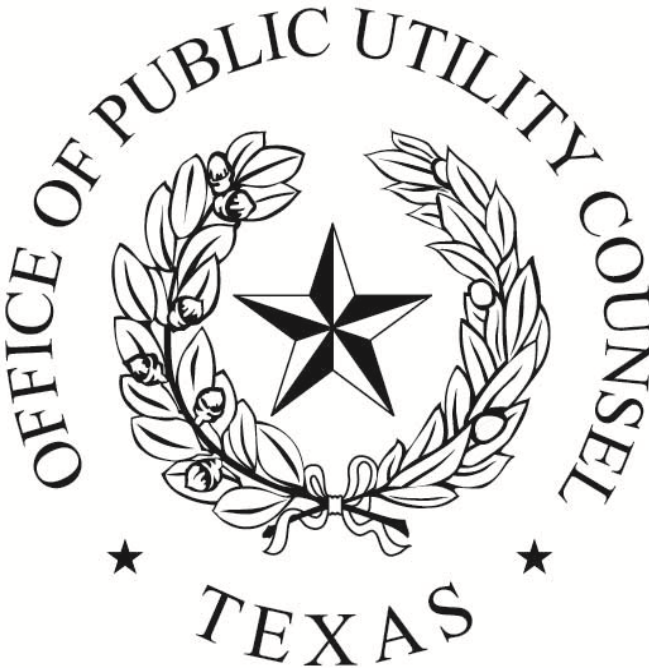


**OFFICE OF PUBLIC UTILITY COUNSEL**



**PURCHASING AND CONTRACT MANAGEMENT**

**PROCEDURES PLAN – FY24**

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## **INTRODUCTION**

The purpose of this Purchasing and Contract Management Procedure Plan FY24 is to establish procurement and contracting policies and practices consistent with the Comptroller of Public Accounts (CPA) Statewide Procurement Division (SPD) *State of Texas Procurement and Contract Management Guide* (Guide) to be followed by the Office of Public Utility Counsel (OPUC). The activities contained in this document will occur as applicable to a specific purchase or contract. The OPUC Purchasing and Contract Management Procedure Plan FY24, and Guide are intended to promote the efficient use of resources and to provide transparency and accountability of OPUC's expenditure of public funds.

The contents of this plan are subject to change. The contents are not intended in any way to grant any entitlement or right to any individual or entity. This plan does not constitute a basis for contesting any bid, offer, proposal, or contract made, granted or awarded by OPUC.

## **ETHICAL POLICIES AND STANDARDS**

### **Ethics Policy**

A special responsibility is imposed on everyone who is entrusted with the disposition of state funds. State officials and state employees are entrusted with the safety and welfare of the citizenry. In return for their confidence in state government, citizens expect that state employees' private interests will not conflict with public business. It is the policy of OPUC to maintain the highest level of agency and personal standards in the performance of our official duties and to comply with all state laws and policies regarding the ethical behavior of state employees.

Purchasing processes and OPUC employees shall remain independent and free from the perception of impropriety. An OPUC officer or employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer or employee's duties in the public interest.

## **Conflict of Interest**

Texas Government Code §2261.252 governs OPUC employees or officials who are involved in procurement or in contract management. Texas Government Code §2261.252 requires OPUC employees or officials to disclose potential conflicts of interest. OPUC will evaluate any potential conflicts and eliminate or otherwise adequately address the effect of disclosed conflicts.

Any OPUC employee or official involved in the development, execution, contract management, or approval process of a contract must sign a Conflict of Interest Form for each contract that is entered into certifying that they do not have an actual or reasonably foreseeable conflict of interest. In addition, all purchasing staff and the head of the agency must sign an annual Conflict of Interest Statement which states that they do not have an interest in or in any manner be connected with a contract or bid for a purchase of goods or services.

OPUC may not enter into a contract for goods and services with a private vendor with whom the Chief Executive & Public Counsel, the Director of Administration & Budget (Certified Texas Contract Developer (CTCD)/Certified Texas Contract Manager (CTCM)) has a financial interest as defined in Texas Government Code §2261.252(c). Additionally, OPUC may not enter into a contract for goods and services with a private vendor with whom a family member related to an employee or official described above within the second degree by affinity or consanguinity has a financial interest.

## **CREDIT CARD PROCEDURES**

The state travel charge card can only be used for official state business as approved by the Chief Executive & Public Counsel and is limited to pre-approved purchases, airfare, lodging and/or vehicle rental. With exception of the Director of Administration & Budget and Chief Executive & Public Counsel, no individual OPUC employee has access to or will be issued an individual travel charge card. The travel charge card is utilized for agency pre-approved travel only to purchase contract and non-contract travel services.

## **INTERNAL PURCHASING PROCEDURES**

### **Purchasing Management Controls & Oversight Method**

OPUC has established purchasing procedures that are in compliance with Texas Government Code Chapter 2155 and the Comptroller of Public Accounts Guide. OPUC purchases supplies, materials, services, and equipment.

OPUC utilizes the State of Texas Procurement and Contract Management Guide to ensure proper procurement procedures are followed. All purchases shall follow all applicable State purchasing rules and regulations.

The typical OPUC purchase authorization cycle is as follows:

- End user identifies need of goods or service(s).
- Purchaser is notified of the need and selects the proper procurement process.
- Purchaser submits PO via CAPPs to Director of Administration & Budget and Chief Executive & Public Counsel for electronic signature authorization for funding approval.
- Purchaser and authorized approver(s) (Chief Executive & Public Counsel or designee) electronic signature via CAPPs required on all POs.
- Purchaser completes purchase, maintains all approval, purchase order (PO), confirmation, receiving and packing slip documentation to be distributed to Accounts Payable for payment purposes.

## **PROCUREMENT METHODS**

### **Open Market Requisitions**

Procedure to be utilized for commodities exceeding \$50,000 and services exceeding \$100,000, for delegation or solicitation by the CPA SPD:

- A purchase is initiated by OPUC's submission of a requisition containing desired specifications and conditions on a form provided or approved by SPD. The requisition must also include OPUC's certification that funds are available for the purchase.

- Requisitions will be submitted to CPA in advance to allow sufficient time for preparing and advertising bid invitations, receiving and evaluating bids, awarding contracts, and permitting a normal delivery schedule.

### **Specifications**

- OPUC will submit specifications in accordance with standard specifications developed by CPA for a number of commodities purchased by the state. If a standard specification is not used, OPUC will provide an explanation as to why the standard specification is not being used.
- If OPUC submits a requisition to CPA for the purchase of a product on the open market when an equivalent product is available for purchase under a term contract, it will include an explanation as to why the term contract product is not satisfactory.

### **Proprietary Purchases**

If OPUC requires specifications or conditions of a purchase which are proprietary to one vendor and do not permit an equivalent product to be supplied, OPUC will provide written justification to the procurement file prior to the requisition being processed for procurements exceeding \$10,000 in value.

A written justification for the use of proprietary specifications or conditions will contain the following:

- description of the product or service the agency proposes to purchase, and provide a statement regarding the agency's business need and planned use;
- explanation of why the agency specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the agency's goal for the procurement;
- statement of the reasons why any competing or equivalent products or services will not satisfy the need of the agency and provide examples of the technical, practical, or operational risks that would occur if competing products or services are selected;
- statement of whether the purchase is sole source or competitive; and



- be signed by the Chief Executive & Public Counsel or a person to whom signature authority has been delegated.

[Example of Proprietary Purchase Justification:](#)



## Office of Public Utility Counsel Memorandum

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**To:** Procurement File

**From:** *(Chief Executive & Public Counsel name)* or designee  
Chief Executive & Public Counsel

**Subject:** Proprietary Justification for - NIGP Commodity Code/  
General Item Description

**PO Number:**

**Date:**

Texas Government Code §2155.067 requires a state agency that intends to purchase a proprietary purchase, rather than a competitive bid process, to include with the procurement file written justification signed by the agency head or presiding officer of the agency's governing body (or designee). This memorandum provides such justification for the referenced purchase order.

In accordance with the Texas Government Code §2155.067, Office of Public Utility Counsel is providing a proprietary justification for the purchase of \_\_\_\_\_ at a cost of \$\_\_\_\_\_. The original purchase was made from \_\_\_\_\_. This \_\_\_\_\_ is proprietary to \_\_\_\_\_. They are only vendor that can supply this \_\_\_\_\_ and any associated accessories or enhancements.

APPROVED \_\_\_\_\_ NOT APPROVED \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_  
*(Chief Executive & Public Counsel name)*, Chief Executive & Public Counsel or designee  
Office of Public Utility Counsel

## **Lease Purchase Contracts**

OPUC may acquire capital equipment by lease-purchase if it is cost effective. If a proposed lease purchase is for information technologies resources, the requisition will include written evidence that the Department of Information Resources (DIR) has approved the acquisition. For other items, the requisition will be forwarded to CPA to determine the cost effectiveness of a lease purchase. To establish cost effectiveness, OPUC will submit the following information:

- anticipated interest charges over the life of the contract;
- anticipated cost savings which would result from outright purchase;
- an affirmative statement that OPUC reasonably expects to be able to make payments beyond the current biennium without requiring an increase in appropriations;
- any information requested by CPA; and
- any other information OPUC considers relevant.

## **COMPETITIVE SEALED BIDDING PROCEDURES**

### **Notice and Posting of Bids**

OPUC will post all procurement contract solicitations estimated to exceed \$25,000 in value to the Electronic State Business Daily (ESBD). The ESBD posting will include all information necessary to make a responsive bid. At a minimum, the ESBD bid posting will include the following procurement information:

- a brief description of the goods or services and any applicable (The Institute for Public Procurement) NIGP commodity class and item codes;
- the due date and time the bid submission is due;
- the estimated date on which the goods or services will be needed; and
- the name, business mailing address, e-mail address, and telephone number of the OPUC point of contact for inquiries pertaining to the solicitation.

## **Bid Submission**

- Prospective bidders may request specific bid invitations from OPUC at any time prior to the bid due date and time. A copy of the bid invitation will be distributed electronically to the requestor.
- A bidder may withdraw its bid by written request at any time prior to the bid due date and time.
- A bid received after the bid due date and time established is considered late and will not be considered for evaluation.
- A bid received which does not contain adequate bid identification information on the outside of the envelope will be opened to obtain such information and will then be processed as any other bid. If the incorrect information on the envelope causes the bid not to be considered in making an award, the bid will be considered invalid and rejected.
- An unsigned bid is not valid and will be disqualified.
- By signing and submitting a bid to OPUC, the bidder affirms that it has not given or offered any economic opportunity, employment, gift, loan, gratuity, special discount, tip, favor, or service to a public servant in connection with the bid.
- Signing a bid with a false statement shall void the bid and any resulting contract.

## **Bid Opening**

All bid openings conducted by OPUC shall be open to the public. Bid opening due dates and times may be changed and bid openings rescheduled if bidders are properly notified in advance of the new opening date via an addendum posted to the ESBD. If a bid opening is canceled, all bids which are being held for opening will be returned to the bidders.

## **Bid Tabulation**

The following information will be included on the bid tabulation:

- Bidder name and Vendor Identification Number
- Price
- Lowest/Best Value Identification

- Class & Item Codes
- HUB Ethnicity/Gender Identification

All bid tabulation files are available for public inspection. Bid tabulations may be reviewed by any interested person during regular working hours at the OPUC office. If a bid is received without a signature, it will be disqualified and logged in the comments section of the bid tabulation.

### **Bid Evaluation**

- OPUC may accept or reject any bid or any part of a bid or waive minor technicalities in a bid, if doing so would be in the state's best interest.
- A bid price may not be altered.
- No increase in price will be considered after the bid due date and time. A bidder may reduce its price provided it is the lowest and best bidder and is otherwise entitled to the award.
- Bid prices are considered firm for acceptance for 30 days from the bid due date and time, unless otherwise specified by the bidder or the Invitation for Bids (IFB).
- A bid containing a self-evident error may be withdrawn by the bidder prior to an award.
- Bid prices which are subject to unlimited escalation will not be considered. A bidder may offer a predetermined limit escalation in his bid and the bid will be evaluated on the basis of the full amount of the escalation.
- A bid containing a material failure to comply with the advertised specifications shall be rejected.
- All bids must be based on "F.O.B. destination" delivery terms unless otherwise specified.
- If requested in the IFB, samples must be submitted or the bid will be rejected. OPUC may require samples for assessment of product quality when essential during bid evaluation. Samples will not be returned to the bidder unless requested, at the bidder's expense. Otherwise, samples will be disposed of in the same manner as surplus or salvage property.
- When brand names are specified, bids on alternate brands will be considered if they otherwise meet specification requirements.

- Cash discounts are acceptable but are not considered in making an award.
- No electrical item may be purchased unless the item meets applicable safety standards of federal and state law.

## **Award**

All awards will be made to the bidder complying with the best value criteria set forth in the bid and that conforms to the advertised product or service specifications.

The following are options when considering an award:

- **Award:** A bidder is selected which offers the best value and meets all the specifications. An agency PO, with pertinent information, will be issued to the selected bidder.
- **No Award:** Occurs when no bidders responded to bid request, no bidders met the specifications of the bid, agency decides it does not wish to make an award due to budgetary constraints or change in agency requirements.
- **Re-Award:** If the original vendor cannot meet the conditions of the PO, or permission is granted to cancel the PO, an award may be made to the next best value bidder meeting the specifications.
- **Tie Bids:** Bids that are tied, with same specifications and price, preference is first given to goods produced or offered by a Texas resident bidder owned by a service-disabled veteran followed by goods produced or offered by a Texas resident bidder. OPUC will give preferences as defined in Texas Government Code §2155.444 and Texas Administrative Code §20.306. Tie bids which cannot be resolved by application of one or more preferences, shall be awarded by drawing lots.

## **PROTEST PROCEDURES**

OPUC has developed and adopted the following procedures for resolving vendor protests relating to purchasing issues as required by Texas Government Code §2155.076 and consistent with 34 Texas Administrative Code §1.72.

Any actual or prospective bidder, offer, proposer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by OPUC may formally protest the award of the contract by submitting a protest in accordance with the procedures set forth in this section.

The following procedures consistent with the Comptroller of Public Accounts procedures are available for persons or entities not awarded a contract pursuant to authority delegated to OPUC by the Comptroller of Public Accounts or by Texas Government Code, Chapters 2155-2158.

### **Filing of Protest**

1. Any bid protest must be received in writing addressed to the Chief Executive & Public Counsel within ten (10) working days after the aggrieved party is notified that the award of a contract is forthcoming or otherwise knows, or should have known, of the occurrence of the action that is being protested. The protesting party must mail or deliver copies of the protest to the agency and other interested parties.
2. In the event of a timely protest under this section, OPUC will not proceed further with the solicitation or award of the contract unless the Chief Executive & Public Counsel makes a written determination that the contract must be awarded without delay, to protect the best interests of the agency.
3. A protest must be sworn and contain the following information:
  - a. a specific identification of a statutory or regulatory provision(s) that the action being disputed is alleged to have violated;
  - b. a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in the protest;
  - c. a precise statement of the relevant facts related to the dispute;
  - d. an identification of the issue(s) to be resolved;
  - e. argument and authorities in support of the protest; and
  - f. a statement that copies of the protest have been mailed or delivered to all other identifiable interested parties. Upon request, the Chief Executive & Public Counsel will furnish to the requestor a list of interested parties, as reflected in the records of the procurement solicitation file.

## **Review of Protest**

1. A protest that is not submitted in a timely manner or in conformance with agency requirements is not eligible for consideration.
2. The Chief Executive & Public Counsel shall have the authority to settle and resolve the dispute.
3. The Chief Executive & Public Counsel may request additional information from the party submitting the protest.
4. If the Chief Executive & Public Counsel determines that no violation of rules or statutes has occurred, and the protest is not resolved by mutual agreement, the protesting party and all other interested parties will be informed by letter which sets forth the reasons for the determination.
5. If the Chief Executive & Public Counsel determines that a violation of the rules or statutes has occurred, the protesting party and all other interested parties will receive a letter which sets forth the reasons for the determination. If the Chief Executive & Public Counsel determines that a violation of the rules or statutes has occurred in a situation in which a contract has been awarded, then the Chief Executive & Public Counsel's letter may also include an order that declares the contract void.

## **Appeal**

1. A protesting party or any other interested party who is not satisfied with the determination may appeal the determination to the Chief Executive & Public Counsel. The appeal must be submitted and received by the Chief Executive & Public Counsel no later than ten (10) working days after the date on which the Chief Executive & Public Counsel has sent written notice of his or her determination.
2. The written decision made by the Chief Executive & Public Counsel shall be the final administrative action of the agency regarding the protest and appeal.

## **Solicitation File Retention**

OPUC will maintain all documentation and correspondence relating the purchasing process in the event of a protest in accordance with the agency's records retention schedule.

## **CONTRACT ADMINISTRATION**

### **Inspection of Merchandise**

OPUC's Director of Administration & Budget or designated person will inspect all shipments received to ensure that invoices match with purchase orders and report any discrepancies immediately. If unlisted shortages are discovered, the vendor will be notified immediately. The vendor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately.

### **Substitutions**

Substitution of items called for in a contract is not permitted without the prior approval of the Director of Administration & Budget (Certified Texas Contract Developer (CTCD)/Certified Texas Contract Manager (CTCM)). No such approval will be granted unless substituted items are of equal quality and are offered at the same or lower price.

### **Canceling a Purchase Order – OPUC Issued**

- If a vendor does not meet their contractual obligations, OPUC may cancel the order without Vendor's permission. This applies both to individual line items of a PO and the PO in its entirety. If OPUC cancels a PO or part of a PO because the vendor did not meet the contractual obligations, OPUC will file a Vendor Performance Report via the system established by the CPA.
- If OPUC cancels an order for any reason other than the vendor not meeting their contractual obligations, OPUC will obtain the vendor's permission prior to cancellation.
- When the vendor is not in default on an order, OPUC may pay a restocking charge or cancellation fee. Restocking shall not exceed 15% of the original purchase price.



### **Canceling a Purchase Order – CPA SPD Issued**

- CPA-generated PO's must be cancelled by CPA. The same conditions for canceling agency-issued POs apply to CPA-issued POs. OPUC will either document a vendor's default or obtain the vendor's permission to cancel. OPUC will notify CPA of OPUC's desire to cancel the PO. If the purchase is a CPA Term Contract PO, the OPUC will submit a Purchase Change Order Change Notice (POCN) to CPA. If the purchase is an Open Market PO, then OPUC will submit notification to the CPA Purchaser responsible for the Open Market Contract stating that OPUC wishes to cancel the PO.
- The restocking charge guidelines for agency-issued PO's apply to CPA-issued POs. If the Restocking charges exceed 15% of the original purchase price, they must be approved by the CPA Purchaser.

### **Damages for Failure to Perform**

- A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.
- If any merchandise delivered under a contract/purchase order has been used or consumed by OPUC and is found not to comply with specifications, no payment may be approved by the Chief Executive & Public Counsel (or designee) for such merchandise until the amount of actual damages incurred has been determined.
- A vendor who fails to pay damages assessed by the state may not be awarded additional contracts until such damages have been paid or the matter has been otherwise resolved.

OPUC, in accordance with CPA rules, shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

### **NON-DELEGATED PURCHASES**

#### **Set-aside Purchases**

Set-aside purchases are those which do not require competitive procurement. The State Use program is authorized by Texas Human Resources Code Chapter 122 and the Texas Correctional

Industries governed by Texas Government Code Chapter 497. Preference for certain goods and services will be given to the WorkQuest and Texas Correctional Industries (TCI). OPUC shall access and utilize the commodities and services provided by the State's authorized set-aside programs as required. If a product or service offered by TCI needs to be purchased from a source other than TCI, a TCI Waiver Request form must be submitted to TCI for approval. Competitive bidding is not required for WorkQuest and TCI purchases.

### **Term Contracts**

In accordance with the delegations established by Government Code §2155.132, 34 Texas Administrative Code §§20.40-20.41 and the Guide, state agencies are required to utilize both established automated and non-automated term contracts unless they fail to meet agency needs. All term contracts are accessible and must be submitted through the online TxSmartBuy ordering system. If the need is not met through a term contracted commodity or service, a justification will be documented and added to the procurement file.

### **Texas Multiple Award Schedule (TXMAS) Contracts**

OPUC must first determine the good or service is not available through SPD established contacts, WorkQuest, TCI, TxSmartBuy term or managed term contracts before entering procuring TXMAS goods and services. POs issued against TXMAS Contracts must be entered through the TxSmartBuy on-line ordering system. OPUC may use the multiple award contract procedure after the Chief Executive & Public Counsel or Director of Administration & Budget (CTCD/CTCM) has documented that "best value" determination has been made and added to the procurement file. If the purchase is estimated to exceed \$25,000 notice will be posted on the Electronic State Business Daily (ESBD).

### **Centralized Master Bidders List (CMBL)**

The CMBL is comprised of manufacturers, suppliers and others wishing to furnish materials, equipment, supplies and services to the state. OPUC shall utilize the (CMBL) for all purchases or other acquisitions, including the acquisition of services, for which competitive bidding or competitive sealed proposals are required. The CMBL will be used for all available procurement

processes authorized in the State Government Code and to the fullest extent possible by OPUC that make purchases exempt from the CPA purchasing authority.

## **DELEGATED PURCHASES**

The following types of procurements are delegated to OPUC:

- one-time purchases of goods that do not exceed \$50,000;
- purchases of services that do not exceed \$100,000;
- direct publications;
- purchases of perishable goods;
- distributor purchases;
- fuel, oil, and grease purchases;
- internal repair purchases, and;
- emergency purchases.

### **Adherence to Ethical Standards**

OPUC employees who perform purchasing functions under delegated authority shall adhere to the same ethical standards required of CPA employees, and shall avoid all conflicts of interest in their purchasing activities.

### **Provisions Generally Applicable to Delegated Purchases**

- Competitive bidding is not required for commodities or service purchases in the amount of \$10,000 or less.
- All bids must be obtained from sources which normally offer for sale the merchandise being purchased.
- Items purchased under delegated authority may not include schedule items, items available under a term contract (unless purchased in quantities less than minimum ordering quantities shown in contract), or any item required by law to be purchased from a particular source.

- OPUC will attempt to obtain at least three informal bids, including a minimum of two bids from historically underutilized businesses (HUBs), on all purchases of goods or services in excess of \$5,000 and not over \$25,000.
- OPUC will solicit bids for all purchases \$25,000 or greater from all vendors who provide the required commodity or service and also service the agency's geographic region.
- OPUC will solicit from all eligible vendors on the CMBL when making service purchases in excess of \$100,000 that CPA delegates to the agency and has determined should be advertised and awarded by OPUC.
- Large purchases may not be broken down into small purchases in order to meet dollar limits specified in these rules.

For purchases over \$100,000, OPUC shall consult with and receive delegation approval from CPA SPD.

Negotiation of contracts, including price, is permitted for:

- Emergency purchases when there is insufficient time to solicit bids;
- Proprietary purchases or purchases of items for which there is only one source of supply;
- Purchases by means of competitive sealed proposals;
- Purchases by means of requests for offers;
- Proposed purchases in circumstances where competitive specifications have been advertised but OPUC has received only one acceptable bid, or no acceptable bids; provided, however, such negotiation may not result in a material change to the advertised specifications; and
- Procuring litigation-related goods and services when competitive procurement is not feasible.

## **DEPARTMENT OF INFORMATION RESOURCES (DIR)**

In Accordance with HB 1516, 79<sup>th</sup> Legislature, each state agency must purchase Information Technology (IT) commodities and/or services, as well as telecommunication components and/or services, through DIR contracts unless an agency first obtains an exemption from DIR authorizing

an open market solicitation. OPUC will utilize the established DIR contracts for all available commodities and services, including software. If an IT commodity code item is not on the DIR IT Commodity List, OPUC will request to be granted an exemption before procuring the item through an avenue other than a DIR contract.

## **HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROGRAM**

The Comptroller of Public Accounts (CPA) administers Texas' Statewide HUB Program in accordance with Texas Government Code Chapter 2161 and Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter B. OPUC shall make a good faith effort to utilize HUB's in contracts in the procurement process using the CPA's Directory.

## **VENDOR COMPLIANCE VERIFICATIONS**

In accordance with the Comptroller of Public Accounts Guide, prior to awarding any contracts, procurement staff must perform vendor compliance verifications, including, but not limited to, debarment check, System for Award Management (SAM) check, Federal Database Check, Iran, Sudan, & Foreign Terrorist Organization checks, Boycott Israel check, Energy Company Boycostts check, Warrant/Payment Hold check and franchise tax check.

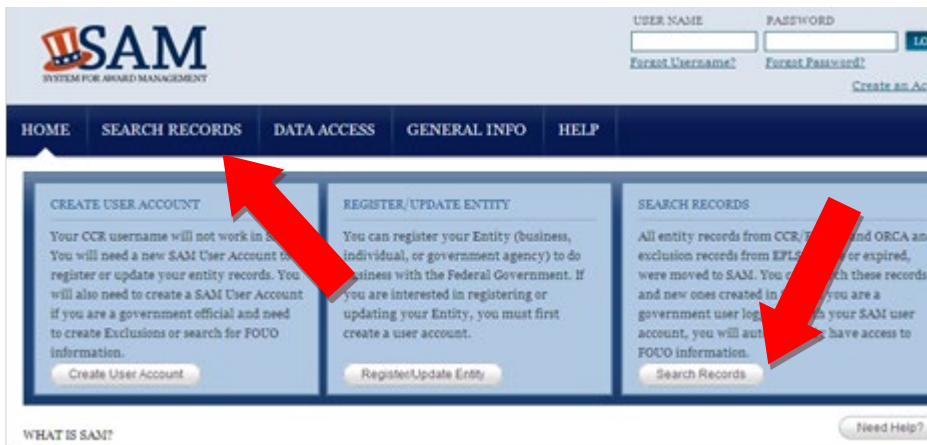
## **SYSTEM FOR AWARD MANAGEMENT (SAM)**

Procurement staff must check the System for Award Management (SAM) for vendors excluded from doing business at the federal level.

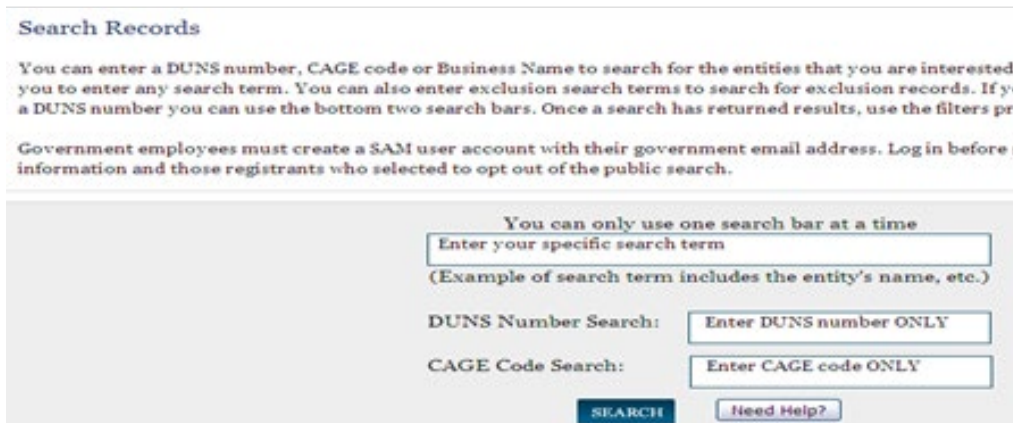
Step by step process:

1. Go to the SAM Website:  
<https://www.sam.gov/SAM/>

2. Select “Search Records”



3. Enter the Dun and Bradstreet, Data Universal Numbering System (DUNS) number, company or individual name in the search field.  
Then, hit the “Search” button.

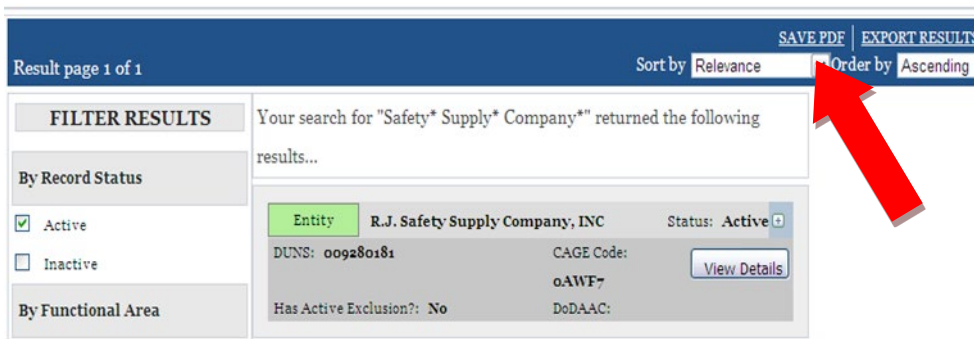


The search results will reflect a “Has Active Exclusion?” with a “Yes or No” answer format. The entity does not have an active exclusion submitted in SAM by a federal agency if the answer is “No.” If “Yes”, an exclusion record is found, it will display in a box marked “Exclusion” in purple; check the status in the top-right corner of the box. If the vendor has an active exclusion from doing business with the Federal government, do not proceed with making an award.

In addition, contract cannot be awarded to a vendor named on the U S Treasury Department, Office of Foreign Assets Control’s master list of Specially Designated Nationals & Blocked Persons

(with limited exceptions set forth in the Order). OPUC will utilize to check: <https://sanctionssearch.ofac.treas.gov/>

4. Save results in PDF format.



**Note:** The “SAVE PDF” option contains a date and time stamp which is required for audit purposes. Do not use the "Print" function as it does not provide a time stamp.

5. Print the PDF results page and place into procurement file.

SAM checks are not required for awards made to WorkQuest or Texas Correctional Industries (TCI) as these entities hold statutory and contractual responsibilities under the state’s set aside program.

The SAM check must be conducted, preferably no more than seven (7) days prior to the award date.

## RESPONSE TO CONTRACT ADVISORY TEAM (CAT) RECOMMENDATIONS

The Contract Advisory Team (CAT) was created to assist state agencies in improving contract management practices by reviewing the solicitation documents of contracts with a monetary value of at least \$5 million prior to the solicitation being submitted to the vendor community. Splitting contracts to circumvent the \$5 million threshold is not permissible.

Any contract under Texas Government Code §2262.101, with a monetary value of \$5 million or more during the original term of the contract must be submitted to CAT for review. OPUC will base its determination of the proposed length of and compensation during the original term and the renewal periods of the contract on best business practices, state fiscal standards and applicable law, procedures and regulations.

The CAT will review the solicitation document(s) from a contract management and best practices perspective. In the course of the review, the CAT provides recommendations, identifies risks and offers risk mitigations/strategies within 30 business days of receipt.

Once the CAT review is received by OPUC, the Director of Administration & Budget (CTCD/CTCM) must work to correct as many of the deficiencies as possible in a timely manner. Deficiencies will be corrected, and CAT recommendations followed whenever possible. Any CAT recommendations not followed, justification must be provided in writing, explaining why the recommendations were not followed. A response will be provided for each comment to the CAT review team.

Step by step process:

1. Determine if CAT review is required.
2. Complete and submit CAT questionnaire and solicitation documentation through the CPA web portal.
3. Receive and review CAT response.
4. Document response and rationale to each CAT recommendation received.
5. Forward response to CAT.
6. Retain response and rational information in procurement file.
7. Update and finalize solicitation documents as necessary.

## **INVOICING & PAYMENT**

To receive payment, vendors must submit an invoice which should include, but is not limited to:

- Vendor's mailing and email (if applicable) address;



- Vendor's telephone number;
- Name and telephone number of a person designated by the vendor to answer questions regarding the invoice;
- State agency requisition, purchase order or contract number;
- State agency's name, agency number, and delivery address;
- Valid Texas identification number (TIN) issued by the Comptroller of Public Accounts;
- Description of the good or services, in sufficient detail to identify the order relating to the invoice;
- Quantities and unit of measures corresponding with the referenced order.
- If the required information is not included or if an invoice is thought to contain an error, OPUC shall notify the vendor of the error or omission. After the invoice is corrected by the vendor, it shall be processed for payment.
- When an invoice is received, OPUC's Director of Administration & Budget or designated personnel shall date stamp it and certify that the goods or services were received in accordance with the purchase order and that the invoice is correct and payable.
- A payment is considered mailed on the date it is postmarked or on the date it is electronically transmitted to the vendor's financial institution. Any payment owed by OPUC shall be mailed to the vendor no later than 30 days after the later of:
  - the date OPUC receives the invoice for goods or services; or
  - the date OPUC receives the goods; or
  - the date OPUC vendor completed performing the services for the agency.
- Payments will accrue interest at the rate determined by the state comptroller if not timely made, beginning on the day after payment is due and ending on the date the payment is mailed to the vendor. If partial payment is timely made, the unpaid balance will accrue interest as determined by the state comptroller. Accrued interest shall be paid by OPUC.

OPUC shall process claims for accrued interest by submitting the claim and a voucher directly to CPA in accordance with the rules and procedures adopted by the state comptroller.

## **CONTRACT MANAGEMENT**

The Contract Management process includes planning, procurement, contract formation and contract execution phases. OPUC utilizes CPA's Contract Management Guide for guidance in achieving contract success. OPUC Contract Management key activities include, but are not limited to:

1. Identifying needs;
2. Analyzing risk;
3. Planning;
4. Creating Scope of Work;
5. Soliciting offers;
6. Evaluating offers;
7. Awarding contracts; and
8. Managing performance.

The Chief Executive & Public Counsel approves and signs all purchase orders and contracts. The Chief Executive & Public Counsel may delegate signature authority consistent with State law through a signed delegation of authority letter. Only the Chief Executive & Public Counsel or his/her designee has the authority to bind the agency to a contract or commit agency funds.

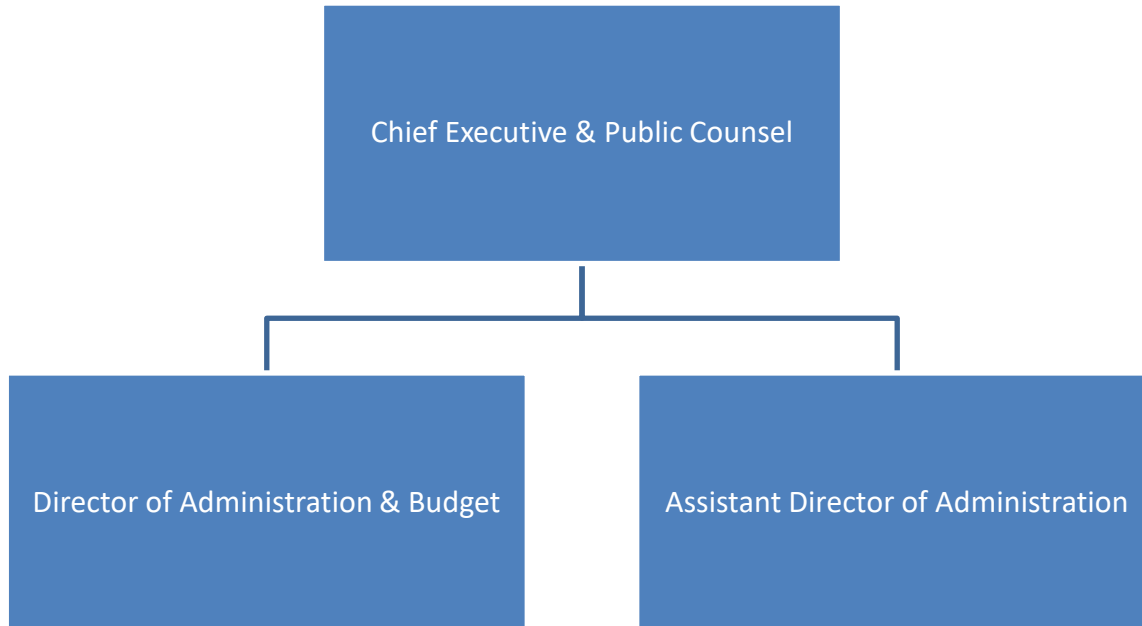
## **PURCHASING ACCOUNTABILITY AND STAFF RESPONSIBILITIES**

### **Policy**

OPUC will maintain sound, ethical contracting and procurement practices consistent with state and federal laws. OPUC is committed to transparent procurement procedures that provide for accountability, risk analysis and the prevention of fraud, waste, and abuse of public funds.

All OPUC staff working on procurements and/or contracts shall perform their responsibilities with the highest integrity throughout the contract life cycle.

## Organizational Chart for employees involved in OPUC's procurements



### Director of Administration & Budget (CTCD/CTCM) Responsibilities

The Director of Administration & Budget (CTCD/CTCM) is responsible for budget oversight and may perform the following functions:

1. Ensures that funds are available for all purchases and contracts.
2. Validates and approves method of finance.
3. Coordinates with the Chief Executive & Public Counsel.

The Director of Administration & Budget (CTCD/CTCM) coordinates and manages all aspects of the procurement process for goods and services, and may perform the following functions:

1. Participates in the creation of clearly defined contract deliverables, develops specifications and contract management activities to be performed throughout the procurement process.
2. Works with stakeholders within the context of performing ongoing contract management activities to meet contract requirements.

3. Monitors contract activities and measures performance to ensure that OPUC business objectives are met throughout the life of the contract.
4. Establishes, implements, maintains, and manages contract management processes documented in the *Guide*.
5. Manages internal and external communication.
6. Coordinates with the Chief Executive & Public Counsel.

#### Assistant Director of Administration (Certified Texas Contract Developer (CTCD)) Responsibilities

The Assistant Director of Administration (CTCD) is responsible for overall compliance with procurement laws relating to the purchase of goods and services and compliance with OPUC policies and procedures related to purchasing as well as maintaining proper Certified Texas Contract Developer (CTCD) certification. The Assistant Director of Administration (CTCD) coordinates and manages all aspects of the procurement process for goods and services, and may perform the following functions:

1. Participates in the creation of clearly defined contract deliverables, develops specifications and contract management activities to be performed throughout the procurement process.
2. Coordinates with the Director of Administration & Budget.

The Director of Administration & Budget (Certified Texas Contract Developer (CTCD)/Certified Texas Contract Manager (CTCM)) and the Assistant Director of Administration (CTCD) adheres to the pertinent procedures for contracting and procurement as outlined in:

1. Texas Statutes
2. Texas Administrative and Government Codes
3. State of Texas Procurement and Contract Management Guide
4. Department of Information Resources (DIR) Rules
5. Federal and State Law
6. General Appropriations Act

7. OPUC Contract Management Guide
8. OPUC Procurement Plan

The Director of Administration & Budget (CTCD/CTCM) has primary responsibility for developing and maintaining internal policies and procedures to maximize purchasing accountability.

The Director of Administration & Budget is responsible for compliance with state laws applicable to payment processes, and may perform the following functions:

1. Reviews invoices and payment vouchers.
2. Issues payments and ensures compliance with the Prompt Payment Act.
3. Maintains procurement and contract file documents.
4. Maintains records of training and certifications in Personnel File.
5. Coordinates with the Chief Executive & Public Counsel when appropriate.

## **CONTRACT MONITORING**

Contract monitoring ensures effective and efficient contract performance in accordance with contract terms and conditions. The type of contract monitoring required is dependent on the dollar value, complexity, or risk level associated with the contract.

## **RISK ANALYSIS AND ENHANCED CONTRACT MONITORING**

### **Policy**

It is the policy of OPUC to have a procedure for risk assessment to identify procurement contracts for goods or services from a private vendor that require enhanced contract or performance monitoring.

### **Procedure**

OPUC will complete a risk assessment to evaluate whether enhanced contract or performance monitoring may be required for contracts with a value estimated to be greater than \$150,000.

For contracts of a lesser value, OPUC may complete a risk assessment to evaluate whether enhanced contract or performance monitoring is indicated.

The risk assessment may consider some or all of the following risk factors as appropriate:

- Cost of the contract
- Complexity of the contract
- Type of contract
- Payment type
- The experience OPUC staff has with the type of procurement
- Time constraints or the expected duration of the contract
- Risk of loss to the agency under the contract
- Risk of fraud, waste, or abuse
- Scope of the goods or services provided
- Availability of agency resources
- Business process impact of failure or delay
- Vendor past performance
- Whether vendor is a foreign or domestic person or entity

Additional risk factors may be considered when appropriate.

The Director of Administration & Budget (CTCD/CTCM) will notify the Chief Executive & Public Counsel immediately of any potential issue or risk that is identified with respect to a contract determined to require enhanced contract monitoring.

This procedure does not apply to a memorandum of understanding, interagency contract, interlocal agreement or a contract for which there is not a cost.

## **CHANGE MANAGEMENT**

Modifications made to any contract are done so through an amendment agreed to and signed by both parties. Contract amendments are required to be associated with the original contract and subject to the competitive process, if required, underlying the original contract. Substantive

changes that require a contract amendment may include, but are not limited to, the following changes:

1. Price
2. Delivery schedule (term)
3. Quantity
4. Scope
5. Terms and Conditions

## **CONTRACT CLOSE-OUT**

The purpose of contract close-out is to verify that both parties to the contract have fulfilled their contractual obligations. Pursuant to Texas Government Code §2155.089 contracts over \$25,000 are reported into the CPA's Vendor Performance Tracking System (VPTS).

## **RECORDS RETENTION**

The following records retention schedule will be followed for all OPUC purchase order, contract, lease and agreement files:

1. Contracts and purchase orders executed, renewed or amended on or after 9/1/2015 will be retained for a period of seven (7) years after the contract expires, terminates, or is completed or until any litigation issues are resolved.

## **VENDOR COMMUNICATION PROCEDURE**

### **A. Introduction**

This procedure is to provide guidance to both OPUC and the vendor community on appropriate communications during the pre-solicitation phase of the procurement cycle. Pre-solicitation vendor communication is written or in-person communication initiated by a vendor to introduce a product, service, or other innovative idea that is not in response to a solicitation. Guidelines for communication during the solicitation process are available in the Texas Procurement and

Contract Management Guide in the Vendor Communication section. Any communication between OPUC and vendors post-award should be directed to the Director of Administration & Budget.

**B. Background**

Working with the vendor community and potential contractors early and often as a precursor to be a procurement helps the state gain between product or service information and improves the quality of market research efforts. Frequent and effective communication between the public and private sectors helps agencies develop specifications and requirements that best meet agency business needs and assures best value to the state. This procedure aims to provide guidance and context for OPUC and the vendor community alike.

**C. Agency-Vendor Liaison**

OPUC has designated the Director of Administration & Budget (CTCD/CTCM) as the Agency-Vendor Liaison.

**D. Implementation:**

The Agency Vendor Liaison will facilitate introductory vendor communications; support agency staff and subject matter experts researching their validity and help educate agency procurement staff about the potential for these new goods or services.

Responsibilities include:

- Establishing strong relationships with the vendor community
- Strengthening practices within the agency to improve communications with the vendor community
- Engaging and encouraging vendor feedback on agency procurements
- Providing outreach to the vendor community on the standard procurement practices of the State and agency
- Responding to vendor requests and submissions in a timely manner



- Establishing an agency-specific Vendor Communication Policy that is publicly accessible, and
- Facilitating initial introductions and communications between the vendor community and agency subject matter experts, program managers, and procurement staff

## Doing Business in Texas

Prospective vendors should become acquainted with local and state procurement laws, policies, and standards. As a result of enhanced scrutiny on public procurement, the State of Texas has implemented various measures to foster competition for state business as well as promote transparency throughout the procurement process.

A vendor can improve its chances of doing business with the State by incorporating the following actions:

1. **Properly classify the goods and services offered.** The State of Texas uses the NIGP (National Institute for Governmental Purchasing) commodity codes categorize goods and services. These NIGP codes are divided into purchasing class and item codes (numeric) that best represent the goods and/or services offered. Properly identifying goods and/or services will help public procurement professionals accurately identify interested vendor in particular industries.
2. **Register as a Texas vendor.** Vendors seeking contracting opportunities with the state should register for the Centralized Master Bidders List (CMBL). The CMBL is a database used by state of Texas procurement professionals to develop a mailing list of vendors to receive bid opportunities based on the goods or services that they can provide to the state <https://comptroller.texas.gov/purchasing/vendor/cmb/>
3. **Obtain Historically Underutilized Business (HUB) certification, if eligible.** The Statewide HUB Program at the Texas Comptroller of Public Accounts certifies qualified small businesses as Historically Underutilized Businesses (HUBs). To qualify, an applicant owner must own 51% or more of the business and control day-to-day operations, and must be economically disadvantaged either as a woman business owner, minority business owner,

or service-disabled veteran business owner

<https://comptroller.texas.gov/purchasing/vendor/hub/>

4. **Regularly Search the Electronic State Business Daily (ESBD).** State and local governments post on the Electronic State Business Daily (ESBD), the state’s search engine for its most valuable contract opportunities. Vendors can search by government agency or by class and item number to find current contract opportunities statewide <http://www.txsmartbuy.com/esbd>
5. **Check Qualifications.** Vendors must be a in good standing with state and federal entities. Prospective vendors are encouraged to confirm if their business entity is subject to Texas franchise tax and determine if they are in good standing or “active”. Public procurement professionals will also ensure that potential vendors are in good standing with the federal government by checking federal databases, such as Sam.gov. IN addition, vendors must comply with any additional prohibitions that are prescribed in statute. These prohibitions are identified in the Texas Procurement and Contract Management Guide.

Below are some of the proactive measures that vendors can take to ensure visibility with state agencies and public procurement staff:

Vendor Communication Checklist		
Communication Actions	N/A	Yes
Request public records to review recent past procurements		
Respond to Requests for Information (RFI)		
Attend Industry Day, Industry Fair, or Conference		
Register for the Centralized Master Bidders List (CMBL)		
Select all applicable NIGP codes		
Obtain HUB Certification, if eligible		
Regularly review the Electronic State Business Daily (ESBD)		

**E. Proper Avenues of Communication for Vendors and Agencies**

To invite and increase vendor communication, the Vendor-Agency Liaison should establish multiple avenues of information and communication for the vendor community.

**Agency website:** OPUC’s website should provide information for the vendor community that includes a schedule and status of upcoming solicitation opportunities, link to the Electronic State Business Daily (ESBD), the agency’s Agency-Vendor Communication procedures (if any), contact information for the Agency-Vendor Liaison (if any), and other outreach or training opportunities, if applicable.

**Phone:** If communicating by phone, the Agency-Vendor Liaison should follow-up via email to maintain records of the communication.

**Email:** State agencies and Agency-Vendor Liaisons should encourage email correspondence from the vendor community. OPUC has the following email address established: [opuc\\_purchasing@opuc.texas.gov](mailto:opuc_purchasing@opuc.texas.gov) to encourage the vendor community to email OPUC with their suggestions or pitches. Agency-Vendor Liaisons should make every attempt to respond to these emails in a timely manner, even if it is to simply acknowledge receipt.

Upon response, the Agency-Vendor Liaison should request the following information from the vendor:

Components List	
Vendor Information	Technical Information
Vendor Name	Concise title and abstract (200 words or less) of the proposal
Vendor Type	Objectives
Vendor Website	Method of Approach
Vendor/Organization primary point of contact Name	Nature and extent of anticipated results
Phone number	How the good/service will support the agency’s mission
Email address	Waiver of proprietary data (confidential information should not be submitted.)
TIN, if applicable	

**In-person or virtual meetings:** When meeting in-person or virtually, state agency personnel must maintain impartiality and not provide any information that would give any vendor a competitive edge over another. OPUC will follow the guidance below to ensure in-person or virtual meetings are conducted with utmost care for the competitive process:

- Emphasize that the primary purpose of the meeting is for OPUC to learn about the industry and marketplace. Ask questions and gain an understanding of the advantages and issues associated with a particular approach or business practice. Let the vendor clarify questions but avoid expressing opinions or preferences. The meeting should not be the basis for further action and should not unintentionally solicit a proposal.
- Avoid unauthorized commitments (i.e. an agreement that is not binding because the agency representative making the agreement lacks the proper authority to enter into that agreement on behalf of OPUC). Each vendor meeting should end with a statement similar to: “Nothing discussed in this meeting authorizes you to work, state work, or bill for work. Any understanding on your part to the contrary is not valid.”
- OPUC will treat all vendors and potential vendors fairly and impartially.
- OPUC will conduct business with integrity, fairness, and openness. Not only must the procurement process have integrity, but the actions of each individual involved in a public procurement must reflect integrity, fairness, and openness. OPUC will avoid organizational conflicts of interest or even the appearance of a conflict of interest.
- OPUC’s procurement staff will understand ethical responsibilities and will notify the Chief Executive & Public Counsel of any concerns.
- OPUC will control the meeting and the agenda of any meetings. OPUC will prepare and follow a meeting agenda. Before the meeting, OPUC will identify specific information that the vendor should address.
- OPUC will always make the information provided to one vendor the same as provided to all vendors. OPUC shall provide a standard information package to all vendors that provides up-to-date and accurate information about the agency mission and requirements. OPUC will not provide non-public information to any vendor.

- OPUC will ensure impartiality. OPUC will not give, or accept, preferential treatment from any private party.
- OPUC will document the results of the meeting. Documenting the results and findings of a meeting is a critical part of the market research effort. OPUC shall record the date, place, and meeting participants, including company affiliation and contact information.

#### **F. Expectation Management**

The process of procurement in the public sector may appear cautious and resistant to change for the following reasons:

- Reliability and consistency are critical (in lieu of risk)
- Errors, misjudgments, and unethical behaviors are amplified, and the effects are long-lasting
- Even the appearance of impropriety can have negative ramifications
- Erosions of public trust can be swift, and rebuilding trust in public institutions can be slow

To foster competition within the state and increase transparency in the procurement process. Texas has enacted several laws and administrative rules that require state agencies to take or avoid certain actions. The vendor community is encouraged to review current legislation and other adopted policies, starting with the *Texas Procurement and Contract Management Guide*.