

## TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY CONTRACT HANDBOOK

Pursuant to Section 2261.256 of the Texas Government Code, the Texas State Board of Public Accountancy (TSBPA) has established contract management procedures. TSBPA has established policies that are in compliance with the Contract Management Guide and the State of Texas Procurement Manual provided by the Comptroller of Public Accounts (CPA). TSBPA will use both guides to ensure proper procurement and contracting procedures are followed. These contract management procedures contain the requirements of Texas Senate Bill 20, 84<sup>th</sup> Legislature (2015).

### Ethics and Conflict of Interest

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All purchasing and contracting employees on behalf of the State of Texas must remain independent, free of obligation or suspicion, and completely fair and impartial. Purchasing processes and personnel must remain independent and free from the perception of impropriety.

Agency employees may not engage in conduct which conflicts with the proper performance of his or her duties. TSBPA employees shall not have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligations of any nature which is in substantial conflict with the proper discharge of their duties in the public interest.

It is the policy of TSBPA that employees may not solicit or accept any benefit, gift, favor or service they know is offered to influence their official conduct or the conduct of any employee of the agency. Employees may not solicit or accept anything of value from an actual or potential vendor. Such benefits shall include meals, transportation and lodging. This prohibition is not meant to include meals of nominal value, less than \$25.00 that might occur in the ordinary course of an employee's activities, including lunches provided at seminars, conventions and business meetings. Employees may accept unsolicited advertising or promotional materials such as pens, pencils, note pads, calendars and other items of nominal value. Employees must use their own judgment but should refuse gifts if there is any doubt.

To avoid conflicts of interest TSBPA will require all potential contractors to disclose, in their responses to solicitations, any actual or potential conflicts of interest in their proposed provision of services or other performance under any contract resulting from solicitations. Any employee who is involved in the procurement or in contract management for TSBPA must disclose to the agency any potential conflict of interest specified by state law or TSBPA policy that is known by the employee with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

TSBPA may not enter into contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

1. A member of the agency's governing body
2. The governing official, executive director, general counsel, or chief financial officer
3. A family member related to an employee or official described above in 1 or 2 within the second degree by affinity or consanguinity.

All purchasing staff, contracting staff and other staff involved in contracting approval must sign a conflict of interest statement.

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### Assessing Risk and Monitoring

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To ensure that the contractor is performing all duties in accordance with the contract, TSBPA monitors the contract to be aware of and address any developing problems or issues. TSBPA monitors contracts by staff review and presentation at enforcement committees, Board meetings, and on an expenditure level during preparation, review, and approval of voucher.

### Enhanced Monitoring

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Any contract that exceeds \$1 million in value is subject to enhanced monitoring. The TSBPA does not have contracts that exceed \$1,000,000 in value. If a situation occurs which would necessitate a contract exceeding \$1,000,000, TSBPA will comply with requirements for enhanced monitoring.

### Contract Procedures - Agency Wide Contract Development and Solicitations Process for Board's Professional Services Contracts

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TSBPA will comply with the Contract Management Guide provided by the Comptroller of Public Accounts (CPA) for all contract procedures. Pursuant to Section 2262.052 of the Texas Government Code, TSBPA will comply with the contract management guide with the intent to follow and use best practices.

The Board only contracts for professional services when it has a need that it cannot fill with existing staff or existing Board and advisory committee members. Board and advisory committee members may have the expertise but often lack the ability to devote the time and resources required to conduct the technical examination, preparation of a report and the expert testimony necessary to fully and properly prosecute a violation of Board rules.

In addition case law makes it clear that Board members serving as expert witnesses could jeopardize any decision decided by the Board. The courts have found that due process is violated when the decision-makers are weighing the opinion of a fellow board member up against the testimony of an independent third party expert. Board members will often give more weight to the testimony and opinion of a fellow Board member. Therefore the Board adopts the position that Board members should be used only sparingly as an expert witness in the adjudication of a violation of the Board's Rules of Professional Conduct. The Board has determined that the public is best protected and fairness is best achieved when Board members do not provide the expertise required for the prosecution of a complaint.

Complaint investigations require numerous areas of expertise. School district audits, tax shelter issues, IRS regulations, Yellow Book audits, just to name a few, all require different specialized areas of expertise. Attempting to utilize Board employees to provide all the areas of expertise that comprise Board complaints would require the addition of multiple Board employees. This would not be cost effective particularly when the specific areas of expertise are not routinely required. There may be instances where existing staff may be able provide that expertise and the Board will make that determination as it examines each complaint investigation. In addition, the Board will take advantage of the existing expertise provided in the Enforcement Committees.

The Enforcement Committees will continue to review each complaint investigation and make a determination if the expertise of an independent outside consultant is needed and will employ an outside

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consultant only when necessary to achieve a fair and complete investigation of the matter before the committee.

All contracts for professional services will continue to have a beginning and termination date and the need for the services re-evaluated before procured again. The Board will formally require re-procurement no later than every four years and must have documented justification if it enters into a multiyear contract or extends a contract beyond one year.

The Board, as is all state agencies, is subject to Chapter 2254, Subchapter A, of the Texas Government Code. As such the procurement of professional services is subject to the Electronic State Business Daily (ESBD) posting requirements. Professional Services include accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising and professional nursing. The Board will post procurements with a contract value of more than \$25,000 to the ESBD, regardless of the source of the funds to be used for the contract.

Procurements are advertised as a Request for Qualifications (RFQ). The award of a professional services contract is based upon demonstrated competence and qualifications to perform the services at a fair and reasonable price. The professional fees may not exceed any maximum provided by law. The Board must select the most highly qualified provider based upon demonstrated competence and qualifications and then attempt to negotiate a fair and reasonable price for the services. If a satisfactory contract cannot be negotiated with the most highly qualified respondent, the Board will formally end negotiations with respondent and then attempt to negotiate a fair and reasonable price with the next most highly qualified respondent. The Board will utilize this process every three to four years for all professional services.

The solicitations will include an introduction and background information, minimum requirements to qualify which may include education, experience and other training and specialization, a description of the scope of work the Board is seeking as well as expected performance and monitoring requirements when appropriate, the term of the contract and conditions, the minimum requirements for a response which include the period of response and the minimum information contained in a response and the criteria that will be used in evaluating the responses with prioritizations on the qualifications, competence experience and expertise.

The Board will document each of the steps of the contract development, solicitation, evaluation and selection. The Board will have a clear assignment of responsibilities between those evaluating the responses and staff handling the contracts to ensure that respondents do not inappropriately communicate with the decision-makers while responses are being evaluated.

A RFQ would not be a suitable procurement method for procuring goods, as the essential feature of an RFQ is that price is not a factor until after the vendor selection.

The Board will provide written notice, on a prescribed form, to the Legislative Budget Board (LBB) not later than the 10<sup>th</sup> day after the date the Board enters into a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract exceeds \$14,000.

If a contract involves both consulting and other services, the services will be procured as consulting services if the primary objective of the contract is the acquisition of consulting services.

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### Legal Services

Although not considered a professional service under the Professional Services Procurement Act all legal services the Board determines it has a need for, other than a full time Board employee or a full-time employee of the Office of Attorney General (OAG), must be approved by the OAG to be valid. The Board will electronically submit a Request to Retain Outside Counsel (RtR) and the proposed Outside Counsel Contract (OCC) to the OAG. An amendment to the OCC contract must also be approved by the OAG.

### Major Consulting Services

A major consulting services contract for the Board is a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000. A consulting services contract cannot be divided into more than one contract to avoid the procurement requirement pertaining to major consulting services contracts. A major consulting services contract must comply with the Texas Register publication requirements and notification requirements of the LBB and Governor's Budget and Planning Office.

### Purchasing Accountability and Staff Responsibilities

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The following delineates staff roles and responsibilities for contract management.

#### Staff Services Officer

Staff Services officer serves as the purchasing agent, contract manager, records manager officer and HUB coordinator. Primary responsibilities for the day to day management of contracts including but not limited to:

- Monitoring vendor performance and fiscal, financial and record keeping requirements
- Reporting vendor performance in the Comptroller's Vendor Performance Tracking System
- Taking timely and appropriate action to resolve performance and compliance issues
- Receiving, reviewing and approving deliverables
- Documenting receipt of contract deliverables and communicating acceptance of these deliverables to appropriate section
- Processing contract modifications
- Receiving and responding to communications between the agency and the contractor
- Identify and resolve disputes with contractor in a timely manner
- Maintaining appropriate records
- Documenting significant events
- Exercising state remedies, as appropriate, when a contractor's performance is deficient
- Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements
- Monitoring the budgeting/accounting process to ensure sufficient funds are available
- Verify accuracy of invoices consistent with contract terms
- Performing contract closeout process ensuring the contract file contains all necessary contract documentation, formal acceptance documented, and document lessons learned
- Attend contract management continuing education to maintain certification
- Maintain all contract and contract documentation according to its retention date

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Chief Financial Officer

The chief financial officer reviews financial records for compliance with purchasing and contracting guidelines. Serves in the capacity of contract oversight, compliance, and financial resources, including but not limited to:

- Consulting with legal counsel to address any legal concerns and/or issues
- Ensuring that funds are available for the contract and its amendments
- Assisting department staff in identifying available funding for new unforeseen contracts, when necessary

General Counsel

The general counsel provides legal review, guidance, and oversight for all aspects of the Board's contracting, and is responsible for ensuring that the Board adheres to all statutory requirements of the contract.

Executive Director

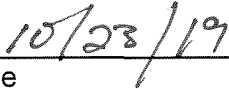
The executive director will review, approve, and sign all contracts.

Board

The Board ratifies contracts for professional legal and accounting expertise to support the administration of the Public Accountancy Act.

Approved by:

  
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William Treacy, Executive Director

  
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Date

This handbook is supplemented by other manuals and reference materials including, but not limited to:  
The State of Texas Contract Management Guide

<http://www.window.state.tx.us/procurement/pub/contractguide/>

The State of Texas Procurement Manual

<http://www.window.state.tx.us/procurement/pub/manual>