

# Credit Union Department Contract Management Guide and Handbook

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## **1. INTRODUCTION**

The Credit Union Department (Department) has developed this Contract Management Guide for all Department staff who request goods and services. This Guide will be updated periodically to reflect changes in procurement rules and policies. The Staff Services Officer stays current on all purchasing rules, policies, and regulations and should be your primary source to provide guidance on procurement processes. The Staff Services Officer coordinates all contracting activities closely with the General Counsel. The intent of this Guide is to assist in understanding the processes that must be followed in order to adequately manage contracts. Any suggestions should be directed to the General Counsel at (512) 837-9236 or [cudmail@cud.texas.gov](mailto:cudmail@ cud.texas.gov)

## **2. CONTRACT OVERVIEW**

A contract is a written document referring to promises or agreements for which the law establishes enforceable duties and remedies between a minimum of two parties. An original Contract, Amendment, Modification, Extension, Purchase Order (PO), Interagency Agreement, Inter-local Agreement, Inter-cooperative Contract, and a Memorandum of Understanding are all considered contracts.

## **3. PROCUREMENT AND CONTRACT SERVICES**

The Staff Services Officer is responsible for coordinating and managing all procurement and contracting activities for the Department. She/he is available to assist Department staff with procurement and contracting needs.

The Staff Services Officer is also responsible for facilitating the procurement and contracting needs for the Department and for all types of purchases. Purchasing efforts are focused on the purchasing and contracting activities which obtain the best value for the Department at the right time, at the right price, consistent with laws, regulations, Department purchasing procedures, and sound business judgment.

## **4. STATE PURCHASING STATUTE AND RULES**

The Texas Comptroller of Public Accounts (CPA) identifies a list of governing statutes and rules that state purchasing programs must follow: <http://window.state.tx.us/procurement/procedures.html>. All contracts involving procurements must adhere to these statutes, rules, and the State Procurement Manual.

### **4.1 ENHANCED GUIDANCE FOR CONTRACTS OVER \$1 MILLION**

Under TEX. GOV'T CODE § 2261.254, for all contracts over \$1 million, the agency shall develop and implement contract reporting requirements that provide information on:

- Compliance with financial provisions and delivery schedules under the contract;
- Corrective action plans required under the contract and the status of any active correction plans;
- Any liquidated damages assessed or collected under the contract; and

In addition, the Department shall verify the accuracy of any information reported by a contractor and the delivery time of goods and services. All contracts over \$1 million must be

approved by the Commission. As appropriate, the approval and signature authority may be delegated to the Commissioner.

Per General Appropriations Act, Article IX, Section 7.12 requirements, the Department must provide 10 business days' notice to the Legislative Budget Board (LBB) before payment can be made on any contract that is over \$1 million that was awarded outside of the competitive process. This notice will include a certification, in the form prescribed by the LBB, from the Commissioner that the purchase complied with the contract management guide, procurement manual, applicable statutes or the alternative process used and the name of the person directing that process.

#### **4.2 ENHANCED GUIDANCE FOR CONTRACTS OVER \$5 MILLION**

Under TEX. GOV'T. CODE § 2261.255, for all contracts over \$5 million, the contract management office or procurement director must:

- Verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and
- Submit information to the Department's governing body on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

#### **4.3 ENHANCED GUIDANCE FOR CONTRACTS OVER \$10 MILLION**

Under TEX. GOV'T CODE § 2262.101, all solicitations expected to result in contracts valued at \$10 million and greater must be submitted to the Contract Advisory Team for review before the solicitation can be posted. The contract value is determined without regard to source of funds or payment mechanism.

Per General Appropriations Act, Article IX, Section 7.12 requirements, the Department must provide 10 business days' notice to the LBB before payment can be made on any contract that is over \$10M. This notice will include a certification, in the form prescribed by the LBB, from the Commissioner that the purchase complies with the contract management guide, procurement manual, applicable statutes or what alternative process was used and the name of the person directing that process.

### **5. STATE AND AGENCY ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES**

All Department employees and officials who participate in the Department's procurement and contracting activities shall adhere to the Department's Policy 203 Ethics and Standards of Conduct. Violation of the procedure or statement is subject to discipline, up to and including termination. All Department personnel involved in procurement or contract management must disclose any conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services. Department officials and employees are responsible for protecting the safety and welfare of the public's monies. All officials and staff should endeavor to pursue a course of conduct that does not raise suspicion among the public. Therefore, everyone must avoid acts which are improper or give the appearance of impropriety. This conduct is particularly important for Department purchasing and contract management personnel who are charged with the disposition of Department funds. Department personnel must adhere to the highest level of professionalism in performing their official

duties. The following paragraph is an excerpt from the CPA State of Texas Procurement Manual Section 1.2 regarding ethics for personnel involved in purchasing:

*“State officials and state employees are entrusted with the safety and welfare of the citizens of Texas. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business. The nature of purchasing functions makes it critical that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Maintaining the integrity and credibility of a purchasing program requires a clear set of guidelines, rules and responsibilities to govern the behavior of purchasing employees. Credibility and public confidence are vital throughout the purchasing and contracting system.”*

Under TEX. GOV'T CODE § 2261.252, the Department may not enter into a contract with a vendor if any of the following Department employees or officials has a financial interest in that vendor:

- A member of the Department's governing body;
- The Commissioner, Deputy Commissioner, General Counsel, or Staff Services Officer for the Department;
- A family member related to an employee or official described above within the second degree by affinity or consanguinity;
- Having a “financial interest” in this section is defined as a state agency employee or official that:
  - Owns or controls, directly or indirectly, at least 1% in the person, including the right to share in profits, proceeds or capital gains or;
  - Could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.
- A financial interest that is prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

Under TEX. GOV'T CODE § 572.069, state officers and employees who participated in a procurement or contract negotiation are prevented from accepting employment with the vendor for two years after the officer's or employee's service or employment with the agency have ceased.

## **6. CONFLICT OF INTEREST**

All Department personnel involved in procurement or contract management activities must disclose any conflict of interest with respect to any new contract or renewal with a private vendor or bid for the purchase of goods or services. A Disclosure Statement for Purchasing Personnel (**Appendix A**) must be signed annually by any employee who participates in the development of contract specifications, solicitation documents, evaluations, negotiation, or contract monitoring activities. A violation of this provision is subject to discipline, up to and including termination. Any identified potential conflict of interest must be reported immediately to the Commissioner.

## **7. DISCLOSURE REQUIREMENT FOR OUTSIDE FINANCIAL ADVISOR OR SERVICE PROVIDERS**

Any outside financial advisor or service provider shall disclose any relationship the financial advisor or service provider has with any party to a transaction with the Department, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the Department, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the Department.

All direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the Department, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the Department or to a member of the Commission in connection with the management or investment of Department funds.

A financial advisor or service provider shall disclose a relationship described by this section without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

## **8. SIGNATURE AUTHORITY & APPROVALS**

Prior to any contract execution, the Department will document best value standards used for the contract and acknowledge in writing that the Department complied with this guide and the CPA's contract management guide.

An authorized employee's signature on a contract will reflect a representation that the contract has been properly submitted, reviewed and approved in accordance with all Department policies and procedures, and that the contract is in the best interest of the Department.

No employee, other than the Commissioner, may sign a contract binding the Department without an express, written delegation of authority to do so. In the event of such authorization, it shall be posted on the Department's website.

## **9. CONTRACT MANAGEMENT**

Contract Management refers to the entire contracting process, which involves planning, forming, and administering contracts through closeout. Contract management activities include administering and monitoring the contract after the award and during contract implementation by measuring completed work, computing and approving payments, monitoring contract performance, incorporating necessary changes and modifications to the contract, and actively interacting with the Contractor. Purchasing staff will utilize this guide along with the CPA's State Contract Management Guide to achieve contract objectives.

## **10. CONTRACT REVIEW TEAM**

The Department Contract Review Team (CRT) is comprised of the Staff Services Officer, the Commissioner, the Deputy Commissioner, and the General Counsel. Proposed contracts, agreements

or purchase orders must be reviewed to ensure that they meet the criteria and requirements set by the Department. The CRT reviews significant procurements and contracts to help ensure efficiency, effectiveness, and best value and practices.

## **11. CONTRACT MANAGEMENT ROLES**

Per TEX. GOV'T. CODE § 2261.256, each state agency must develop and comply with a purchasing accountability and a risk analysis procedure that provides for establishing clear levels of purchasing accountability and staff responsibilities related to purchasing and contract monitoring. Provided below is a high-level description of key differences between the Contract Monitor and the Contract Administrator.

### **11.1 CONTRACT MONITOR**

A Contract Monitor must be assigned to every PO or contract. The Contract Monitor is responsible for the continual monitoring and day-to-day management of the contract's performance to ensure its compliance with terms and conditions as well as the forecasting and planning for contract renewals, changes, and close-outs. The Contract Monitor must understand the procurement timelines associated with renewals, solicitations, and transitions and ensure that those actions are initiated and planned so as to start and finish within contract constraints.

Contract Monitors are:

- Full time employees and not contract employees;
- Expected to monitor the contract for the life of the contract;
- Required to review vendor performance and report the review to CPA at the termination of a contract;
- Responsible for their contract monitoring duties and may not delegate their duties to any other personnel; and
- Thoroughly familiar with the Department's Contract Management Guide.

### **11.2 CONTRACT ADMINISTRATOR**

A Contract Administrator is responsible for facilitating the procurement and contract management processes to ensure compliance with state laws, policies, and guidelines. Contract Administration involves the administrative activities associated with handling contracts. The role of Contract Administrator is to complete the acquisition cycle, oversee the management of the contract, ensure Department needs are satisfied, and confirm the Contractor is fully compensated for services rendered or supplies provided per the contract terms and conditions.

## **12. VERIFICATION OF USE OF BEST VALUE STANDARD**

The best value selection of a contractor is based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past

performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains compliance standards.

For each contract for which the Department is required to purchase goods or services using the best value standard, the CRT must:

- Approve the contract;
- Ensure that the Department has documented the best value standard utilized for the contract; and
- Acknowledge in writing that the Department complied with its rules and policies and with CPA's contract management guide in the purchase.

### **13. VENDOR PERFORMANCE REVIEW**

After any contract is completed or otherwise terminated, the Department is required to review the vendor's performance by filing a report through the Vendor Performance Tracking System maintained by the Comptroller of Public Accounts per TEX. GOV'T. CODE § 2155.089. For each purchase of goods or services for which the Department is required to use the best value standard, the Comptroller shall ensure that the Vendor Performance Tracking System will include information on whether the vendor satisfied the best value standard.

### **14. OTHER CONTRACT STAKEHOLDERS**

#### **Legal**

As requested, the General Counsel provides guidance, direction, and review to assist the Department in ensuring that the contracting and procurement activities are compliant with applicable state laws, policies, and guidelines.

Other General Counsel responsibilities include the following as requested:

- Provide guidance and direction through the solicitation, award, monitoring, and closeout processes to help ensure the Department is protected;
- Help to ensure that Department contracts can be monitored and performance is measurable;
- Identify opportunities to improve clarity of responsibility and expectations documented in the contract;
- Vet and recommend Commissioner action on two-party contracts;
- Provide guidance and direction on dispute resolution; and
- Identify state remedies, as appropriate, when a vendor's performance is deficient.

#### **Accounting**

- Ensure compliance with prompt payment;
- Validate and approve use of funds identified on requisitions;
- Validate receipts are complete before issuing payments;
- Perform three way match before issuing payment; and

- Immediately report to the Staff Services Officer, General Counsel, or Deputy Commissioner any of the following:
  - Conflict of Interest
  - Potential Conflict of Interest
  - Fraud
  - Potential fraud
  - Any incident that is an ethical problem
  - Any incident that may lead to ethical questions
  - Failure of a peer, self, contract monitor, or customer to abide by required purchasing and contracting rules, laws, or policies.

**Other Staff**

- Responsible for reviewing and evaluating requests and determining if they need to modify or approve specifications;
- Responsible for identifying to what extent and how they will be impacted by the contract;
- Responsible for adhering to all procurement and contracting rules, policies, and procedures;
- Responsible for supporting the Contract Monitor and Contract Review Team;
- Responsible for completing a lessons learned document and depositing that document into the contract document repository;
- Immediately report to the Staff Services Officer, General Counsel, or Deputy Commissioner any of the following:
  - Conflict of Interest
  - Potential Conflict of Interest
  - Fraud
  - Potential fraud
  - Any incident that is an ethical problem
  - Any incident that may lead to ethical questions
  - Failure of a peer, self, contract monitor, or customer to abide by required purchasing and contracting rules, laws, or policies.

**15. CONTRACT CHANGE CONTROL**

A key aspect to effective contract management is the ability to manage change and have sufficient oversight to prevent scope creep, unauthorized work from being performed, and over billing. The Contract Monitor, Contract Administrator, and the end user all have a responsibility to ensure all contract changes are memorialized in the form of a modification, amendment, or change order. Changes not addressed through formal Modification, Amendment or Purchase Order Change Notice (POCN) are considered non-compliant. Contract Monitors should implement a change control system for major contracts and keep a log of all requested changes. The change control system should account for evaluation of requested changes and approvals/disapprovals of requested changes, and date change was executed if applicable. All changes must be within the scope of the original contract. Types of changes include work orders, administrative changes, substantive changes, and constructive changes.

Changes:

- Must be addressed in writing and must go through the Staff Services Officer to be authorized; and
- Are not considered authorized until both parties have signed-off and the Staff Services Officer has identified the item as being fully executed.

## **16. CONTRACT ISSUE MANAGEMENT**

The Contract Monitor is the first person to know about and resolve issues related to contract performance. Contract Monitors should keep a log of all issues that arise during the life of the contract and document the timeline of the issue along with the resolution.

To prevent disputes, Contract Monitors will:

- Maintain regular communication with the contractor;
- Respond promptly to all contractor inquiries regarding contract concerns;
- Work with the Contract Administrator to develop a strategy to resolve issues and communicate to contractors;
- Thoroughly document all issues and communications pertaining to contract issues; and
- Use Corrective Action Plans to address issues that are impacting performance of the contract.

## **17. CONTRACT RISK MANAGEMENT**

Each state agency must develop and comply with a purchasing accountability and risk analysis procedure that provides for:

- Assessing the risk of fraud, abuse or waste in the contractor selection process, contract provisions, and payment and reimbursement rates;
- Identifying contracts that require enhanced contract monitoring or immediate attention of the contract management staff; and
- Establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

Performing risk assessments helps to determine the level of degree of oversight and participation from the end user. The Department uses a Risk Assessment Matrix (RAM) tool to determine the risk level of the contract. Based upon the classification of risk, the contract will require enhanced levels of reporting. This assessment is completed to anticipate risks, mitigate or manage risks, and avoid or transfer risk in order to protect the Department. Performing a risk assessment is an ongoing process throughout the life of the contract. The risk assessment is conducted at the time the requisition is submitted to the Staff Services Officer, at the time of award, and throughout the life of the contract as needed based on current circumstances. Risks to the contract must be reviewed and evaluated by the Contract Monitor on a continual basis until the contract is fully performed and final payment has been rendered. In addition to using the risk assessment tool, Contract Monitors should keep a log for all major contracts and major purchase orders (POs). This log should identify all risks to their contracts, the mitigation plan or strategy for addressing the risk and the outcome.

Under TEX. GOV'T CODE §2261.253 and other provisions of Senate Bill 20 (84<sup>th</sup> Legislative Session) and General Appropriations Act Art IX, Rider 7.12 adopted by the 84<sup>th</sup> Legislature, Regular Session, the Staff Services Officer has responsibilities relative to serious issues or risks on certain contracts.

The Staff Services Officer shall notify executive management of any serious issues or risks on certain contracts.

### **Risk Assessment Matrix (RAM) - Appendix C**

The RAM is a tool used by the CRT to identify areas of risk (the potential for loss, harm, or damage that may occur due to errors or problems associated with contractors' performance) for first time contract vendors. This tool also allows staff to identify specific areas that may need enhanced monitoring.

This tool should be used prior to: 1) awarding contracts from RFP proposals; 2) entering into new contracts with vendors; and 3) renewing existing contracts.

Risk factors are indicators that determine the risk of the contract or project objectives not being met. The risk factors in the RAM include:

- Type of contract purchase – what type of contract solicitation – competitive/non-competitive;
- Payment type/structure – the type of budget included in the contract;
- The dollar amount of the contract;
- Essential department functions;
- Stability and experience of contractor's key management staff;
- Percentage of services performed by subcontractors;
- Compliance history;
- Past programmatic performance;
- Audit outcomes;
- Number of years in business;
- Performance measures;
- Deliverables; and
- Greater than \$1 million dollars – amount of financial reporting required. Additional risk factors can be added as appropriate for the contract.

Rate each contractor on the risk elements using the range of Low (score 1-3), Medium (Score 4-7), or High (Score 8-10). Add up the scores in the Overall Risk Score field. The ranges for the overall risk scores are:

Low Risk procurement: 0 – 48

Medium risk procurement: 49 - 112

High Risk Procurement: 113 – 160

No objective or mathematical formula can be used to completely assess the risk imposed by a particular contract; risk is determined subjectively.

The RAM should be completed annually, but risk should be assessed on an on-going basis throughout the contract period. A new RAM should be completed when risk conditions undergo a substantial change (i.e., contractor's management or ownership changes). Contract management and monitoring activities should be adjusted to focus on the riskiest contractors during the entire contract period.

## **18. CONTRACT DISPUTES**

Despite best efforts, there is always the potential for a contract dispute. Contract Monitors should follow these steps in order to informally address disputes.

- Identify the problem – many times what may appear to be a problem can be resolved by providing the contractor with information or clarification.
- Research facts –obtain all the information regarding the potential problem from all relevant sources.
- Evaluation –review all of the facts in conjunction with the requirements and terms and conditions of the contract. The Department should then determine the appropriate course of action.
- Corrective action – identification of problems early in the performance period, effectively communicating and formalizing the process in writing via a corrective action plan (contract performance is impacted) or less formal written procedure (contract performance could be impacted if not resolved), is essential.
- Document all information related to the informal dispute until the informal dispute is resolved. Resolution must also be documented.
- Email the Staff Services Officer and copy management. The email should contain an overview of problem and actions taken towards resolution to date.
- The Staff Services Officer will provide guidance and assistance and escalate issues to the General Counsel if needed.
- The Staff Services Officer will facilitate resolution with all parties, with the assistance of the General Counsel.
- The Staff Services Officer will facilitate completion of an internal Corrective Action Plan and/or require the contractor to provide a formal Corrective Action Plan (CAP).
- As requested, the General Counsel will provide guidance and direction on appropriate legal action if the vendor remains non-compliant.

## **19. CONTRACT REPOSITORY**

All major POs and all Contracts will be stored by the Staff Services Officer. The Staff Services Officer is responsible for ensuring the initial contract and major PO are labeled and filed appropriately. Additionally, the Staff Services Officer is responsible for ensuring that all amendments, modifications, and POCNs are filed and updated upon change. Additional responsibilities include checking the files, validating that all information for their contract or major PO is correct and current, and resolving any discrepancies.

## **20. CONTRACT FILES**

The Staff Services Officer will be responsible for maintaining an official contract file for all contracts that include the request, solicitation, responses, scoring, Best and Final Offers (BAFO), award documents, corrective actions, contract monitor reports, and change documents. The Contract Monitor is responsible for maintaining a working file that captures documents pertaining to the contract, issues, changes, risks, expenditures, invoices, payments, and correspondence.

## **21. CONTRACT RETENTION**

The following is the required retention policy for all purchase order and contract related documentation: For contracts and purchase orders entered into after September 1, 2015, a state agency shall retain in its records each contract and related documents it enters into for a period of seven years after the contract expires, is terminated, or is completed, after all issues have been resolved. Along with the contract, all solicitation documents shall also be retained. For contracts and purchase orders entered into prior to September 1, 2015, the records retention period is four years.

## **22. POSTING CONTRACTS AND CONTRACT DOCUMENTS**

The Department will also comply with all procurement and contract posting requirements, including those described by Sections 2157.068, 2261.253, and 2261.256 of the TEX. GOV'T. CODE and applicable sections of the General Appropriations Act.

## APPENDIX B: RISK ASSESSMENT MATRIX

#	Risk Factor	Risk Level – LOW Score 1-3	Risk Level - MEDIUM Score 4-7	Risk Level – HIGH Score 8-10	Justification/Comments	Risk Level Score
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Pre-set Risk Factors						
1	Type of Contract Purchase	Interagency, MOU or Interlocal	Contract Less than 25K	Consulting, Emergency, Sole Source, Proprietary, or Construction > \$25K		
2	Payment Type/ Structure	Fixed price or contingency	Rate or Fee for Services	Cost Reimbursement		
3	Total Dollar Amount for FY	Less than \$100K	\$100K to \$1 million	Over \$1 million		
4	Essential Agency Function	Contract services are not critical for meeting CUD's mission	Contract services are moderately essential to CUD's mission	Contract services are essential to CUD's mission		
5	Stability & Experience of Contractor Key Management Staff	No recent change and significant experience	No recent change, but not significant experience; or recent change but significant experience	Recent change and not significant experience		
6	Percentage of Services Performed by Subcontractors	No Subcontractor involvement	Subcontractors account for 50% or less of contract work performed	Subcontractors account for more than 50% of contract work		
7	Compliance History	No issues of non-compliance	Moderate instances of noncompliance/ no history - never contracted with CUD before	Substantial finding of non-compliance		
8	Past Programmatic Performance	Met or exceeded all output and outcome measures	Met 75% or more of output and outcome measures	Met less than 75% of output and outcome measures		

#	Risk Factor	Risk Level – LOW Score 1-3	Risk Level - MEDIUM Score 4-7	Risk Level – HIGH Score 8-10	Justification/Comments	Risk Level Score
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Risk Factors - Financial						
9	Audit Outcomes	No audit required or no issues or finding in audit(s)	Moderate issues or findings in audit(s)	Substantial issues or findings in audit(s)		
10	Number of years in business	More than 5 years	1 year to 5 years	Less than 1 year		

Risk Factors - Contract						
11	Performance Measures	Contract contains multiple defined and measurable performance measures	Contract contains at least one clearly defined or measurable performance	No performance measures included in contract		
12	Deliverables	Contract contains multiple deliverables that are clearly defined	Contract contains at least one clearly defined deliverable	No deliverables included in contract		
13	> \$1 million - Financial Reports required	> \$1 million - substantial financial reports required	> \$1 million - minimal financial reports required	> \$1 million - no financial reports required		

Overall Risk Score	
Low Risk Procurement	0-48
Medium Risk Procurement	49-112
High Risk Procurement	113-160

**Summary of Risk Assessment:**

**Additional Risks:**

**Risk Mitigation Plan:**