. The PCS purchaser serves as the evaluation team facilitator and is a non-voting member.

Evaluation team members may have input into the solicitation document especially the evaluation criteria and assigned weights. The evaluation team members should:

- Fully understand the requirements of the solicitation;
- Be able to critically read and evaluate responses and to document their judgments concisely and clearly in accordance with their evaluation; and
- Must agree to adhere to the proposed timeline required to evaluate proposals.

For complex contracts, a three-tiered evaluation team approach is recommended, and consists of:

- **Initial screening team** to check proposals for compliance with mandatory submission requirements;
- **Business/Technical solution team** to evaluate the business proposal/technical solutions based on the criteria in the RFP; and
- **Financial/Cost team** to evaluate the vendor's cost proposal for completeness, competitiveness, reasonableness, and compliance with RFP requirements.

Evaluation Tool

As best practice, the evaluation tool should be completed before publishing the solicitation document. Agencies will often see that additions or revisions are needed to the solicitation document once they start developing the scoring matrix. Those changes are more easily made prior to posting the final document.

If time does not permit the evaluation tool to be completed before publishing the solicitation, the tool must be completed before reviewing the solicitation responses.

Evaluation tool questions should be cross-referenced to their corresponding RFP numbered sections.

Evaluation Training

The PCS purchaser will ensure that all evaluation team members complete any required ethics, confidentiality, and disclosure forms prior to reviewing or discussing any proposals. Additionally, the PCS purchaser will ensure the team members receive evaluation training on their roles and responsibilities, evaluation criteria and scoring methodology, and the evaluation process.

3.5 Contract Negotiations

POLICY

Contract negotiation during the procurement phase involves communicating with a potential contractor to reach agreement on the terms of the final contact. The purpose of the contract negotiation will depend on the procurement method and the items being negotiated but will always be guided by obtaining the best value for the state.

For a request for proposal with more than one potential contractor, negotiations may be used to further evaluate offers and to select one or more for contract award.

To enhance the HHS agency's negotiating position, a potential contractor is not told if it is the only potential contractor the agency is negotiating with. This information should be shared only when it is pertinent in the negotiation.

PCS must give the same information to all potential contractors that are being considered. No contractor being considered for award should receive information that would give it a competitive edge over the others. Information about an offer is not shared with any other potential contractors

RESOURCES

Best and Final Offers and Negotiations, Evaluation and Award, Ch. 5 - Comptroller's State of Texas Contract Management Guide

PROCEDURES

- The HHS agency will work with PCS to negotiate with any potential contractors.
- PCS will facilitate the negotiation and manage the technical and financial evaluation outcomes of the negotiation to ensure selection of a best value potential contractor.
- For request for proposals (RFP), PCS may limit the field of competition for negotiations to offers that received the highest or most satisfactory evaluations.
- PCS retains all negotiation documents as part of the procurement file, which is subject to public disclosure.
- All negotiated changes must be included in writing in the final contract.

Negotiation team: PCS will coordinate the evaluation and negotiation process with the HHS agency program, HHS legal and others with needed expertise on the team, such as information technology staff. The contract manager must ensure that the team is adequately staffed with needed expertise.

Negotiation process: Negotiations may include discussions of any ambiguities or deficiencies in the business proposal, the cost proposal, service delivery strategies, and any other items. Negotiation may

also be used to obtain clarifications, improvements, and revisions to the original offer. All changes or revisions to the offer must be documented in writing.

Best and final offer: After discussions with potential contractors, HHS agencies may work with PCS to request a best and final offer (BAFO). BAFO may be requested prior to negotiation and may be used to narrow the field of competition. BAFOs are only used in the evaluation of RFPs.

4 Contract Formation

POLICY

Before a contractor provides goods or services, an authorized representative of the contractor and the HHS signature authority must execute a written contract. PCS and the contract manager will work with appropriate staff, including HHS legal staff, to develop the contract and include all required contract documents and the appropriate contract terms and conditions.

A contract can be documented in different formats, including a four-corner contract or purchase order.

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

4.1 Contract Documents

A written contract must include or incorporate by reference the following documents, if applicable:

- The appropriate version of the contract terms and conditions;
- The solicitation document;
- The contractor's response;
- Any negotiated changes;
- The required budget documents; and
- Any required forms.

The required forms will vary by HHS agency in accordance with internal processes, procedures, policy, and the type of contract.

4.2 Contract Terms and Conditions

HHS agencies have developed uniform or standard contract terms and conditions that are applicable to their specific contracted services. These terms and conditions address areas such as:

- Governing laws and regulations;
- Procedures for amendments and other contract modifications;
- Terms and conditions of payment; and,
- Data Use Agreement requirements.

The contract manager must ensure the appropriate terms and conditions are used, in consultation with the HHS agency program, PCS, and HHS legal. HHSC uniform terms and conditions may be used, as appropriate.

4.3 Minimum Contract Requirements

At a minimum, a contract must contain the following terms and conditions:

- Begin and end date;
- Description of the goods and services to be provided;
- Payment and invoicing information;

- Renewal periods available to the HHS agency;
- Any service level standards or agreements;
- Points of contacts and notice provisions;
- The process to change or amend the contract;
- A clause that the contract is subject to cancellation by the HHS agency;
- Termination provisions; and
- A clause that states continuation is contingent on the availability of state or federal funding.

4.4 Coordination and Preparation

The contract manager is responsible for the coordination and preparation of the appropriate contract agreement.

The contract manager must:

- Coordinate with appropriate HHS stakeholders such as the PCS purchaser, finance staff, legal staff, program staff, division management, and executive leadership to ensure mandatory terms and conditions are incorporated into the contract;
- Ensure the necessary procurement documents including: responses, negotiations, statement of work, performance measures, and any other pertinent incorporation by reference are included into the contract;
- Review whether the contractor will access confidential information, and ensure the Data Use Agreement or approved language has been incorporated into the contract;
- Assign a unique contract number as a means to properly identify, track, and report necessary contract information and data through HCATS; and
- Conduct the required checks and certifications which may vary depending specific contract language and whether the contractor is located in the state of Texas or outside of the state.

4.5 Conducting Required Checks and Determining Contractor Qualifications

POLICY

The contract manager, in coordination with PCS, must ensure that required contractor checks are completed and contractors are qualified to do business with the State of Texas. Contract managers must maintain documentation to support the outcome of the required checks, applicable escalation communication, and contractor qualifications in the contract management file. Refer to: Escalation

Each HHS agency will develop policies and procedures for the completion of required checks that include specific instructions for escalating business decisions to agency leadership, or as needed, obtaining legal consultation when the results of a check identify any issues.

Required checks may include:

- **Background Checks:** Background checks may be required for contractors that provide direct client services.
- **Texas Identification Number (TIN):** A TIN is required to enter into a contract and to receive payment.
- **Legal Status of an Entity**: Verify the legal name of an entity for contractors doing business in Texas. Governmental agencies are exempt from this check. If an entity is using an assumed name (or dba) to conduct business in Texas, the name must be filed appropriately. The check

can be conducted here: Secretary of State SOSDirect or at the local county clerk offices where an office exists or services are rendered.

- **Vendor Hold:** State agencies may not enter into a contract with an entity that is indebted to the state, unless arrangements are made to pay off the debt. State debt includes tax delinquency, child support delinquency, or student loan default. The check can be conducted here: Vendor Hold Search
- **Franchise Tax Account Status:** Franchise tax account status check is required to verify whether a contractor has the right to transact business in Texas. Governmental agencies are exempt from this check. The check can be conducted here: Comptroller's Taxable Entity Search
- **Debarred Vendors:** Verify that an entity has not been debarred or excluded from doing business with the state. Comptroller's Debarred Vendor list.
- **Federal Excluded Parties:** The U.S. Department of Health and Human Services website allows checks on providers that are debarred or excluded from receiving federal contracts or certain subcontracts and from certain types of financial and non-financial assistance and benefits.
- **List of Excluded Individuals/Entities (LEIE):** LEIE check is required for Medicaid contracts to reduce improper payments to providers. The state check is conducted through the Texas Health and Human Services Office of Inspector General. The federal check is conducted through the U.S. Department of Health and Human Services Office of Inspector General.

4.6 Reviewing the Contract for Accuracy

The contract manager, in consultation with HHS program staff, and HHS legal, should review the draft contract for content and accuracy. The contract manager should ensure that the contract addresses all concerns or issues raised during the review process. Contract review and approval should be completed before executing the contract. Reviewers check the following:

- **Contractor name:** The contractor name on the contract should be the complete legal name of the entity and should match on all of the required contract forms;
- **Signature authority**: The individual designated to sign the contract on behalf of the contractor and the HHS agency must be authorized to bind the party in contracting decisions;
- **Contract forms:** All required forms must be completed correctly and attached to the contract;
- **Payment and invoicing information**: If there is a total dollar amount it must be correct and budgets must be calculated accurately; and
- **Effective dates:** The effective begin and end dates must be specified and correct.

4.7 Identification of Reviewers and Approvers

POLICY

HHS agencies must identify staff and subject matter experts that are responsible for reviewing and approving contracts. These staff may include:

- Contract managers,
- Program leadership,
- Executive staff
- Deputy executive commissioner of PCS
- HHS legal,
- HUB program office,
- Office of Civil Rights,
- HHS Ethics Office,
- HHS Chief Security Information Office; and
- Financial services

HHS agencies should consider keeping this process as streamlined as possible to ensure timely execution of contracts, while still providing a sufficient level of due diligence to ensure a quality contract and protection of the State's interest.

4.8 Delegated Signature Authority for Execution and Amendments

POLICY

As granted by the Governor, the HHSC executive commissioner has authority to commit an HHS agency to a contract. The executive commissioner delegates authority to the HHS agency commissioner and other staff to sign certain agency contracts and amendments on behalf of the agency. See: HHS Circular C-046 *Delegation of Signature and Threshold Limits for Contracts* which further defines and clarifies delegation of signature authority and threshold limits for contracts.

This policy applies to all documents that obligate or involve the HHS agency in the acquisition of goods or services, including:

- Contracts
    - including when the HHS agency is the performing agency or recipient of funds;
    - memoranda of understanding (MOU);
    - memoranda of agreement (MOA);
    - letters of commitment;
- Amendments, renewals, and extensions;
- Purchase orders and purchase order change notices; and
- Binding and non-binding commitments.

Contract managers must route contracts for HHSC executive commissioner's signature when the highest potential value for the projected life (full term) of the contract will equal $1 million or greater. The highest potential value should be based on estimated expenditures, amount allowed by the procurement, or historical data.
PCS maintains a copy of the HHS agency delegated signature authority in the procurement file.

4.8.1 Contract Agreements for $1 Million or Greater

As specified in HHS Circular C-046, the HHSC executive commissioner or the HHSC chief deputy commissioner must sign:

- Contracts that are $1 million or greater, excluding contracts resulting from an open enrollment procurement method; and
- Amendments that equal $1 million or greater.

The contract manager must ensure:

- Completion of required forms, including PCS-201;
- Receipt of final review and approval by the HHS agency commissioner or designee;
- Completed forms and associated contract documentation are forwarded to the HHS agency Contract Oversight and Support division to route for HHSC signature, which may take up to 10 business days;
- Distribution of the executed contract to the contractor and PCS, if appropriate; and
- HCATS contract central file is updated based on HHS agency's requirements.

4.8.2 Contract Agreements under $1 Million

For contract agreements that are under $1 Million, the contract manager must ensure that:

- The contract has been signed by the authorized contractor signature authority;
- The contract is routed for signature based on the HHS Signature Authority matrix and the HHS agency's signature authority delegation policy;
- The executed contract is distributed to the contractor and PCS, if appropriate; and
- The HCATS contract central file based on HHS agency's requirements.

4.9 Electronic Transmission of Signed Contracts

POLICY

HHS agencies have adopted the HHS Circular C-038; Guidelines for the Acceptance of Electronically Transmitted and Electronically Signed Contract Records which allows the acceptance of electronically transmitted signed records, when procedures have been followed that are contained in the Circular.

Contract managers can accept records with valid signatures that are transmitted electronically through:

- Fax or email; and
- Scanned documents attached to emails.

For the purposes of this policy, a signed contract record is electronically submitted through the transmittal process of emailing scanned documents or faxing documents, which can include an executed contract and documents that are incorporated by reference.

Interagency contracts between HHS agencies are regarded as low risk and the contract signature authority may type their name and verify the electronic signature by submitting the record by email.

4.10 Data Use Agreements

In accordance with HHSC Bulletin B-15-001, HHS agencies must comply with state and federal requirements regarding the protection of confidential information. By incorporating the HHS Data Use Agreement (DUA) and the Information Security and Privacy Initial Inquiry (SPI) into agency contracts, contractors are accountable for having processes in place to ensure the protection of confidential information. This requirement applies to all contracts that contain confidential information, unless exempt.

Once a contract is executed, verify that the DUA was incorporated into the contract terms and conditions and that the SPI and HHS Procurement and Contract Planning Questionnaire were completed and submitted to the Chief Information Security Officer (CISO) mailbox with the associated contract number.

DUA Exemptions:

HHCS-PCS provides a list of goods and services that are exempt from the DUA on their Procurement and Contracting Services page:

http://hhscx.hhsc.state.tx.us/admin/purch/dua.shtml

Monitoring Requirements for Contracts with an Exchange of Confidential Information:

High risk contracts, as determined by the Risk Assessment Instrument, must be monitored for compliance with DUA requirements. When monitoring contracts that contain confidential information (even those that are exempt from DUA requirements), staff must document the review of information security and privacy controls during monitoring activities.

When monitoring contracts that contain confidential information that are not exempt from DUA requirements, staff must monitor in accordance with existing monitoring processes and include the elements specified in the DUA Monitoring Questions below:

Contract Monitoring Questions for Data Use Agreement (DUA)
Confidential Information Protection

To be implemented by HHS Agencies/Programs in accordance with existing monitoring processes (for example, add to existing monitoring tools within risk-based monitoring structures, either on-site or desk review).

Category	Monitoring Questions	Response
Policies & Procedures	1. Does the contractor have written policies and procedures regarding the protection of confidential information? 2. Do the contractor's policies and procedures include: a. Limitations on the use and disclosure of confidential information. b. Protocol for responding to a breach?	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No
Training	3. Does the contractor have a training curriculum regarding the protection of confidential information? 4. Have all workforce authorized to access confidential information taken the training? 5. Was the training taken in a timely manner by all authorized workforce (within 30 days of hire for new staff, annually for existing workforce)?	☐ Yes ☐ No ☐ Yes ☐ No Total # of Staff: If No, # of Staff Not Trained: ☐ Yes ☐ No Total # of Staff: If No, # of Staff Not Trained Timely:
Subcontractors	6. Does the contractor have a signed Subcontractor Agreement Form (DUA Attachment 1) for all subcontractors?	☐ Yes ☐ No Total # of Subcontractors: If No, # of Subcontractors Without a Signed Form:
Safeguards for	7. Can the contractor demonstrate that they are in	

Protection of Confidential Information (Paper, Oral, & Electronic)	compliance with minimum safeguards for protecting confidential information? Consider the following, as applicable: a. Secured physical premises (building, locked file cabinets) b. Unique computer login/password for each authorized user c. Secured Wi-Fi (Password-Protected; Not Public) d. Records destruction (shredder v. trash can) e. Encryption software (FIPS 140-2 recommended, see list here: http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/140val-all.htm)	☐ Yes ☐ No If No, what do they lack? What encryption software (brand/version) does the contractor use?

Additional Information:

HHSC Business Opportunity Page

HHSC DUA Compliance Information

4.10.1 Reporting Privacy Breaches

All HHS staff, contract staff, contractors, or other third parties that become aware of or suspect a breach of HHS confidential information must immediately report the incident to the HHS enterprise privacy officer.

HHS contractors are required to report security breaches within specific timeframes for certain data types, as detailed below:

> **Initial Notice of Breach** must be provided in accordance with HHS and DUA requirements with as much information as possible about the Event/Breach and a name and contact who will serve as the single point of contact with HHS both on and off business hours. Timeframes related to Initial Notice include:
>
> - Within one hour of Discovery of an Event or Breach of Federal Tax Information, Social Security Administration Data, or Medicaid Client Information
> - Within 24 hours of all other types of Confidential Information
>
> **Formal Notice** must be provided no later than 48 hours after Discovery for protected health information, sensitive personal information or other non-public information and must include applicable information as referenced in Section 4.01 (C) 2. of the DUA.

A report of an actual or suspected privacy breach may be made by completing a Potential Privacy/Security Incident Form available on the Privacy Office's website, and emailing it as an attachment to the HHSC privacy office mailbox privacy@hhsc.state.tx.us or leaving a detailed message on the Privacy hotline: (877) 378-9869.

5 Contract Management

5.1 Contract Management Overview

POLICY

The Enterprise is responsible for managing resources effectively, efficiently, and in a manner that is aligned with state strategic goals and societal needs. The Enterprise is committed to maintaining a business-like system of contracting that ensures the state, clients, and employees receive quality services at a reasonable cost.

To best achieve this responsibility, the Enterprise has nearly 1,000 contract managers and gives HHS agencies the flexibility to determine how to assign contracts to staff.[xxxix]

While not HHS-specific, the Comptroller's State of Texas Contract Management Guide gives an overall structure for understanding general governmental contracting in Texas. Contract managers should refer to the guide for basic contracting principles expected of state agencies and their staff, including assistance on ensuring the best quality combined with the best value for the taxpayer.

A contract manager must:

- Coordinate with legal staff to make effective contract decisions and promote accountability;
- Promote the use of best practices throughout the contract lifecycle;
- Behave ethically at all times and exercise informed and professional judgment throughout the contract lifecycle;
- Be vigilant for any potential conflicts of interest that may arise, and report any concerns;
- Communicate and coordinate with all stakeholders involved with the contract;
- Have thorough knowledge of assigned contracts and of the program purposes they are intended to achieve; and
- Comply with statutes, rules, and policies related to HHS programs and contracts.

5.2 Contract Management Responsibilities

POLICY

Effective contract management requires that a contract manager be involved throughout each stage of the contract lifecycle. Each HHS agency must develop procedures to guide contract managers to:

- Effectively and efficiently manage and oversee quality contracting outputs and outcomes.
- Provide adequate training and guidance to ensure contract managers understand roles and responsibilities.
- Oversee and ensure overall management of contracting risks through planning, data analysis, reporting, and mitigation or resolution of contract risks and issues.
- Oversee contract management activities and ensure compliance with statutes, rules, regulations, and policies.
- Ensure proper maintenance and retention of contracting related documents, such as HCATS central file, and contract management file.
- Periodically review the HHSAS accounting data related to contracts to ensure that payments are applied complete and accurately and that correct contract and purchase order numbers are associated with payments.

Contract management is an essential function that involves:

- Ensuring all applicable state and federal rules and regulations, HHS and agency policy, and the terms and conditions of the contract are adhered to;
- Being well versed in the contract terms, including its purpose, scope, requirements, and deliverables to ensure the contractor is held accountable for performance;
- Coordinating a well-defined statement of work with input from stakeholders;
- Establishing specific, time-bound, performance measures and requirements to ensure contractor accountability;
- Staying informed and involved throughout all stages of the lifecycle to ensure successful contract outcomes;
- Maintaining required documentation, such as required disclosure and conflict of interest forms, correct signature authority, amendments, and monitoring results;
- Maintaining thorough and up to date documentation as required in HCATS and the contract management file; and
- Overseeing performance and receipt of quality and deliverables.

Responsibilities throughout the lifecycle may include:

- Coordinating with PCS on procurements and amendments;
- Ensuring that the statement of work or purchase order clearly defines contractor responsibilities and performance outcomes and expectations;
- Assisting with contract negotiation;
- Conducting and maintaining required contractor checks (including background and licensure checks);
- Assessing risk;
- Establishing a contract monitoring plan;
- Ongoing coordinating and communicating with necessary contractor and agency staff;
- Facilitating access and security to agency systems, as required, and ensure timely termination of contractor personnel;
- Reviewing and approving billing and tracking budget trends;
- Collaborating with agency Information Security and Privacy personnel to facilitate compliance with the Data Use Agreement (DUA);
- Administering contract changes;
- Conducting risk-based monitoring activities;
- Tracking and reviewing performance measures and outcomes (verifying receipt of quality services, goods, and other deliverables);
- Providing technical assistance by answering questions, participating in meetings, engaging in correspondence and communication with the contractor, and working to resolve complaints;
- Maintaining the official contract record, including ensuring accurate and timely HCATS data entry and document uploads and documentation of decisions, actions, and progress; and
- Conducting contract closeout/termination activities, vendor performance reporting;
- Assisting in planning the next contract cycle; and
- Documentation of lessons learned.

5.3 Contract Manager Designation and Authority

POLICY

A contract manager must be designated to manage a contract with a value of $25,000 or more. Respective directors must ensure a contract manager is assigned responsibilities and designated authority in the Health and Human Services Contract Administration and Tracking System (HCATS).

Depending on value, scope, and complexity, contract mangers may be responsible for one or more contracts. For contracts that affect multiple HHS agency programs, the contract manager must communicate and coordinate with the respective divisions regarding contract activities.

Multiple contract coordination assists with the utilization of shared information between agencies, regions, and program divisions to limit duplicative data collection and administrative efforts by contract managers within the Enterprise.

5.3.1 Contract Manager Coordination: an Enterprise Best Practice

HCATS reports can be generated to determine contractors that have multiple contracts across HHS agencies or divisions. This information can be used to determine if, or when, circumstances warrant inter-agency/divisional cooperation. Contract coordination can occur in all aspects of contract management including but not limited to:

- Assessing contractor risk: sharing information to determine appropriate scoring for risk factors;
- Evaluating and reviewing internal controls;
- Responding to single audit findings;
- Identifying cost allocation plans, indirect costs, or budgetary issues;
- Contract monitoring efforts or review of prior monitoring reports;
- Resolving findings and obtaining corrective actions;
- Reviewing for conflict of interest; or
- Other areas that would mitigate risk and facilitate beneficial outcomes through the efficient use of shared information and data collection.

5.3.2 Single Point of Contact and Stakeholder Involvement

The contract manager serves as the single point of contact for purposes of contract management and oversight, consulting with stakeholders, and data entry into HCATS. During all stages of the contract lifecycle the contract manager may consult with numerous stakeholders including, but not limited to the following:

- Contractors, subrecipients, and service providers;
- HHS agency executive leadership;
- HHS agency program staff;
- HHS agency finance staff;
- HHS procurement staff;
- HHS legal staff;
- HHS agency ethics advisor or HHS Ethics Office staff;
- HHS Risk and Compliance Management staff;
- HHS agency Contract Oversight and Support; and
- HHS agency internal auditors and external auditors such as the State Auditor's Office (SAO) and Comptroller of Public Accounts (CPA).

5.4 Certified Texas Contract Manager Training and Certification Requirements

POLICY

In accordance with Section 2262.053 of the Texas Government Code, designated contract management staff must be certified through the Certified Texas Contract Manager (CTCM) process administered by the Texas Comptroller of Public Accounts (CPA).

Contract managers must:

- Complete three training sessions:
  - Contract management
  - Project management
  - Negotiation skills and strategies
- Take and pass the certification exam
- Maintain certification by:
  - Completing 120 hours of additional training over the course of five years
    - No more than 45 CEH's may be applied per year
  - Apply for recertification

New HHS staff or staff that transfer into a contracting position must complete the required training within 24 months of hire.

For additional information, see: Texas Comptroller of Public Accounts

Executive staff must complete the 45 minute *Governing Bodies Webinar Training S.B. 1681* and fill out and submit the acknowledgement form to the Comptroller's office.

To register, visit Texas Comptroller of Public Accounts Webinar Training for Governing Bodies SB 1681.

5.5 Contract Management through the Lifecycle

HHS agencies enter into contracts as a means of accomplishing their missions, including providing critical services to clients, supporting agency operations, and administrative support across the Enterprise. Effective and efficient contracting requires adherence to contract management standards, and best practices, as well as statutes, regulations, and policies.

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

Considerations and tasks throughout the lifecycle:	
Contract and Procurement Planning	• Federal or legislative mandates, requirements and timelines • Documented need and completed needs assessment • Designate contract manager • Define contract objective • Identify those who need to be involved from planning to execution • Identify level of approval needed • Collaborate with stakeholders • Identify potential constraints for contracting • Identify potential risks based on type of service and dollar amount • Complete cost-benefit analysis • Subrecipient or Contractor determination • Procurement initiation and approval to advertise or delegation from the Comptroller of Public Accounts (CPA) • Completion of the HHS Procurement and Contract Planning Questionnaire, including identification of information security risks • Develop statement of work • Develop performance measures • Consider best value factors • Determine monetary value of contract based on budget approval • Coordinate with HHS-PCS to develop timeline and ensure procurement requirements are met

Procurement	• Prepare solicitation document • Consider benefits of conducting a solicitation conference and determine if one is needed
	• Develop evaluation criteria, consulting PCS purchaser as needed • Create and finalize evaluation tool prior to posting of solicitation • Conduct solicitation conferences, if applicable • Coordinate with PCS purchaser to finalize solicitation document • HUB Determination • Identify subject matter experts who will participate in the evaluation, ensuring conflict of interest and non-disclosure statements are complete • Evaluate responses to solicitation
Contract Formation	• Determine contract award • Ensure required checks are completed • Conduct contract negotiations • Review required documents ensuring completion • Finalize contract award • Coordinate appropriate signature based on identified signature authority
Contract Management	• Conduct post award meeting, if applicable • Maintain official contract record including accurate and timely HCATS data entry and document uploads • Review and approve billing and track budget trends • Assess risk and document any decisions, actions and progress in HCATS • Coordinate and communicate with necessary contractor and agency staff on an ongoing basis • Administer contract changes • Track and review performance measures and outcomes • Provide technical assistance as needed • Conduct required contract monitoring
Contract Termination and Closeout	• Document termination decision and communicate with key stakeholders while receiving approval for termination • Determine any settlements and negotiate as needed for contract closeout • Resolve any outstanding issues • Complete vendor performance reporting • Document lessons learned • Complete closeout or termination in HCATS

5.6 Contractor Communication, Training and Technical Assistance

Contract managers must hold contractors accountable for ensuring compliance with state and federal regulations, contract terms and conditions, and protecting the state's financial interest. Communication is essential for a successful partnership; and contract managers may find providing training and technical assistance necessary for overseeing compliance, supporting successful contract outcomes, and more transparent expectations

5.6.1 Training

Contract managers and agency staff may provide training to contractors in order to address program requirements, reporting requirements, changes in agency policies, or to meet state and federal requirements. Contract managers should coordinate with their agency leadership regarding curriculum, materials, presenters, training dates, and locations. To coordinate training efforts with shared HHS agency contractors, see multiple contract coordination section of the *Contract Management Handbook*.

The contract manager must ensure training is adequately documented and maintain the following in the contract management file:

- Date, time and location of training;
- Sign-in sheet with the name and signature of each contractor in attendance;
- Copy of the curriculum and/or materials.

5.6.2 Technical Assistance

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

- Turnover in key agency or contractor staff;
- Difficulty with following contract terms and conditions, policies and procedures, or reporting requirements;
- Clarification of HHS agency policies;
- Clarification of monitoring and oversight requirements;
- Billing or payment issues; or
- Other identified needs.

Contract managers may determine that specific contractors would benefit from technical assistance in instances when the contractor:

- Has minor problems with compliance that does not warrant formal actions;
- Has technical problems or issues with billings; or
- Has difficulty in determining an approach to correct a problem or issue.

The contract manager must ensure technical assistance is adequately documented and maintain the following in the contract management file:

- The name of the contractor,
- The contract number,
- Date of technical assistance; and
- Summary of technical assistance provided.

5.7 Contract Management Tips and Best Practices

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

Contract Management Best Practices	
Be Timely and Proactive	• Assign a contract manager early in the procurement process to actively participate throughout the contract lifecycle. • Updating HCATS when contract manager is designated. • Designate a contract manager or point of contact, as back up. • Meet internal and external deadlines and submit reports and other information as required. • Make mutually agreeable arrangements ahead of due dates if a deadline cannot be met.

Communicate Effectively	• Keep open, consistent, and clear communication with those involved in the contract, including program staff, management, and contracting partners. • Work to ensure common understanding of key terminology, both internally and externally. • Seek advice early on, from legal, program staff, and management, before a problem worsens and become more difficult to resolve or increases risk to the agency. • Document contract performance issues timely to ensure legal, program staff, and management have ready access to information when needed. • Identify and communicate with appropriate internal and external stakeholders, including those with authority to act on behalf of the contractor. • Communicate and consult with HHS agencies on contractor performance issues that may impact the entire Enterprise. • Determine roles and responsibilities, including knowing who has authority for decisions, who is responsible for taking actions, and who should be consulted and informed. • Adhere to HHS policies that delineate levels of approval authority, including those with signature authority.
Know the Contract	• Understanding of the base contract prevents costly mistakes when amending it such as duplicating costs for services or goods already included in original contract. • Understanding of requirements and performance measures is essential to ensuring successful contract outcomes.
Understand the Impact of Decisions	• Use all available information, data, and reports when analyzing a potential course of action. • Continually assess contractor risk, and take into consideration how potential decisions and actions can decrease, or increase, contract risks. • Seek input on key decisions from subject matter experts to reduce the risk of unintended consequences, foster mutual cooperation, and promote effective contract management.

5.8 Amendments and Renewals

POLICY

Contract managers may initiate contract changes that do not alter the scope of the original contract to meet unanticipated post-award changes at any point during the life of the contract. Needed contract modifications can be identified by the contractor, agency program staff, or the contract manager. Changes to contracts require a documented request and most require prior written approval. Agencies must have routing and review processes in place to ensure that the appropriate changes are approved by applicable staff, including legal.

The procurement and contract documents serve as the primary guide in establishing whether or not the modification can be allowed. The contract must contain provisions that allow changes to services, deliverables or other aspects of the contract agreement. Additionally, the contract manager must ensure contract modifications comply with applicable law, HHS agency policy, and do not violate procurement requirements.

A new procurement is required if the proposed change is outside of the scope of the original procurement. Examples of changes that may be outside the scope of a procurement include:

- Providing new or additional services that were not described in the original procurement; or
- Providing services in geographic areas not defined in the original procurement.

5.8.1 Review for Renewal, Amendment, or Re-procurement

Contract managers must regularly review assigned contracts to determine which contracts expire in the near future. The contract manager should consult with the HHS agency management to determine whether the contract will be renewed, extended, re-procured, or allowed to expire. If no more renewals remain available under a contract, contract managers should consult with program staff to determine whether the services are still needed and a new solicitation must be issued. The contract manager's assessment should consider all required internal and external timeframes necessary for successful renewal or re-procurement.

5.8.2 Contract Amendments

A written contract amendment, signed by the HHS signature authority and the contractor, is required if there is a change to:

- The contract terms and conditions;
- The services or the statement of work*, including performance measures;
- Dollar amount; or
- Contract period that is outside of the contract period stated in the contract.

** A formal contract amendment is not required for an enrollment contract where services or geographic areas described in the solicitation are changed. This change must be documented in writing, but does not require the formal amendment described in this section.*

A contract amendment must be documented in the contract record and include:

- An effective date; and
- A detailed description of the change.

Further considerations include:

- A proposed amendment that adds a CPA class or item codes must be reviewed by PCS to ensure that the change is permissible.
- Any amendment that changes the statement of work or equals $1 million or greater must be reviewed and approved by PCS, even if the contract remains under the total contract value. The change order process must not be used to by-pass the amendment process.

5.8.3 Contract Renewals

A contract renewal is the continuation of the contract period according to the timeframes specified in the contract. Typically, a renewal is limited to only extending the designated period of time. If a renewal changes any other terms and conditions, it is considered an amendment.

A contract renewal cannot cause the total contract period to exceed limits in the contract or any HHS agency statute or rule. Contracts or procurement documents must contain provisions that allow for renewal.

When considering if a renewal is appropriate, the contract manager should consult with HHS agency program staff to determine:

- Whether a re-procurement or renewal is the most cost effective the HHS agency;
- The continued need for the service;
- If a more competitive contractor pool, or potential for improving best value exists;

- Changes to HHS agency statutes or rules;
- Funding allocations for the new contract period;
- Any contractor performance issues or emerging risks and issues; and
- HUB Subcontracting Plan compliance and monitoring requirements.

5.8.4 Routing the Contract Amendment or Renewal

A contract amendment or contract renewal must be routed and approved according to HHS agency procedures prior to execution. The purpose of routing the amendment is to ensure appropriate review of the transaction, source of funding, and terms and conditions.

The contract manager is responsible for:

- Assembling the contract amendment and required documentation;
- Routing for appropriate review and approval, which should include legal review;
- Routing to PCS for review and approval, if the amendment changes the statement of work or equals $1 million or greater;
- Obtaining the contractor signature;
- Routing the contactor's signed amendment to HHS agency signature authority;
- Distributing the executed contract amendment; and
- Completing the data entry and uploading the required amendment documents in the HCATS contract record.

5.8.5 HUB Requirements for Amendments and Renewals

The contract manager must notify the HHS HUB Program Office of proposed amendments, renewals, and extensions when the aggregate contract amount approaches $100,000 or more and when contracts are procured with an initial value of $100,000 or greater.

When the original statement of work expands beyond the subcontracting opportunities designated by the CPA class or item codes in the original solicitation, then the contractor will submit a revised HUB Subcontracting Plan because these new CPA class or item codes may contain additional subcontracting opportunities.[xl]

If the HUB Program Office determines additional HUB subcontracting opportunities exist, the contract manager and contractor will be required to work with the contractor to submit and updated subcontracting plan.[xli] Once evaluated, the HUB Program Office will submit the determination to the contract manager, who will ensure its inclusion in the contract file.

Additional HUB information can be found on the HHSC Business Opportunities HUB Program and Policies page at: http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_HUB.shtml.

5.9 Contract Records

Maintaining and documenting contract management activities is critical to effectively managing contracts, making informed decisions, settling claims or disputes, and accurately accounting for and reporting contract data. HCATS is the official source of record for HHS contract information.

All HHS contracts (including agreements such as MOUs and MOAs) must be entered into HCATS, and all HCATS contract records (with the exception of administrative purchases less than $25,000) must identify the designated contract manager responsible for the contract. Contract managers must ensure that the HCATS contract record is updated throughout the lifecycle to contain accurate and complete information. The contract manager must ensure that all required data elements, as detailed in the HCATS User Manual, are accurately reflected in HCATS.

Examples of HCATS Contract Record Essential Elements Include, as Applicable:

- Division and department
- Designated contract manager
- Classification (administrative or client services)
- Contract term
- Budget and expenditures
- LBB contract category and type
- Associated procurement number and method
- Subject (type/description of good or service)
- HHS Procurement and Contract Planning Questionnaire and associated documents
- Routing documents reflecting approvals
- Insurance requirements
- Grant Funded
- Federal Funding Accountability and Transparency Act (FFATA) certification
- Designated signature authority
- Signed contract document or purchase order
- Statement of work
- Contract amendments, renewals and extensions
- Disclosures and conflict of interest forms
- Risk assessment
- Performance outcomes and reports (including deliverables or monitoring documents)
- Data Use Agreement and Information Security and Privacy Initial Inquiry forms
- Closeout documentation
- VPTS reports

Supplemental contract records, including automated systems, electronic files, and paper records, may also be maintained but do not replace HCATS requirements.

Examples of Supplemental Documentation Include, as Applicable:

- Meeting records and minutes
- Regional and central office correspondence
- Training and technical assistance documentation
- Change orders, notices to proceed, stop work
- Routine contractor reports
- Invoices, discounts, fee adjustments
- Contractor certifications and disclosures
- Reference checks
- Risk and monitoring working papers
- Accounting/collection forms or payment notices
- Contract correspondence
- Contract assessment and lessons learned

The procurement record, which is created and maintained by PCS, is also an important component of the contract record. Procurement information may be captured in the HCATS procurement record, HHSAS documentation, and other relevant paper or electronic files.

5.9.1 Disclosure of Contract Records

All contract records and documents are subject to examination and audit by the Comptroller of Public Accounts, the State Auditor's Office, HHS Internal Audit, the Office of Inspector General, Contract Oversight and Support, and other state and federal auditors.

Additionally, most government contract documents are public and must be released upon request unless disclosure is expressly prohibited or confidential under law. All requests for public information must be handled in a timely fashion, and specific, formal protocols apply to requests made under the Public Information Act. Other than routine communication with staff, external stakeholders, or members of the public, only designated agency personnel are permitted to respond to public information or other external requests for information. If contract staff receive an information request, immediately consult with legal and Contract Oversight and Support (COS) for assistance in determining a response plan.

5.9.2 Contract Records Retention

In accordance with the Texas Government Code, all contract documents must be retained for a minimum of seven years after a contract is complete (expired, terminated, or otherwise closed) or the last action related to the contract is resolved, whichever is later. Consult with legal and HHS agency records retention personnel for detailed retention requirements.

5.10 Federal Grant Administration and Management

POLICY

The purpose of this policy is to assure grants are managed properly and that Federal and State dollars are spent in accordance with applicable laws and regulations.

A grant is a financial award provided by the state or federal government to an eligible grantee (subrecipient) to carry out a program in accordance with applicable federal or state rules and regulations. Grant agreements are often referred to as contracts. Grant contracts can be uniquely created or take other forms such as a "Statement of Grant Award." Grant contract elements should mirror conventional contract elements, and include any grant-specific provisions.

5.10.1 Federal Uniform Grant Guidance

In December 2013, the Office of Management and Budget (OMB) published 2 CFR 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. This Uniform Grant Guidance (UGG) consolidated grant guidance and implemented efficiency and effective grant reforms. The reforms are the result of several executive orders to reduce administrative burdens and increase flexibility, while targeting improper payments and improving program performance.

Effective December 2014, UGG applies to HHS federal grants as grant terms expire and new grants are issued. The UGG has implications for all aspects of HHS agency operations including accounting, budgeting, information technology, and grant-subrecipient monitoring and oversight. The UGG covers administrative requirements, cost principles, and audit requirements, among others.

Key elements of UGG include:

- Integrating and streamlining eight OMB circulars into one set of guidance;
- Providing a set of uniform definitions for federal assistance;
- Creating exceptions for innovative programs;
- Replacing "vendor" with "contractor";
- Requiring pre-award consideration of merit and risk;
- Requiring advance payments to subrecipients;
- Providing consistency on negotiated indirect cost rates;
- Streamlining and clarifying guidance on subrecipient monitoring;
- Strengthening internal controls while providing administrative flexibility;
- Using a risk-based approach towards single audits and raising audit threshold to $750K;
- Strengthening audit follow-up by requiring greater accountability; and
- Simplifying reporting requirements while strengthening internal controls.

5.10.2 State Uniform Grant Management Standards

State funded grants must be administered according to the state's Uniform Grant Management Standards (UGMS) published by CPA. The UGMS mirrors the federal requirements with some exceptions. The Comptroller of Public Accounts develops and maintains UGMS.

POLICY

It is the policy of HHS that the HHSC federal funds manager review and approve all federal funding plans for HHS services in Texas. HHSC is responsible for establishing business processes to coordinate and monitor the use of federal funds received by HHS agencies. This includes ensuring that HHS agencies have access to federal funds information for their programs, as well as providing technical assistance to both HHS agencies and external entities seeking federal grants.

Federal grants awarded to subrecipients should be managed according to the same contract management requirements and best practices in this handbook. However, federal and state requirements take precedence if any conflict exists between the handbook and these requirements. The State of Texas is the prime recipient of federal funds and the subrecipient (contracted entity) is a non-federal entity that expends pass-through federal funds from the state.

5.11 Determination of Subrecipient or Contractor Relationship

POLICY

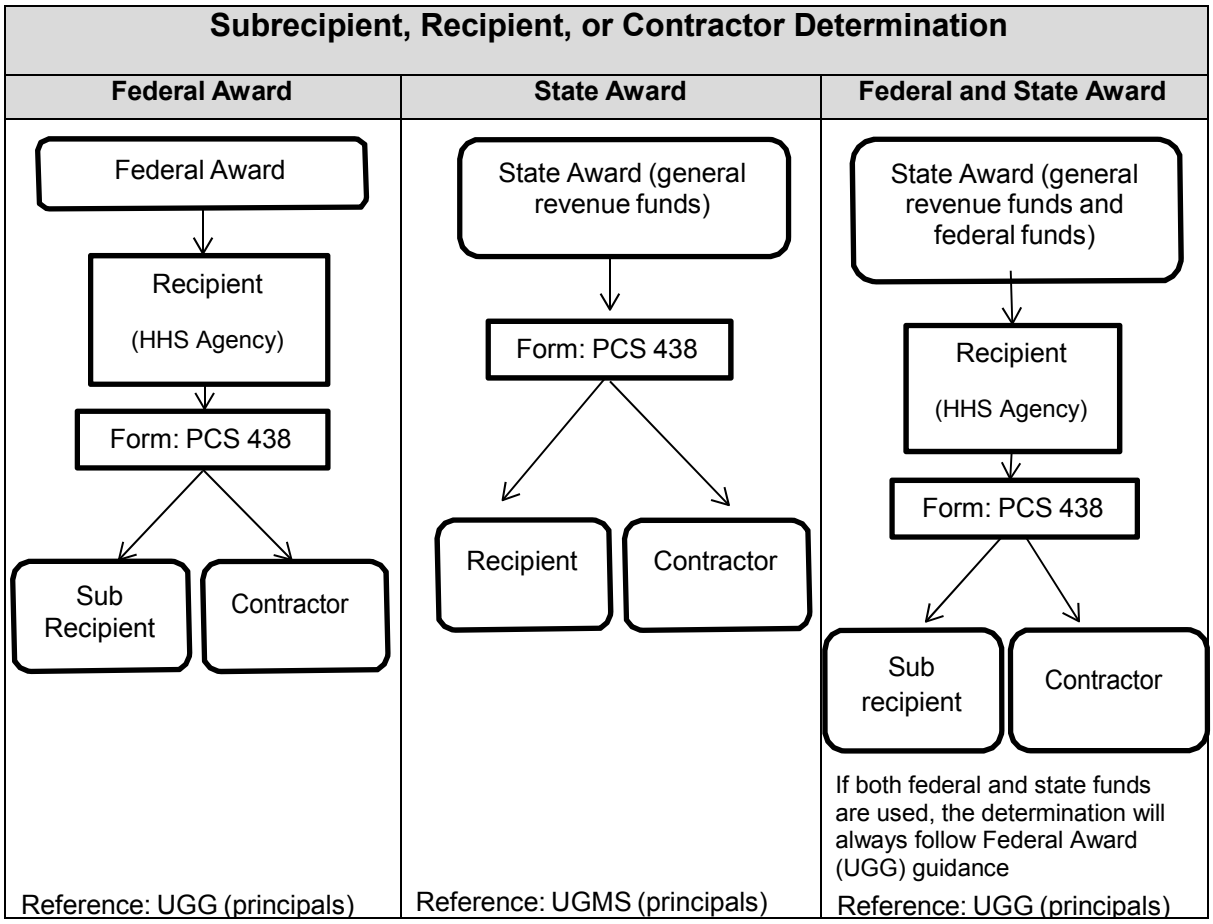
The determination of the contractor or subrecipient must be made during the procurement planning phase or when the federal or state guidelines change. The determination process involves various stakeholders that may include: contract staff, program staff, federal funds coordinator, legal services, and PCS; with the final determination from COS director or designee.

HHS agencies must comply with UGG and UGMS when determining how contract purchases of a goods or services will be carried out through a contractor or subrecipient relationship. Form PCS 438 must be completed and helps stakeholders in their assessment of the standards, principles, and requirements that will govern the contractual relationship.

Examples of subrecipients include Area Agencies on Aging, local authorities, councils of government, and municipalities.

Relationship Characteristics	
Contractor	**Subrecipient or Recipient**
• Normally operates in a competitive environment	• Determines who is eligible to receive program assistance
• Provides similar goods and services to many different purchasers	• Has responsibility for programmatic decision making
• Provides goods and services that are ancillary to the operation of the program	• Federal or state funds are used to carry out the program for public purpose
• Provides goods and services within the normal business operations	• Performance is measure against federal or state program objectives
• Is not subject to federal or state program compliance requirements	• Is responsible for adhering to federal or state program compliance requirements.

Definitions	
Federal: Definitions from the Uniform Grant Guidance (UGG)	**State: Definitions from the Uniform Grant Management Standards (UGMS)**
Subrecipient: A non-federal entity that receives a sub award from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. (2 CFR §200.93)	**Subrecipient:** An entity that receives a state award from a recipient or pass-through entity to carry out a state program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other state awards received directly from a state awarding agency. (UGMS §200.93.01)
Contractor: An entity that receives a contract defined as a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. (2 CFR §200.23)	**Contractor:** An entity that receives a contract as in §200.00 contract (UGMS §200.23.00)
Recipient: A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients. (2 CFR §200.86)	**Recipient:** An entity that receives a federal award directly from a federal awarding agency to carry out a federal program or receives a state award directly from a state awarding agency to carry out a state program. (UGMS §200.87.00)
Federal award: The federal financial assistance that a non-federal entity receives directly from a federal awarding agency. (2 CFR §200.38)	**State award:** The state financial assistance that recipients receive directly from state awarding agencies. (UGMS §200.90.02)



The HHS agency representative is responsible for the following steps when determining the contractor, subrecipient or recipient relationship status:

- ✓ Step 1: Coordinate with stakeholders to determine the relationship between the state and entity.
- ✓ Step 2: Coordinate the completion of form PCS 438.
- ✓ Step 3: Submit the completed form to the COS director or designee. COS will coordinate with stakeholders if additional information is needed. COS will designate final determination.
- ✓ Step 4: COS is responsible for approving and archiving the completed form PCS 438 and submitting the form back to agency representative with the relationship determination.
- ✓ Step 5: The agency representative or designee enters or updates the appropriate status in the HCATS contract record based on the HHS agency's HCATS processes.

5.12 Subrecipient Management

POLICY

The contract manager is responsible for subrecipient accountability in meeting grant requirements and must ensure that the subrecipient has policies in place to oversee and monitor their subcontractors.

HHS agencies oversee subrecipients by conducting programmatic and fiscal monitoring. Contract managers must strive to ensure fiscal and program compliance by reviewing the results of fiscal and

programmatic monitoring. Fiscal monitoring may include reviewing internal controls, indirect costs and expenditures for allowability, reconciling expenditures with service delivery, and monitoring the overall fiscal compliance of the subrecipient. Programmatic monitoring may include monitoring performance measures and reporting requirements.

In overseeing grant performance, program staff and contract managers must ensure subrecipients achieve goals and complete deliverables. By closely monitoring performance throughout the grant period, potential problems can be addressed to keep subrecipients on course. Monitoring can be done through formal methods such as reporting, on-site reviews, and desk reviews. Grant management includes:

- Use of management systems and site visits to monitor effectively by providing timely and accessible information on performance and deliverables.
- Identifying, prioritizing, and managing potential at-risk subrecipients. Higher risk contracts and subrecipients may require more frequent and intensive monitoring and technical assistance to ensure overall success.
- Monitoring results are shared with subrecipients to assist with improving performance.
- Reviewing reports for timeliness, quality, and accuracy on an ongoing basis, including data entered into reporting systems.
- Measuring effectiveness to determine if reported results are satisfactory.
- Reviewing subscription data to determine if funding is over or under what is subscribed.

5.12.1 Single Audit Reports

Subrecipient contractors that meet federal requirements for single audit completion must obtain an independent audit and submit a copy of their audit reports to both the HHS agency and the Office of Inspector General (OIG). The OIG may coordinate with HHS agencies to assist with the single audit process. Each HHS agency must address non-compliances identified in the audit report, issue a management decision on audit findings within the requested timeframes and determined by OIG, and ensure the subrecipient takes appropriate and timely action on all single audit non-compliances.

- Subrecipient contractors who spend $750,000 or more in federal awards or $750,000 or more in state awards during that entity's fiscal year must have a single audit performed by an independent, third-party auditor.
- A subrecipient not meeting the $750,000 threshold will not be required to undergo a Single Audit, but must abide by UGG on cost principles and administration.

As established in the HHS Circular C-041, Guidelines for HHS Agencies on Requiring Subrecipient Contractors, subrecipient contractors that are required to obtain a single audit must re-procure single audit services every six years. The contract manager must verify that the subrecipient has appropriate procedures in place to comply with this requirement.

OIG audit responsibilities for all HHS agencies include maintaining a database of audit-related information on subrecipients, obtaining subrecipient audit reports, and completing desk reviews of single audits.

5.12.2 Federal Funding Accountability and Transparency Act (FFATA) Reporting

The Federal Funding Accountability and Transparency Act (FFATA) require subrecipient contractors to provide information on federal awards at www.USASpending.gov. The website is supported through the FFATA Sub-award Reporting System (FSRS). Exemptions to FFATA reporting requirements include sub-awards valued at less than $25,000 and funds received by entities with gross incomes of less than $300,000 in the previous tax year.

5.12.3 Closeout

The grant closeout period must be no less than 45 days and no later than 90 days after grant expiration or termination. The subrecipient must submit all financial, performance, and other reports required in the grant. Final reports and invoicing requirements are subject to grant record retention and access requirements.

For closeout guidance, see: Contract Closeout

5.13 Risk Assessment, Monitoring, and Risk Response

POLICY

All HHS 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.

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

- Determining compliance with the terms and conditions of the contract, including applicable state and federal regulations;
- Providing feedback and technical assistance to prevent non-compliance;
- Evaluating system and process controls to ensure reliable validation of service deliverables; and
- Assessing and evaluating progress towards successful completion of performance requirements and outcomes.

Contract managers must complete the Enterprise Risk Assessment Instrument (RAI) for all applicable contracts in order to prioritize monitoring activities and establish a monitoring plan.

A monitoring plan must:

- Document the contracts that will be monitored during an established timeframe,
- Document the monitoring activities developed for individual contracts based on the complexity, value, and risk of the contract, and
- Track the status and progress of monitoring requirements.

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

5.14 Risk Assessment

POLICY

HHS agencies must evaluate contracts for the level of risk they present to the State. The purpose of risk assessment is to:

- Strengthen contract management activities in order to mitigate risk;
- Help identify the potential for fraud and abuse;
- Prioritize contract monitoring; and
- Determine the highest risk contracts across the HHS Enterprise.

Within 60 calendar days of the effective date of the contract, contract managers, in collaboration with program staff, as appropriate, must conduct a risk assessment using the Enterprise Risk Assessment Instrument (RAI). The Enterprise RAI includes a variety of risk factors that, in aggregate, are used to determine the overall risk level of the contract (high, medium, or low). All risk factors included in the Enterprise RAI must be assessed for all applicable contracts; however, contract leadership may add factors that align with specific programmatic risks.

- The Enterprise RAI is required for:
    - All client services contracts that have a monetary value.
    - Administrative contracts that have a value of $50,000 or more.
- Risk assessments are not required for:
    - Administrative contracts that have a value less than $50,000.
    - Memorandums of Understanding or Agreement that have no monetary value.

5.15 Contract Monitoring

POLICY

Contract monitoring is the systematic review of a contractor's records, business processes, deliverables, and activities to ensure compliance with the terms and conditions of the contract. Monitoring includes planned, ongoing, periodic, or unscheduled activities.

The goal of contract monitoring is to protect the health and safety of clients that receive services, ensure delivery of quality goods and services, and protect the financial interest of the State.

Each HHS agency that contracts for goods or services is responsible for actively monitoring all contracts by documenting contractor compliance with contract terms and conditions. In addition, agencies must ensure that effective monitoring policies and protocols are in place, including the development of a monitoring plan.

5.15.1 Monitoring Plans and Activities

A monitoring plan establishes the monitoring schedule and the activities required for individual contracts. It also tracks the status and progress of monitoring requirements. Each agency or program is expected to develop a monitoring plan based on risk that defines which contracts will be monitored within what timeframe (volume and frequency).

The monitoring plan must include:

- Methodology for determining which contracts require monitoring

- Which contracts require enhanced monitoring (meaning greater frequency or more robust monitoring tools), based on the overall risk score thresholds from the Enterprise RAI (including any added factors).

Monitoring plans must be documented and made available upon request. Monitoring plans must be provided to the designated governing bodies for the agency and HHS Enterprise.

Examples of Monitoring Plan Development Using RAI Scores:

Establish defined risk score categories for each agency or program. For example:

1. Split the possible risk score values into thirds, such that a contract's overall risk score is associated with a risk level.
    - Example:
        - X-Y range = high risk
        - A-B range = medium risk
        - C-D range = low risk
2. Establish monitoring expectations for each category
    - Example:
        - 100 percent of high risk contracts are monitored every two years
        - 66 percent of medium risk contracts are monitored every two years
        - 33 percent of low risk contracts are monitored every two years;
    - OR:
        - 25 percent of high risk contracts are monitored on-site each year
        - 25 percent of medium risk contracts are monitored using a targeted desk review tool each year
        - Low risk contracts are monitored via billing validation.

Use actual overall risk score values from the completed RAI tools to define risk level thresholds. For example:

1. Determine that the agency/program will monitor a given percentage (e.g. 20 percent) of the highest risk contracts during FY 2016.
2. Once all RAIs are completed, establish risk thresholds for high, medium, and low based on the actual score values.
    - If the RAI has a possible range of values from 30 to 156, but the top 20 percent of the highest risk values actually produced were between 70 and 92, then:
        - High risk could be defined as a score of 81 or more
        - Medium risk as a score between 70 and 81.
    - High risk requires on-site monitoring of programmatic, fiscal, and administrative activities.
    - Medium risk requires either an on-site monitoring or desk review targeting particular areas of risk.

Contracts identified on a monitoring plan must be monitored unless adjustments are documented, justified, and approved by agency leadership. Additional contracts can be added to the monitoring plan at any time based on increased risk or other factors.

Contract monitoring activities can be conducted in a variety of ways, as long as they are objective, address contract complexity, value, and risk and are documented in the contract record.

Examples of Monitoring Activities:

- **Billing validation:** A review of contractor invoices, documents that support service delivery, and expenditure requests to determine if the rates and services are the same as allowed by the contract and to validate claims. Determine if the supporting documents such as cost reports, third party receipts for expenses, detailed client information, etc. adequately support the request for

payment. If the contractor consistently provides incorrect invoices or the supporting document is insufficient to support the request, additional monitoring, such as an on-site visit, may be necessary.

- **On-Site visit:** Monitoring conducted at the contractor's location or service delivery site to review information and documents, personnel, physical facilities, live operations, service delivery, client records, or other observable characteristics to objectively validate compliance with contract requirements. Reviewing documents such as invoices, files, system reports, audit files and system data, as well as face -to-face interviews may be effective methods to use during site visits.
- **Desk review:** Monitoring conducted at an HHS agency office to review information and documents to objectively validate compliance with contract requirements. Reviewing documents such as invoices, files, system reports, audit files, financial records, system data, personnel files, or phone interviews may be effective methods to use during desk reviews.
- **Third party monitoring:** Monitoring conducted by an independent party to validate and verify compliance with contract requirements. This monitoring may be conducted as either a site visit, desk review or both.
- **Process improvement monitoring:** An approach using statistical data and pool sampling methodology (e.g. six sigma) that measures overall quality to help determine likelihood of compliance and applies root cause analysis to negative findings to support corrective measures. This approach is also used to conduct targeted monitoring for specific requirements to ensure compliance with quality standards.
- **Team approach:** Monitoring conducted by multiple individuals either simultaneously or at different times with different scopes. A team approach may be most appropriate for extremely complex or large contracts. It may include implementation of a contract management governance framework or committee, which includes formal structures to oversee contractors' obligations and objectives and ongoing communication to promote positive performance and adherence to the contract. All representatives of the review team should be on the same page regarding any issues and corrections, sanctions, or remedies.

5.15.2 Determining the Scope of Monitoring Activities

There are standard items that each agency may review across all contracts being monitored. For example, all contracts that involve an exchange of confidential information must be monitored for information security compliance. All contracts to which a Data Use Agreement applies must include the standard DUA monitoring questions. However, monitoring activities, questions, methods, and tools should also target specific elements or issues of concern unique to each contract. In determining what monitoring activities to conduct for a given contract, consider the following:

- Contract requirements;
- Changes in the contractor's operations, personnel, or environment (e.g., shifts in population demographics or staff turnover);
- Individual risk factor scores on the RAI. Consider focusing on risk factors scored the highest to identify weaknesses and help develop solutions for improvement;
- Prior monitoring history and past performance (e.g., problems recently resolved, recurring issues);
- Contractor strengths in areas tested and proven to be continuously compliant, in which case it may be appropriate to omit or reduce monitoring of those areas; and
- Recent reviews from or collaboration with other HHS agencies or contract divisions to coordinate monitoring efforts, reduce duplication, and promote consistency.

The scope of monitoring may be categorized into particular types or may include elements of multiple types.

Examples of Monitoring Types		
Monitoring Type	**Description**	**Possible Actions**
Fiscal Monitoring	A review of a contractor's financial operations, which may include review of internal controls for program funds in accordance with state and federal requirements, an examination of principles, laws and regulations, and a determination of whether costs are reasonable and necessary to achieve program objectives. This activity involves assessment of financial statements, records, and procedures. It is similar to an audit, but with a lesser degree of detail and depth, and usually a higher degree of frequency.	• Review the contractor's bills to determine if appropriate units of measure are reported and that costs are correct • Compare bills with supporting documentation to determine that costs were allowable, necessary, and allocable • Compare budget limits to actual costs to determine if the contractor's expenditures are likely to be more or less than budgeted • Verify that goods or services billed were actually delivered according to the contract
Programmatic Monitoring	A review of a contractor's service delivery system to determine if it is consistent with contract requirements including outputs, outcomes, quality and effectiveness of programs. In programmatic monitoring, service-related information is reviewed for compliance with process and outcome expectations as identified in standards, rules and contracts. This activity assesses the degree to which the identified need is being met and the quality of the service being provided.	• Review the provisions of the contract to determine desired outputs and outcomes • Review materials to determine if goods or services are being provided appropriately • Interview agency personnel, contract staff, clients, or others to determine if the services are being performed according to the contract
Administrative Monitoring	A review of a contractor’s internal controls and operating processes.	• Review personnel files/records • Verify required training and licensure • Verifying background check requirements • Verify contractor insurance coverage • Review compliance with subcontractor requirements • Validate internal control processes, such as adherence to contractor's written policies/processes or application of information security protections • Review of complaints and resolution

5.15.3 Sampling

Depending upon the monitoring scope and the risk, complexity, value, and volume of goods or services being performed under the contract, it may be appropriate to select a representative sample of contractor information and documentation when conducting monitoring.

The process of sampling is designed to statistically determine a subset of individuals from within a given population to estimate characteristics of the whole population. When planning to monitor, sampling can be used to determine what size and selection of information (e.g., the number of files, records and expenditure items to be tested) accurately represents the contractor's overall performance for the item being reviewed.

Use of a standard sampling methodology helps eliminate the appearance of bias during the sampling selection. The methodology should give each item in the population an equal chance of being reviewed and allow for random selection of individual items.

5.15.4 Monitoring Documentation and Follow-Up

Once testing is completed, the monitoring review is concluded. Conclusions and recommendations should aid in the root cause analysis of a problem and should be developed after the contract manager has collected and evaluated information that supports potential findings.

Contract mangers must ensure that documentation of monitoring activities and results is complete, factual, thorough, and substantiates findings, such as performance deficiencies or instances of non-compliance. Monitoring documentation must be completed timely and maintained within the contract record. Contract managers must communicate the results of monitoring with the contractor in writing, including findings (concerns, issues, or non-compliances), strengths, conclusions, and recommendations.

Monitoring Documentation Should Include:

- HHS agency and associated program or division;
- Name of person conducting monitoring;
- Date of monitoring activities;
- Fiscal year being reviewed;
- Type of monitoring activity (site visit or desk review);
- The sampling methodology used and the selected sample;
- Monitoring tools and working papers;
- Conclusions and recommendations, including findings, results, any dispute and resolutions;
- Copies of supporting documentation to substantiate findings; and
- Actions taken, such as escalation, liquidated damages, corrective action plans, or service or payment hold.

An example of monitoring documentation that can be included in the contract record and shared with the contractor is a monitoring report. A monitoring report is a formal document developed by the contract manager at the conclusion of the monitoring review. The report identifies documents and communicates to the contractor the facts, findings, conclusions, and recommendations resulting from the review. The monitoring report should be clear and concise. In addition, confidential client or employee identifying information must not appear in the report.

When monitoring results in issues or findings, contract managers must also follow-up with additional action to ensure that findings are resolved.

Examples of Monitoring Follow-Up		
Nature of the Finding	**Possible Action Response**	**Other Optional Steps**
Minor Concern Example: Contractor misunderstanding of performance requirements	Communication with contractor to clarify problem, increase contractor awareness of possible risks, and offer information and assistance.	• Informal conversation with contractor • Letter to contractor • Follow-up monitoring to verify compliance • Corrective action plan
Systemic Issue Example: Recurring problem which requires specific action steps to correct	Formal correction to address and resolve the problem and prevent any future risk.	• Escalate to agency leadership • Formal conversation with contractor • Enhancing monitoring activities (increasing scope, depth, or frequency) • Corrective action plan • Letter to the contractor warning of possible sanctions if the problem is not corrected • Contract remedies • Liquidated damages as specified in the contract

Significant harm or risk of harm to agency clients
 	
Significant misuse of agency funds or resources
 	
Concerns of fraud, waste, or abuse
 	
Example:
 	
Loss or misuse of agency funds related to the contractor's lack of cooperation or carelessness
	Contract Remedies to resolve the problem and/or eliminate negative impact.	• Escalate to agency leadership, executive staff, and HHSC
		• Impose additional reporting requirements
		• Reduce the services or dollars associated with the contract including:
		  o Disallowances/collection of improper payments
		  o Suspension of referrals or services
		  o Modification of the contract provisions
		  o Suspension of payments until the problem is resolved
		  o Placing the contractor on a service hold
		  o Reduction of the contract amount
		  o Deny contract renewal
		  o Reduce the contract period or terminate prior to the contract expiration date
		• Find alternate goods or services
		• Report the contractor to VPTS for unsatisfactory performance, to the appropriate licensing organization, to the OIG, or to law enforcement
		• Liquidated damages as specified in the contract

5.16 Enhanced Monitoring

POLICY

6 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, provider meetings, and documentation requirements deemed necessary by the agency to assess progress of the contractor toward meeting the identified goals and outcomes established in response to assessments of unsatisfactory performance in accordance with this procedure. – *Texas Comptroller's Office*

Texas Government Code 2261.253 (c) specifies that state agencies are required to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring. This information must be submitted to the agency's governing body, or if the agency is not governed by multimember governing body, the officer who governs the agency.

The agency's contract management office or procurement director shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issues or risk that is identified with respect to a contract monitored under this process.

Enhanced Monitoring Protocol: HHS agencies are required to establish enhanced monitoring protocols on contracts with a value of $10 million or more. HHS agency's enhanced monitoring protocol is applicable to $0 contract agreements that reach the $10 million threshold.

Contracts for goods and commodities are excluded from the enhanced monitoring protocol.

Enhanced Monitoring Criteria: HHS agencies may expand the scope of contracts that require enhanced monitoring beyond the $10 million threshold defined above for their respective agency based on legislative, federal, and state requirements or by developing expanded scope guidelines based on the criteria found within table 1.1. The criteria listed in table 1.2 are potential reasons agencies may utilize to expand the enhanced monitoring scope. *The table below is not designed to be an all-inclusive list.*

Table 1.1

Considerations for Expanding the Enhanced Monitoring Scope
Multiple Stakeholders Involvement (internal/external)
Dollar Threshold ($1 million +)
Impact to the State and Consumers (liability, risk of harm to clients)
Risk to the State (high profile, negative publicity)
Geographical Coverage
Complexity of Contracts (multiple phases, services)
Multiple Subcontractors
Legislative Initiative or Mandate

Enhanced Monitoring Standard: due to the SB 20 mandate associated with enhanced monitoring, HHS agencies will include, at a minimum, standard elements in the agency's enhanced monitoring protocol. This will provide consistency in data collection and reporting.

The following activities must be conducted for all contracts that require enhanced monitoring. Many of these requirements are activities already conducted as part of contract monitoring.

- Development of a written enhanced monitoring plan – (i.e. monitoring frequency, key requirements, noted areas that will be monitored)
- Development of a written and defined communication plan with the contractor, including escalation procedures
- Conducting a contractor orientation within 30 days of the start of the contract
- Receiving and reviewing status/progress reports from the contractor. Status/progress reports must be submitted on a monthly basis, at the minimum.
- Conducting at least two documented reviews annually (desk or onsite) with documented follow-up results for any significant findings
- Providing documented technical assistance services

Enhanced Monitoring and Existing Contracts: for contract agreements that reach the $10 million threshold, the contract manager will notify the contractor in writing that enhanced monitoring protocols have been activated for the remaining contract period.

Enhanced Monitoring Reporting and Compliance: the Contract Administration (CA) area will be responsible for monitoring enhanced monitoring applicability and reporting progress and outcomes.

A data collection system will be established to capture the unique qualitative data elements associated with enhanced monitoring.

Enhanced Monitoring Potential Data Elements: in anticipation of Enterprise reporting, the contract file should have the following data elements readily available to report:

- Summary of monitoring activities (i.e. review level, type, dates, outcomes)
- Budget and expenditure data
- Significant issues or review findings
- Technical assistance information (i.e. topics, dates)

Enhanced Monitoring Clarification: a high score on the Risk Assessment Instrument (RAI) does not necessarily mean that the contract must be monitored accordingly to the enhanced monitoring protocols. Agencies may develop their own monitoring thresholds in accordance with the Contract Management Handbook and any other applicable laws, rules, and regulations for addressing low, medium, and high risk contracts based solely on the RAI score.

5.17 Identifying Risks, Issues, and Controls

POLICY

Internal controls are necessary to promote efficiency, reduce risk, and help ensure the reliability of financial information. A well planned and operational internal control system provides reasonable assurance that an entity can achieve goals and objectives as set in the contract terms and conditions. Internal controls cover all aspects of an entity's operations that include programmatic, financial, and overall compliance with laws and regulations.

5.17.1 Required Components of Internal Controls

To meet internal control expectations, contract managers must follow key objectives to promote contractor's ability to meet reasonable assurance that include:

- **Financial and accounting controls**: The controls on authorizing, processing, recording, and reporting

reliable and timely transactions which operate within the broader control environment of administrative controls.

- **Administrative controls**: The controls on all activities carried out by management or officials to accomplish business objectives, including safeguarding of resources.
- **Organizational controls**: The controls on how management defines authority and assigns responsibility, delegates authority, establishes a hierarchy for reporting and supports human resources policies to ensure effectiveness and efficiency throughout the system of operations.
- **Program and operational controls**: The controls on planning and accomplishing the organization's missions, objectives, performance, and goals.

Depending on the size of the entity, contractors may implement internal control components differently; and effective controls can be less formal or less structured. Effective internal controls must include the following components:

- **Control environment**: Sets the tone of an organization, and includes factors such as integrity, ethical values, management's philosophy, and operating style.
- **Risk assessment**: The identification and analysis of relevant risks to achieving objectives and determining how the risks should be managed.
- **Control activities**: The policies and procedures that help ensure management directives are adhered to.
- **Information and communication**: Pertinent information must be identified, captured and communicated in a form and timeframe that enable employees to carry out responsibilities.
- **Monitoring**: Internal control systems must be monitored to assess the quality of the system's performance over time.

5.17.2 Assessing Levels of Internal Controls

Contract managers should use professional skepticism and reasonable assurance in their assessment of internal controls. Proper internal controls will provide assurance that the terms and conditions of the contract can be fulfilled and that the entity is accurately and reliably reporting required information.

Professional skepticism is an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of information that is presented. The principle of reasonable assurance is a key to understanding adequate internal controls.

To further assist with meeting reasonable assurance, contract managers should assess internal controls by using the five generally accepted control activities shown below with examples:

- **Segregation of duties:** Different individuals are assigned responsibility for different elements of related activities. For example, the same individual should not receive cash, deposit the cash, record the receipt of the cash, and also be responsible for purchasing goods and services and subsequently disbursing funds through the accounts payable system.
- **Proper authorization:** Transactions and activities should include the proper authorization that will help ensure that all company activities adhere to established guide lines unless responsible managers authorize another course of action. For example, a fixed rate sheet may serve as an official authorization of price for staff. A properly stated control should be in place for authorized deviations from this rate sheet.
- **Adequate documents and records:** Controls designed to ensure adequate recordkeeping include the creation of invoices and other documents that are easy to use and sufficiently informative; the use of pre-numbered, consecutive documents; and the timely preparation of documents.
- **Physical control over assets and records:** Helps protect the organizations assets. These control activities may include electronic or mechanical controls, such as employee ID cards, fences, a safe, cash registers, fireproof files, and locks. They may include computer-related controls dealing with access privileges or established backup and recovery procedures.
- **Independent checks:** Carried out by employees who did not do the work being checked. For example, a supervisor verifies the accuracy of an employee's petty cash drawer at the end of the

day. Internal auditors may also verity that the supervisor performed the check of the cash drawer.

5.17.3 Assessing Risks through Contract Controls

As part of assessing risk and developing monitoring requirements, the contract manager and program staff should evaluate what controls exist to reduce identified risks. Controls are activities or processes that help ensure actions are taken to reduce risks. There are many control activities that may counter risks that threaten an organization's success, which can be grouped into four categories:

- **Directive control activities** are designed to guide an organization toward its desired outcome.
- Most directive control activities take the form of laws, regulations, guidelines, policies, and written procedures.
- **Preventive control activities** are designed to deter the occurrence of an undesirable event. The development of these controls involves predicting potential problems before they occur and implementing ways to avoid them.
- **Detective control activities** are designed to identify undesirable events that do occur, and alert management about what has happened. This enables management to take corrective action promptly.
- **Corrective control activities** are processes that keep the focus on undesirable conditions until they are corrected. They may also help in setting up procedures to prevent recurrence of the undesirable condition.

In order to identify and establish effective controls, the contract manager must continually assess the risk, monitor control implementation, and modify controls as needed. Controls should be reassessed to determine if gaps exist in the control structure. Examples of contract controls include:

- User acceptance testing of technology;
- Accepting or rejecting deliverables according to formal, documented processes;
- Developing preventive action plans;
- Recommending defect repairs for processes that allow poor performance;
- Comparing actual performance with required performance;
- Recommending corrective actions;
- Scope limitations;
- Schedule requirements; and
- Policy requirements.

5.17.4 Recognizing Financial Controls, Risks, and Issues

Effective internal control over financial management and reporting provides reasonable assurance that misstatements, losses, or noncompliance with applicable laws and regulations, material in relation to financial reports, would be prevented or detected.

Objectives of Internal Control over Financial Management and Reporting

Reliability of financial management and reporting means that an entity can reasonably make the following assertions:

- Reported transactions actually occurred during the reporting period and all assets and liabilities exist as of the reporting date (existence and occurrence);
- Assets, liabilities, and transactions that should be reported have been included and no unauthorized transactions or balances are included (completeness);
- Assets are legally owned by the agency and all liabilities are legal obligations of the agency (rights and obligations);
- Assets and liabilities have been properly valued and, where applicable, all costs have been properly allocated (valuation);
- Financial reports are presented in the proper form and any required disclosures are present (presentation and disclosure);
- Transactions are in compliance with applicable laws and regulations (compliance);
- Assets have been safeguarded against fraud and abuse; and
- Documentation for internal control, transactions, and other significant events are readily available for examination.

When evaluating controls for the safeguarding of assets it is important to consider the various types of assets which include money at hand or easily accessible in the form of cash deposits, checks, loans, accounts receivable, and marketable securities (bonds, notes, shares, stocks) that an organization owns. These are important because they are more liquid in nature and as a result tend to be more vulnerable.

5.18 Vendor Performance Reporting

POLICY

PCS is responsible for reviewing and submitting vendor performance information to the Comptroller of Public Accounts' (CPA) Vendor Performance Tracking System (VPTS) on behalf of the HHS Enterprise. VPTS reporting is required at contract closeout or termination for all state agency contracts with a total value of $25,000 or more, that do not result from an open enrollment. However, when there are critical performance issues, VPTS reporting is required for all state agency contracts, including those that are less than $25,000, or resulting from an open enrollment.

HHS agencies must establish and document a process for submitting vendor performance reports to PCS (through the HHS PCS Vendor Performance mailbox) within 45 days of the closeout or termination of all applicable contracts or when there are critical performance issues during the term of a contract. The agency process must include a description of the level of agency authority that will review and approve VPTS submissions before submittal to PCS. The VPTS report and supporting documentation must be maintained in the contract file.

VPTS reports must:

- Be documented on the following forms:
  - http://hhscx.hhsc.state.tx.us/Contracting Support/reports/VPTS-form.doc
  - http://hhscx.hhsc.state.tx.us/Contracting Support/reports/VPTS-rep-form-
  - instructions.docx

- Be based on solid, well documented contract management, and monitoring activities;
- Include associated information to substantiate the performance rating; and
- Include the following information for reports of unsatisfactory performance:
    - Terminations for cause;
    - Debarments; and
    - Final reports by the Office of Inspector General and Office of the Attorney General resulting from investigations of alleged fraud.

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

The CPA can bar a contractor from participating in state contracts if the contractor has had more than two contracts terminated by the state for unsatisfactory performance during the preceding three years.

Vendors have the opportunity to protest unfavorable performance. For more information , see: CPA VPTS webpage.

5.19 Escalation of Contract Issues

POLICY

HHS agencies must develop an escalation process to communicate significant or serious contract related issues to agency contract and program leadership, legal staff, agency executive management, and HHSC executive contract leadership as appropriate and depending on the severity of the issue.

Contract managers must ensure that the agency's contracting leadership, program staff, executive management staff, and other applicable staff, are notified immediately when they become aware of serious contract issue or risk. Although contractor noncompliance issues are often identified during monitoring, contract managers must maintain an awareness of a contractor's performance throughout the duration of the contract. Routine contract management activities can also alert staff to noncompliance issues.

Examples of Significant Issues for Escalation Include:

- Loss or misuse of agency funds related to the contractor's failure to cooperate or carelessness (depending upon amount and repetition);
- Risk that the contract will exceed budget limitations or timeframes;
- Harm or risk of serious harm to clients;
- Repeated non-compliance;
- Publicized or political concerns;
- Patterns of complaints or high-profile complaint;
- Appearance of impropriety or potential conflict of interest;
- Suspicion of fraud, waste, or abuse; and
- Any other serious issue or risk.

Effective escalation helps ensure that serious problems and issues are addressed quickly to prevent harm to clients, gaps in goods or service coverage, or misuse or waste of taxpayer dollars.

In cases where an HHS agency has a committee or other entity that is responsible for sanctioning contractors for non-performance, the agency's escalation process takes precedence over committee timeframes and procedures.

5.20 Required Reporting

The following reports and notifications related to state contracting are required by the Legislature, Legislative Budget Board (LBB), Texas Procurement and Support Services (TPASS) rules, or other statutory authority. For additional information regarding a requirement, staff should refer to the appropriate representative.

Contract Reporting Requirements Table						
Type	**Required Report/Notification**	**Mandated By**	**Referenced**	**Responsible Party***	**Receiving Body**	**Due Date**
Information Resources Projects	Major Information Resources Project Plan (over $1 million) filed	Gov. Code §2054.304	TBD	Information Technology (IT) Staff	TPASS; Quality Assurance Team**	Before spending 10% of allocated funds or soliciting vendors for the project
General Appropriations Act (GAA)	Report: Fees, Fines and Penalties Assessed and Not Collected (related to contracts)	Gen. App. Act, Art. IX, §7.08 (a) & (b)	TBD	Agency Finance Divisions	LBB	Before November 1
Texas Historical Commission (THC)	Notification of intent to alter, renovate, or demolish any state building over 50 years of age	Title 9, Natural Resources Code §§191.097 & 191.098	See Office of General Counsel	Agency Staff Involved with the Purchase (Facilities Staff)	THC	60 days prior to work
	Repair exceeding $100,000 to a building with Historic Designation must submit a copy of all bids and evaluation of bidder qualifications	Gov. Code §2166.254	See Office of General Counsel	Agency Staff Involved with the Purchase (Facilities Staff)	THC	Prior to contract award
OTHER	Information Technology Report regarding purchases that do not use DIR	Gov. Code §2157.068; DIR IT Commodity Purchasing Program	None: Pending DIR guidance	Information Technology (IT) Staff	DIR	Semiannually, March 31 and September 30

	contracts	Guidelines and Instructions				
OTHER	Planned Procurement Schedule (PPS)	HB 1516; Gov. Code §2054.1015	DIR Website	Information Technology (IT) Staff	DIR	Based on a rolling 12-month reporting period
Construction	Contract Notification– Construction Contracts exceeding $14,000	Gov. Code §2166.2551	HCATS Reporting Guide	COS or Reporting Staff	LBB	Monthly
Consulting Contracts	Major Consulting Contracts (exceeds $15,000)– Publication in TX Register before Initiating Contract	Gov. Code §2254.029	See PCS for Reference	PCS	TX Secretary of State	Not later than 30 days prior to award
	Major Consulting Contracts (exceeds $15,000)- Request Finding of Fact from Governor	Gov. Code §2254.028	See PCS for Reference	PCS	Governor's Budget & Planning Office; LBB	Before entering the contract
	Major Consulting Contracts (exceeds $15,000)- Notice of Award in TX Register	Gov. Code §2254.030, .031 and .033	See PCS for Reference	PCS	TX Secretary of State	Not later than 20 days after award, renewal, or extension
	Contract Notification– Consultant Services exceeding $14,000	Gov. Code §2254.0301	HCATS Reporting Guide	COS or Reporting Staff	LBB	Monthly
Electronic State Business Daily (ESBD)	Notice Regarding Planned Procurements exceeding $25,000	Gov. Code §2155.083	See PCS for Reference	PCS	TPASS	Depending upon the posting, a minimum of 14 or 21 days
	Notice Regarding Awarded Procurements exceeding $25,000	Gov. Code §2155.509	See PCS for Reference	PCS	TPASS	Upon award
Historically	HUB Report	40 TAC	See PCS	PCS	TPASS	March 15 and

Underutilized Business Report		§732.111; 1 TAC §111.16 (b), (c), & (d)	for Reference			September 15
Information Resources Projects	Contract Notification- Major Information System Contracts exceeding $100,000	Gov. Code §2054.008	HCATS Reporting Guide	COS or Reporting Staff	LBB	Monthly
Major Contracts	Report: Major contracts of $1,000,000 or more	Gov. Code §2262.101	See PCS for Reference	PCS	CAT Team***	Prior to agency approving requisition
	ESBD Notice- Major contracts of $5,000,000 and over		See PCS for Reference	PCS/ Purchaser	TPASS	Depending upon the posting, a minimum of 14 or 21 days
Major Contracts	Report: Major contracts of $1,000,000 or more	Gov. Code §2261.254	SB 20	Under Developmen t	Internal to Governing Body	TBD
Medical / Health Services Contracts	Review of contract terms and conditions before a contract of $250 million or more for health care goods and services is executed by an HHS agency	Gov. Code §531.018	None: Pending guidance from OAG	PCS	Attorney General	Prior to solicitation
Professional Services Contracts	Contract Notification- Professional, exceeding $14,000	Gov. Code §2254.006	HCATS Reporting Guide	COS or Reporting Staff	LBB	Monthly
Recycled, remanufactured, or environmentally sensitive commodities or services	Annual Expenditures Report for Recycled Material	Gov. Code § 2155.448 (c);	See PCS for Reference	HHSAS Support - PCS	TPASS	January 1
	First Choice waiver of Expenditures ($150 or more) for Recycled Materials Report	Gov. Code §2155.448 (b) & (c); 1 TAC §113.135 (e)	See PCS for Reference	PCS	TPASS	January 1

General Appropriations Act (GAA)	Contract Notification-Contacts exceeding $50,000	Gen. App. Act, Art. IX, §7.05 (a)(b)(c)	HCATS Reporting Guide	COS or Reporting Staff	LBB	October 1
OTHER	Agency Web Posting of Vendor Contracts exceeding $100,000	Gov. Code §2054.126(d)(4)	HCATS Reporting Guide	COS or Reporting Staff	Public Information	Quarterly
	TIBH Exception Report	Human Resource Code §§ 122.0095 & 122.016	See PCS for Reference	PCS	TPASS	15th of each month
	Agency Procurement Plan to TBPC	Gov. Code §2155.132(c) & (d); 1TAC §113.11 (h)	None: See State of Texas Procurement Manual, Sec. 4.2	PCS	TPASS	November 30
	Delegated Purchases Report to TBPC	Gov. Code §2155.132(c); 1 TAC §113.11 (j)	None: Pending TBPC Guidance	PCS	TPASS	May 1 and November 1

** Responsible Party: May vary by agency until roles and responsibilities are better defined through consolidation.*
***Quality Assurance Team: State Auditor, Legislative Budget Board, and Department of Information Resources*
**** Contract Advisory Team at TPASS as per Government Code § 2262.102*

For more information regarding reports that state agencies must prepare and submit to other state agencies, local government entities, and the public, see: Texas State Library and Archives Commission.

6 Contract Termination, Closeout and Settlement

6.1 Contract Termination

POLICY

Contract termination is an end to the formal relationship between the HHS agency and the contractor. Termination occurs when:

- The contract expires by its own terms;
- Both parties agree to end the contract; or
- Either party terminates the contract.

The contract manager must document contract termination and closeout in the contract management file.

Each HHS agency must develop and document procedures for processing contract terminations. The procedures must outline the expectations based on the type and complexity of the contract.

6.1.1 Types of Contract Termination

- **Expiration of Contract:** Contracts that have reached the end of their term expire on their own, and there is no action is required by either party to terminate the relationship; including contracts that have available renewals that the agency does not exercise. Once a contract has expired, both parties are relieved of any further performance obligations, except as provided for in the contract. Notice of termination is not required; however closeout procedures must be followed.
- **Voluntary Termination:** The parties mutually agree to end their relationship and terminate the contract, relieving the parties of any further performance obligations. To voluntarily terminate a contract, the parties must document the mutual agreement to end the relationship and closeout the contract. If the contractor wishes to terminate the relationship, the contact manager must require documentation from the contractor.
- **Involuntary Termination:** Occurs when an HHS agency no longer wishes to continue with the services of the contractor or when the agency is unable to continue the contractual relationship. All involuntary terminations should include HHS agency review and approval in consultation with HHS legal. There are two general types of involuntary termination.

  Termination without Cause*:* Many contracts provide that the HHS agency may terminate a contract when it is in the HHS agency's best interest even though the contractor may be performing satisfactorily. This is often referred to as for "the convenience of the State." However, this is not an automatic right and must be specifically provided for in the contract. Another reason for involuntary termination without cause occurs when funding is no longer available or has been exhausted. This is not an automatic right and must be specifically provided for in the contract. Involuntary termination without cause may occur if mandated by the legislature, for example by discontinuing a program or transferring an agency function.

  - **Termination for Cause:** Termination for cause is the contractual right of an HHS agency to terminate, in whole or in part, the contractor's right to proceed with the contract due to the contractor's failure to deliver goods or services or to perform according to the terms and conditions of the contract. This type of termination requires a legitimate basis in the contract itself such and involves a contract breach such as:
    - Failure to deliver goods or services within the time specified in the contract;
    - Failure to perform any significant provision of the contract;
    - Failure of progress, which could jeopardize the carrying out of the contract;
    - Failure to comply with HHS agency rules, policies or procedures;

- Submission of falsified documents, fraudulent billings, or making false statements;
- Failure to obtain or maintain required licensure certification;
- Inappropriate use or mismanagement of state or federal funds;
- Performance that results in threats to individual health or safety; and
- Continued instances of unacceptable performance.

6.1.2 Termination Decision

Before taking action to terminate a contract, the contract manager must review the contract, agency policy, and applicable laws and regulations to ensure termination is allowed and must determine the basis for termination. The contract manager must consult with the HHS agency's management and HHS legal before pursuing termination. Improper termination may subject the HHS agency to damages and other legal liabilities. Formal executive approval for the termination must be obtained before any notification is sent to the contractor.

Termination must be coordinated with agency program staff at the earliest possible stage so alternate arrangements can be made for goods or services and to ensure a smooth transition of clients to other contractors before the contract termination date. The contract manager may need to negotiate a new termination date with the contractor, if possible, to enable a smooth transition of clients to new providers.

See: Contractor Performance Issues and Contract Remedies

6.1.3 Termination Notices

When a contract is terminated before its expiration date, a termination notice must be sent to the contractor. When practical, the HHS agency should give the contractor at least a 30 day. The executive commissioner or an HHS agency representative with authority to sign the contract must sign the termination notice.

The contract manager should send termination notices for involuntary terminations by certified mail, return receipt requested, or by courier with a signature receipt request. The contract manager must maintain the verification of receipt in the contract management file.

For voluntary termination, email or fax may be appropriate.

6.1.4 Notice without Cause

If the termination is without cause or voluntary, the notice, at a minimum, must contain:

- The effective date of the termination;
- The reason for the termination;
- Any outstanding deficiencies and required corrective actions;
- Appropriate contract citations that allow the termination;
- Record retention requirements; and
- A description of the closeout procedure.

6.1.5 Notice with Cause

If the contract is being terminated for cause, the letter must be approved by the HHS agency's management and HHS legal and must contain the following at a minimum:

- The effective date of the termination;
- A notice of the contractor's rights of recourse, if any;
- A statement of all contract provisions that the contractor failed to meet;
- Any related materials demonstrating contractor failures;

- Contract citations that allow the termination; and
- A description of the closeout procedure.

6.2 Contract Closeout

POLCY

Contract closeout is the final step of the contract lifecycle and occurs once the contract is terminated. Contract closeout is a simple, but detailed process. The complexity of each closeout can depend on factors such as:

- Whether the contract is competitively or noncompetitively procured;
- Whether it is a grant agreement with a contractor or subrecipient;
- Whether it is administrative, goods, or client services; and
- The status of the contract deliverables at the time of contract termination.

The contract manager should begin close out when there is a reasonable certainty the terms and conditions of the contact have been met, and the contract will not be renewed or extended. Unless otherwise stated in the contract, the closeout process must be completed within 90 days of contract termination, unless extenuating circumstances exist.

Detailed documentation of contract closeout is critical. Many funding sources for HHS contracts require complete and accurate documentation to be retained according to record retention requirements. Each HHS agency will develop policies and procedures to document the contract closeout process, which include:

- Completion of all administrative actions;
- Settlement of all contract disputes, claims, and agreements;
- Protection of any HHS and HHS agency confidential information;
- Settlement of financial claims;
- Auditing of any records or payments;
- Cancelation of any goods or services not yet received;
- Transferring of client caseloads and files;
- Transferring of equipment, hardware, software and goods;
- Transferring access to any information or reporting systems;
- Disposition of equipment;
- Vendor performance (VPTS reporting); and
- Contract document closure and retention.

6.3 Contract Settlement

POLICY

When a contract is terminated, the contract manager assesses any remaining financial transactions, including any overpayments, underpayments, or unprocessed payments.

The contact manager must:

- Negotiate a fair and prompt settlement that accurately reconciles and finalizes the work and any payments;
- Protect the interests of HHS clients and the Enterprise;
- Verify completion of contract terms, including performance measurements;

- Identify and document any performance issues or deficiencies, and take appropriate corrective actions;
- Consult with HHS agency management; and
- Consult and obtain approval from HHS legal on reaching the settlements.

Each HHS agency must have documented settlement procedures that include required documentation and approval taking into account the type and complexity of the agency's contracts. These procedures must include, at a minimum:

- Determining approval authority for the settlement agreement;
- Required routing of the settlement agreement within the HHS agency for approvals;
- Obtaining contractor and HHS agency signatures on the settlement agreement; and
- Reviewing the contractor's compliance with the settlement agreement.

Reimbursement of allowable expenses: When applicable, the contractor must be reimbursed for all allowable expenses incurred or services provided under the contract up to the termination date. However, an HHS agency is only obligated to pay for goods and services that meet applicable contract standards. Under termination for cause, an HHS agency may not be liable for the contractor's costs on undelivered work and is entitled to repayment of any advance or progress payments.

Contractor obligations: The contractor is responsible for the prompt resolution of any claims for its subcontractors and vendors. A subcontractor may have no contractual rights against the HHS agency on termination. Each claim must be documented by the contractor or the contract manager. The contractor may submit bills, records, affidavits, audit reports, and other documents to support contract invoices within a reasonable period of time, up to 90 days after termination. Contract managers should inspect a subcontractor's records if needed for the contract closeout.

6.3.1 Provide Contractor with Settlement

The HHS agency contract manager sends the final settlement agreement to the contractor by certified mail with return receipt requested or by courier with a signature reception request. The letter must explain that the determination is the HHS agency's final decision and must adequately explain each major item. In addition, if the decision constitutes a contract remedy, the letter must meet the requirements of a notice of contract remedy as stated in the contract.

If the negotiated or determined settlement offer indicates that the contractor owes payment, the contract manager sends a letter to the contractor requiring payment. The contractor must respond to the settlement within 30 days of receiving the HHS agency's letter, subject to the limits on filing an appeal if applicable. The contractor's options for responding to the settlement offer include paying in lump sum, paying in installments, or requesting an appeal. If the contractor does not respond within the required timeframe, the HHS agency may begin involuntary collection procedures.

6.4 Contractor Performance Issues and Contract Remedies

POLICY

The contract manager should communicate with the program routinely and must maintain a reasonable level of awareness of a contractor's performance throughout the duration of the contract. Onsite monitoring and routine contract management activities should be used as appropriate to alert a contact manager to noncompliance issues.

The contract manager is responsible for investigating and addressing unacceptable contractor performance as quickly as possible. The contract manager is also responsible for keeping the contractor informed of noncompliance issues in writing.

Contract managers and program staff should be familiar with remedy provisions in the contract and should consult with HHS legal as needed to determine the correct response to a contractor's performance issues and apply the appropriate remedy.

PROCEDURES

The following outlines the process for remedies if a contractor fails to perform:

1. **The contract manager must document performance issues and damages**

   The contract manager must document contractor performance problems as they occur, such as a failure to meet a service level agreement requirement (e.g., uptime and system response times or help desk service response times) and communicate them to the contractor.

   The contract manager must document any potential consequences from the performance issues (e.g., damages), including:

   - Financial costs,
   - Disruption to services,
   - Schedule changes,
   - Impact on legislative mandates,
   - Lost federal funding, penalties, fines, disallowances, or sanctions for the State; and
   - Costs to obtain substitute goods or services.

2. **The contract manager must identify the specific contract provisions the contractor has violated**

   The contract manager, in consultation with program staff, must determine which particular contract requirements the contractor has breached and collect the data necessary to support the HHS agency's position.

3. **The contract manager must assess any HHS agency responsibility in the nonperformance**

   The HHS agency must determine to what extent, if any, the HHS agency may be responsible for any contract performance failure or if other factors external to the contractor contributed to the failure. If the issues are numerous or complex, then the contract manager and program staff must consult with HHS legal when starting this internal due diligence review. Depending upon the circumstances, legal may determine that an investigation should be conducted so as to maintain attorney-client privilege.

   Excusable non-performance: Situations may exist when failure or delay is due to causes beyond the reasonable control of a contractor and the contractor temporarily cannot comply with the terms of the contract. This may be due to unusually severe weather, strikes, natural disasters, fire, civil disturbance, war, court order, or acts of God. In these instances, known as force majeure, the contract manager must immediately contact PCS, HHS legal, and HHS finance to determine the length of the delay and whether the HHS agency will temporarily excuse the contractor from compliance requirements.

4. **The contract manager must determine the appropriate action or remedy**

   A contract remedy is the action that the HHS agency is authorized by contract, law, or policy to take in response to a contractor's noncompliance with a requirement of the contract.

   The contract manager must carefully review the contract's terms and conditions to determine what remedies are available under the contract. Some contracts provides for a progression (increase or escalation) of specific, tailored remedies to address a continuing performance failure based on its severity.

The contract manager consults with program staff, budget, finance, HHS legal and executive management, as necessary, to determine the appropriate action or remedy for the documented performance issue.

Possible actions include:

- A verbal conversation alerting the contractor to the problem followed by written documentation of the conversation;
- Written correspondence alerting the contractor to the problem;
- A written request for the contractor to submit a corrective action plan to correct the problem. If the contractor submits an acceptable plan, the HHS agency follows up on the implementation of the plan to ensure that the contractor's problems are corrected. If the plan is not implemented or the desired results are not achieved, the HHS agency may proceed to a contract remedy.

The contract manager must consult with HHS legal before utilizing the following the contract remedies:

- Assessment of damages;
- Withholding of payment;
- Bonds, corporate parent guarantees, or letters of credit;
- Free or discounted hardware, or programming credits;
- Stop work orders, contract suspension, or termination;
- Vendor hold or debarment.

5. The contract manager must follow the notice provisions in the contract

Once the appropriate remedy is determined, the contract manager must follow the contract's requirements for communicating performance failures to the contractor and require timely resolution of the problem. The nature of the notice may also require certain types of information to allow the contractor to know exactly how it has not performed correctly. This notice must cite to the contract sections listing the applicable requirements and detail how particular tasks or items that have not met the contract's requirements.

Most contracts will specify who the notice must be sent to and the appropriate method for sending the notice.

Typical options for sending notice include:

- Certified mail, return receipt requested;
- First class mail;
- Electronic mail or electronic transmission (fax);
- Overnight delivery (e.g., UPS, FedEx); and
- Hand delivery (electronic or written confirmation of the receipt by the contractor should be obtained).

6. The contract manager must review and document the contractor's corrective actions

The contract manager, in consultation with program staff, must review all corrective measures requested of the contractor to ensure that the contractor performs as required.

The contract manager must request regular, documented status updates from the program staff until final resolution of the performance issues, as applicable. Updates are required even when the contractor is making timely corrections and the solutions are working. The contract manager must continue to request status updates until there is sufficient evidence to demonstrate that the contractor is fully implementing and maintaining corrections.

The contract manager retains performance remedy updates in the contract management file.

7. **The contract manager must take additional action if the performance issue continues**

   The contract manager, in consultation with finance, executive management, and HHS legal, if appropriate, must take further action if the contractor fails to resolve performance issues as required. The intent of additional actions and remedies is to enforce the contract provisions and protect the State's interests.

8. **The contract manager must report fraud, waste, and abuse to the OIG**
   When a contract manager suspects or receives an allegation that a contractor has committed fraud, waste, or abuse, the contract manager must provide details and documentation to the HHS agency executive management and to the Office of Inspector General.

7 Glossary

Administrative Contract: A contract for goods or services primarily for direct use by an HHS agency in the day-to-day support of an agency's administrative operations.

Advertise: To make a public announcement of the intention to purchase goods or services.

Biennium (State of Texas): A period of 24 consecutive months, beginning on September 1 of each odd numbered year in which the Texas Legislature appropriates funds. Example: September 1, 2015 through August 31, 2017[xliii].

Business days: Any day other than a Saturday, a Sunday, or a day on which State offices are authorized or obligated by law or executive order to be closed.

Class and item: The classification system from the NIGP Commodity Book that identifies items and services. (State of Texas Contract Management Guide, Glossary of Purchasing Terms)

Client services contract: A contract to provide goods or services that is primarily for the direct benefit of an HHS agency's clients and is for the purpose of carrying out one or more of HHS agency's programs.

Contract Advisory Team (CAT): A team created to assist agencies in improving contract management practices. CAT reviews contracts of $10 million or more. The team consists of six members, one from each of the following offices:

- Health and Human Services Commission;
- Comptroller of Public Accounts (CPA);
- Department of Information Resources;
- Texas Facilities Commission (TFC);
- Office of the Governor; and
- One member from a small state agency per §2262.102 Government Code[xliv].

Contract audit: An independent assessment of a contractor's compliance with financial and performance contract provisions performed in accordance with applicable auditing standards.

Contract period: The period of time beginning with the commencement date or effective date of a contract and ending when the contract expires in accordance with its terms or when it has been terminated. The contract period includes any exercised renewal and extension periods.

Contract record: The complete set of information for a contract, including the HCATS contract record, any hard-copy or electronic files, and any contract information contained in other systems. The terms contract record and contract file are used interchangeably throughout this handbook.

Corrective action plan: Specific steps to be taken by a contractor to resolve identified deficiencies and to address concerns that the contracting agency has regarding the contractor's compliance with contract terms or other applicable laws, regulations, and policies. The corrective action plan may also focus on improving contractor performance (as it relates to service delivery, reporting, or financial stability).

Cost allocation: The process of identifying, accumulating, and distributing allowable costs that are allocable to one or more than one cost objective. The cost allocation plan identifies the allocation methodology used for distributing costs to cost objectives in proportion to the benefit received. Cost allocation plans are consistent across funding sources and uniform for the business entity.

Cost plus incentives contract – A contract in which the contractor is reimbursed at cost, but provides incentives to fulfill contract obligations at less than the maximum amount. Although many types of incentives exist, the contract typically contains both a maximum total contract budget to perform the statement of work and a formula that specifies how cost savings will be distributed. The statement of work must be specific enough so that both parties will know when all contract goals have been met. This is

another example of a performance based contract as it provides the contractor with an incentive to manage the contract effectively while achieving performance expectations at the lowest cost.

Cost reimbursement contract: A basis of payment in which the contractor is reimbursed for allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed without the approval of the contracting officer.

Desk review: A review of a contractor's service delivery or business operations that takes place away from the contractor's administrative or service delivery sites, using materials collected by or submitted by the contractor. The scope of the review is at the discretion of the contracting agency.

Enterprise: The consolidated organization made up of the Texas Health and Human Services Commission (HHSC), Department of Aging and Disability Services (DADS), Department of Assistive and Rehabilitative Services (DARS), Department of Family and Protective Services (DFPS), and Department of State Health Services (DSHS).

Extension: The continuation of the contract period beyond the contract period specified in the procurement or contract document and processed as an amendment.

Federal award: Federal financial assistance that a non-federal entity receives directly from a federal awarding agency. (2 CFR §200.38)

Fee-for-Service contract: Payment is made based upon an established fee per defined unit of service.

Financial audit: An independent audit to establish the reliability of an entity's financial information by determining whether the information is presented fairly in accordance with recognized criteria and performed in accordance with applicable auditing standards. Financial audits performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) also provide users information regarding the entity's internal controls and compliance with laws, regulations and provisions of contracts and grant agreements as they relate to financial transactions, systems and processes.

Fiscal monitoring: A review of a contractor's financial operations which may include a review of internal controls for program funds in accordance with state and federal requirements, an examination of principles, laws and regulations, and a determination of whether costs are reasonable and necessary to achieve program objectives. This activity is typically conducted by staff involved in program operations.

Fiscal year (State of Texas): A period of 12 consecutive months, beginning September 1 of each year and ending August 31 of the next year[xlv].

Fixed price contract: A type of payment that provides for a firm price that cannot be increased during the term of the contract or any subsequent renewal periods. Payments are not affected by contractor actual costs. A contract of this type may include an escalation clause allowing increases in the price in accordance with predetermined timeframes and conditions[xlvi].

Fixed price incentive contract: A basis of payment that provides for adjusting profit and establishing a final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset.

Grant: An award of assistance, including cooperative agreements, in the form of money, equipment, supplies, or other resources paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with the terms of the grant award and all applicable state and federal laws, rules, and regulations.[xlvii].

Health and Human Services agency: A state agency identified in Section 531.001 Government Code.

Health and Human Services Commission: The umbrella agency that oversees all health and human service agencies and establishes rules for purchasing by those agencies as established by Government Code Section 531.0055.

HHSAS: The Health and Human Services Automated System is the automated financial system for the Enterprise that is used to manage requisitions, purchase orders, receiving, asset information, payables, budget and GL.

HHSAS requisition: Purchase request entered into HHSAS that uses an electronic workflow process to approve the amount and budget to encumber the funds and route the request to PCS for purchase order processing and issuance.

HHSC Contract Administration and Tracking System (HCATS): A web-based tracking system that offers one centralized storehouse of contract information for tracking, processing, and reporting purposes.

Historically Underutilized Business (HUB): A business in which the owner has a proportionate interest and demonstrates active participation in the control, operation, and management of the business and is a member of a recognized economically disadvantaged group such as Black Americans, Hispanic Americans, women, Asian Pacific Americans, Native Americans, and veterans as defined by 38 U.S.C. Section 101(2) who have suffered at least a 20 percent service-connected disability as defined by 38 U.S.C. Section 101(16) as defined by Government Code Chapter 2161.001.

Indirect cost: Costs incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect cost allocation is one method of cost allocation.

Indirect cost allocation plan: Document prepared by an entity to substantiate its request for the establishment of an indirect cost rate in accordance with OMB Circulars A-87 and A-122. Approval of the plan indicates authorization for a contractor to recover administrative costs associated with the operation of a program through the application of an indirect cost rate approved by the contractor's coordinating agency or included in the contractor's independent annual audit report.

Lease of equipment: A contract granting use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the contractor[xlviii].

Lease purchase: An installment sale which gives the lessee the right to purchase the equipment at an agreed upon price under certain conditions. Title passes from seller to purchaser if and at the time the option to purchase is exercised[xlix].

Lifecycle costing: A procurement technique which considers operating, maintenance, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item's function is required[l].

Liquidated damages: A specified contract provision which entitles the state to demand a set monetary amount determined to be a fair and equitable repayment to the state for the loss of service due to the vendor's failure to meet the contract requirements[li].

Local government: A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state.

Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU): A written document that represents the agreement of the parties regarding the subject matter of the document; it does not usually involve transfer of funds in exchange for services, but may document transfer of funds required by statute. Because the underlying agreement may or may not be legally binding and enforceable, the agreement may or may not constitute a contract. It is generally considered a less formal way of evidencing an agreement and is ordinarily used in state government only between or among state agencies or other government entities.

Monitoring: A systematic review of a contractor's records, business processes, deliverables, and activities to ensure compliance with the terms and conditions of the contract. Monitoring includes planned, ongoing, periodic, or unscheduled activities. The goal of contract monitoring is to protect the health and safety of clients that receive services, ensure delivery of quality goods and services, and protect the financial interest of the State.

Monitoring plan: Documents the monitoring activities required for individual contracts and tracks the status and progress of monitoring requirements.

Onsite review: A review of a contractor's service delivery or business operations that takes place at administrative or service delivery sites and may include observation of service delivery. The scope of the review is at the discretion of the contracting agency.

Programmatic monitoring: A review of a contractor's service delivery system to determine if it is consistent with contract requirements including outputs, outcomes, quality and effectiveness of programs. In programmatic monitoring, service-related information is reviewed for compliance with process and outcome expectations as identified in standards, rules and contracts. Program compliance monitoring may result in quality improvement and technical assistance activities to evaluate and improve the effectiveness of the provision of services.

Proprietary: Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services as defined in Texas Government Code, Section 2155.067[lii].

Purchase order (PO): A purchase contract issued by the Enterprise to a vendor, indicating types, quantities, and agreed to prices for products or services the seller will provide to the agency, and referencing the terms and conditions that govern the purchase[liii].

Rate based payment: A basis of payment where the rate is set independently from an individual contract and typically established through a formal rate setting process.

Recipient: A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients. (2 CFR §200.86) or receives a state award directly from a state awarding agency to carry out a state program. (UGMS §200.87.00)

Retention period: The period during which records must be kept before they may be disposed of, usually expressed in years or contingent upon an event, such as end of calendar year. The retention period for procurement and contract related documents set in this *Contract Management Handbook* may differ from general document retention periods set in HHS agency policy.

Risk assessment: The ongoing process of identifying and determining the risk that a contract poses to the State. HHS uses the Enterprise Risk Assessment Instrument (RAI) to assess a variety of factors that indicate potential risk to HHS contracts and prioritize contract monitoring activities accordingly to prevent and mitigate risk.

Root cause analysis: A technique that helps staff to answer the question of why the problem occurred in the first place. A root cause analysis helps to determine what happened, why it happened, and how to reduce the chance that the problem will happen again.

Scope of work: See statement of work.

Signal audit: An audit which includes both the entity's financial statements and the federal awards in accordance with OMB Circular A-133 which sets forth standards for obtaining consistency and uniformity among federal agencies for the audits of states, local governments and non-profit organizations expending federal funds.

State award: The state financial assistance that recipients receive directly from state awarding agencies. (UGMS §200.90.02)

Statement of Work (SOW): The detailed description of what the agency is purchasing and what the contractor is required to provide in order to satisfactorily perform the work.[liv]

Subcontract: A written agreement between the original contractor and a third party to provide all or a specified part of the work or materials required in the original contract.

Subrecipient: A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency[lv].

Unallowable costs: Costs that are expressly unallowable under applicable state and federal laws and regulations or under the terms and conditions of the contract, or that are unreasonable or unnecessary.

Unit price: The price for a good or service in accordance with the unit of measure provided in the solicitation[lvi], (e.g., price per ton, per labor hour, or per foot).

[viii] Title 1, Part 15, Chapter 391 Subchapter E. Standards of Conduct for Vendors and HHSC Procurement and Contracting Staff.
[ix] Texas Penal Code Section 36.08
[x] Texas Government Code §2261.252
[xi] HHS Circular C-031 *HHS Ethics Training For Contracting And Procurement Personnel*
[xii] Title 1, Part 15, Chapter 391 Subchapter E. Standards of Conduct for Vendors and HHSC Procurement and Contracting Staff
[xiii] Section 2252.901, Texas Government Code.
[xiv] 1 TAC 391.103(7)
[xv] State of Texas Procurement Manual, Glossary of Purchasing Terms
[xvi]Texas Government Code §2155.083
[xvii] Texas Government Code §2254.021
[xviii] State of Texas Contract Management Guide, Ch. 3 - Preparing the Statement of Work
[xix] State of Texas Contract Management Guide, Ch. 3 - Specification Types

[xx] Health and Human Services Commission Contract Council, Contract Performance Workgroup, *Contract Performance Standards, A Guideline for Health and Human Services,* February 2009.

[xxi] Texas Government Code, Section 2262.101
[xxii] Texas Government Code, Section 2262.101(d)
[xxiii]

[xxiv] Texas Government Code, Section 2254.021
[xxv] Texas Government Code, Section 2254.021
[xxvi] Texas Government Code, Section 2254.026
[xxvii] Texas Government Code, Section 2254.027
[xxviii] 45 CFR 92.36(c)(2) and 45 CFR 75.328

[xxix] Texas Government Code Section 2254.021

[xxx] This requirement is delineated in Article IX, Section 9-7.05 of the General Appropriations Act. Instructions and forms were sent to agencies on August 23, 1999.
[xxxi] Government Code, Section 2254.036
[xxxii] Government Code, Section 2254.028
[xxxiii] Government Code, Section 2254.029
[xxxiv] This requirement is delineated in Article IX, Section 9-7.05 of the General Appropriations Act. Instructions and forms were sent to agencies on August 23, 1999.
[xxxv] Government Code, Section 2254.030
[xxxvi] Government Code, Section 2254.036
[xxxvii] Texas Government Code Chapter 2161
[xxxviii] Texas Government Code Chapter 2161
[xxxix] As of April, 2015, HHS Agencies have identified 1016 staff requiring training and certification as Certified Texas Contact Managers.

[xl] Texas Government Code Chapter 2261
[xli] 34 Texas Administrative Code Section 20.14
[xlii] Texas Government Code Section 2262.055
[xliii] See State of Texas Procurement Manual, Glossary of Purchasing Terms and State of Texas Contract Management Guide, Definitions
[xliv] State of Texas Contract Management Guide, Definitions
[xlv] State of Texas Procurement Manual, Glossary of Purchasing Terms
[xlvi] State of Texas Procurement Manual, Glossary of Purchasing Terms
[xlvii] See State of Texas Contract Management Guide, Definitions
[xlviii] State of Texas Procurement Manual, Glossary of Purchasing Terms
[xlix] State of Texas Procurement Manual, Glossary of Purchasing Terms
[l] State of Texas Procurement Manual, Glossary of Purchasing Terms
[li] State of Texas Contract Management Guide, Definitions
[lii]See State of Texas Procurement Manual, Glossary of Purchasing Terms and State of Texas Contract Management Guide, Definitions
[liii] State of Texas Procurement Manual, Glossary of Purchasing Terms
[liv] State of Texas Contract Management Guide, Ch. 3 - Preparing the Statement of Work
[lv] State of Texas Contract Management Guide, Definitions
[lvi] State of Texas Procurement Manual, Glossary of Purchasing Terms