

Employees Retirement System
of Texas
Procurement and Contract Management Handbook



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INTRODUCTION

The Employees Retirement System of Texas (ERS) is a constitutional trust fund established as mandated by Article XVI, Section 67, Texas Constitution, and further organized pursuant to Subtitle B, Title 8, Texas Government Code, as well as 34 Texas Administrative Code § 61.1, *et seq.* ERS invests and administers trust funds as a fiduciary for the exclusive benefit of the members and annuitants of the system. ERS administers all operations funded by trust assets for the same purpose. ERS is also trustee for the Employees Life, Accident, and Health Insurance Benefits Fund within the Texas Employees Group Benefits Program (GBP). ERS administers health insurance benefits, life insurance and other optional benefits on behalf of participants in the GBP. Participants are those persons eligible to participate in these programs per the Texas Employees Group Benefits Act as set forth in Chapter 1551 of the Texas Insurance Code.

Purpose of the Procurement and Contract Management Handbook

This ERS Procurement and Contract Management Handbook (Handbook) is intended as a guide defining the roles and responsibilities of ERS' personnel when procuring and administering, or managing, the agency's contracts. The Handbook applies to the management of ERS' contracts for goods and services. It focuses on and is most applicable to contracts resulting from a formal solicitation process.

The Handbook does not address all procurement and contracting issues that may arise, but is intended to delineate core procurement and contracting elements to guide ERS staff. Particular situations may require deviation from the guidelines included in the Handbook. Any questions relating to the Handbook shall be directed to the Office of Procurement and Contract Oversight (OPCO) with advice and counsel from the Office of the General Counsel (OGC).

Updates to the Handbook

The Handbook is scheduled to be reviewed every five (5) years. OPCO may update this Handbook during the interim as needed, including, but not limited to, revising the Handbook to reflect changes in applicable procurement and contracting laws, regulations, and internal policies.

ERS ROLES AND RESPONSIBILITIES

Per Texas Government Code § 2155.146, ERS "is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the retirement system determines relates to the fiduciary duties of the retirement system." Because ERS is delegated such purchasing authority, ERS' personnel play crucial roles during the procurement and contracting processes. As a trust fund, all purchasing decisions must be made in a manner consistent with ERS' fiduciary duty to the trust.

The key players in the procurement and contracting processes are OPCO, the OGC, each ERS Business Division (Business Division), executive management and the ERS Board of Trustees (the Board). OPCO manages the procurement process and provides high-level oversight of ERS' contracts, while Business Divisions provide day-to-day contract oversight and management. OGC provides legal counsel throughout both processes. Each Business Division plays a significant role in the procurement process for each of its contracts and manages the contract and vendor relationship after award. Executive management and/or the Board play an integral role at key points in the procurement and contracting processes.

Office of Procurement and Contract Oversight

ERS formed OPCO to centralize and standardize the agency's procurement processes and provide additional oversight over the management of its contracts. OPCO works closely with the Business Division ultimately responsible for day-to-day contract management. OPCO is involved in each phase of the procurement and contract lifecycle from planning through contract closeout. Working with the Business Divisions and, as appropriate, the OGC, OPCO advises on procurement-related issues, oversees informal solicitations, manages the formal solicitation process, and provides ongoing contract oversight from contract execution to contract closeout.

Office of the General Counsel

While OPCO addresses all procurement-related legal concerns, OGC works in collaboration with OPCO to ensure that all other legal concerns arising during the procurement and contract management processes are timely and appropriately addressed. OGC provides legal assistance, guidance, and review during these processes from the planning stages

through contract closeout. OGC's participation includes providing input during the solicitation process, drafting contractual agreements, participating in response evaluation from a legal perspective, negotiating contractual agreements, and advising on legal issues during the contract term and any legal issues that may arise upon or following contract termination or expiration.

The Business Divisions

ERS is organized by Business Divisions that specialize in different areas aimed at accomplishing the agency's strategic goals. Some Business Divisions focus on providing support to ERS staff and building operations while others focus on the functions the agency performs for its members and participants. The Business Division is often responsible for identifying the need for a particular good or service, and then plays a significant role in the resulting procurement and contract by drafting the Statement of Work, participating in the evaluation of responses, and performing day-to-day management of the contract.

Executive Management and the Board of Trustees

ERS' executive management, including ERS' Executive Director, plays an active role in the procurement and contracting processes. ERS cannot move forward with a formal solicitation without executive management approval. OPCO keeps executive management informed throughout development and evaluation. For the majority of ERS' contracts, the contractor is selected and awarded by and through the Executive Director, Deputy Executive Director or his/her designee, as such decisions were delegated by the Board.¹ A select few contracts are presented to the Board for contractor selection.

During the contract management process, generally executive management is provided with briefings on the performance of its contractors and is consulted with on major decisions. For large contracts, certain performance measures are reported to the Board during the quarterly public meetings. Additionally, for those contracts referenced under Texas Government Code § 2261.251(b), ERS timely reports to the Board any issues that may arise.

ERS PROCUREMENT AND CONTRACTING ETHICS

All ERS employees involved in procurement and/or contracting must act in an ethical, impartial, transparent, and professional manner in accordance with state law and the ERS Ethics policy. Any erosion of public trust or appearance of impropriety is detrimental to the integrity of the purchasing and contracting processes.

Standards of Conduct

All ERS employees are required to comply with the ERS Personnel Policy and Procedure Manual (Manual). ERS expects its employees involved in procurement and contracting to maintain the highest level of ethics as public servants and to follow the standards of conduct outlined in Texas Government Code, Chapter 572, and the Texas Penal Code, Chapters 36 and 39, which are also reflected in the Manual.

ERS employees shall perform their official duties in a lawful, professional, and ethical manner befitting the state of Texas and ERS. Additionally, ERS expects employees to avoid behavior that has the perception of a conflict of interest when performing work on behalf of ERS. When participating in a procurement or contract matter, employees must use sound judgment in making ethical decisions and seek guidance from the ERS General Counsel, who is ERS' Ethics Officer, or management if they have any doubt as to the right course of action.

In accordance with ERS' Manual, an ERS employee shall not:

- Accept or solicit any gift, favor, or service that might reasonably tend to influence the discharge of official duties or the ERS employee knows or should know is being offered with the intent to influence their official conduct;
- Accept other employment or compensation that could reasonably be expected to impair the ERS employee's independence of judgement in the performance of his/her official duties;

¹34 Texas Administrative Code §65.9: Any right, power, or duty conferred on the executive director by statute, rule, or board action may be exercised or performed by the deputy executive director as provided by Tex. Gov't Code §815.202(f) or if the executive director is incapacitated or otherwise unable to act.

- Accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the ERS employee's official powers or performed official duties in favor of another; or
- Make personal investments that could reasonably be expected to create a substantial conflict between the ERS employee's private interest and the public interest.

Confidentiality

All ERS employees and independent contractors must sign a confidentiality and no communications certification (Nondisclosure Agreement). The Nondisclosure Agreement requires ERS employees and independent contractors to agree not to disclose or otherwise divulge any confidential information gathered during any solicitation process.

Conflicts of Interest

There are multiple situations in which ERS employees are required to disclose a conflict of interest or verify that no potential or actual conflict of interest will occur should he/she participate in the procurement and/or contract management processes, including the following:

- Contract Developers and Purchasers certify their compliance annually with the conflict of interest prohibition described in Section 2155.003 of the Texas Government Code by completing the Non-Disclosure and Conflict of Interest Certification for Contract Developers and Purchasers.
- Under Texas Government Code § 2262.004, ERS purchasing personnel, as defined by statute, must disclose certain relationships with stakeholders of a business entity before a contract for the purchase of goods or services that has a value of at least \$1 million can be awarded to that business entity. This is done so on the Disclosure Statement for Purchasing Personnel, also referred to as the State Auditor's Office's (SAO) Nepotism Disclosure Form.
- For formal solicitations, ERS requires subject matter experts evaluating the responses (Evaluation Team Members) to sign a form verifying his/her participation in the evaluation process will not result in an actual or perceived conflict of interest and that he/she will participate in the process in an unbiased manner, to the best of his/her ability, and in line with the best interests of ERS and its Participants (No Conflict Form).
- For those contracts referenced under Texas Government Code § 2261.251(b), ERS employees or officials involved in the procurement or the contract management must certify his/her participation will not result in either an actual or perceived conflict of interest per Texas Government Code § 2261.252(a). For these same contracts, Texas Government Code § 2261.252 prohibits ERS from contracting with a private vendor if certain agency employees or officials identified by statute have a financial interest, as defined by statute, in that private vendor.

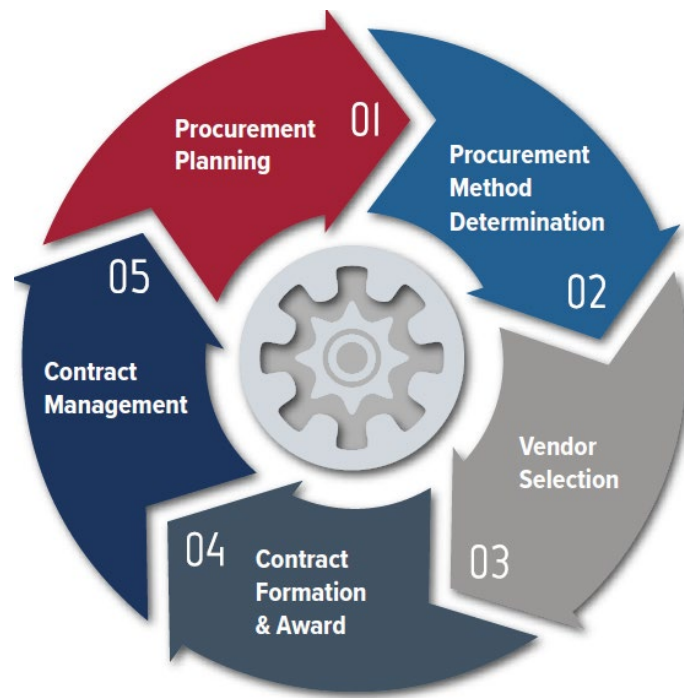
In its solicitation documents, ERS also requires a potential contractor to warrant and represent in its response to ERS' request that it does not have, nor shall it permit, any conflicts of interest that would impair its ability to perform the services required under the relevant contract. ERS' standard contract also contains extensive conflicts of interest provisions, including a provision stating that the contractor warrants and represents that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to any actual or perceived conflict of interest.

OGC and/or the Director of Procurement evaluate(s) each disclosed potential conflict of interest to determine whether it is necessary to address any disclosed potential or actual conflict of interest and the best means of adequately addressing such potential or actual conflict of interest.

Reporting Ethics Violations

ERS employees shall report any conduct or activity they believe to be in violation of ERS' ethics policy to the General Counsel. Employees may also seek the guidance of the ERS General Counsel for any ethics-related concerns or questions or utilize the "[Report an Ethics Violation](#)" link on ERS Connect Home to notify ERS management of possible violations of this policy.

THE PROCUREMENT CYCLE



The Framework

The procurement and contract management or contract oversight processes are often collectively referred to as the Procurement Cycle. An effective Procurement Cycle includes the following steps:

- **Procurement Planning:** Define the need for the goods and/or services and establish the procurement objects.
- **Procurement Method Determination:** Identify the appropriate Procurement Method and, if applicable, issue a solicitation.
- **Vendor Selection:** Fairly and objectively select the vendor that provides best value to ERS.
- **Contract Formation and Award:** Ensure that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives.
- **Contract Management:** Administer and monitor vendor performance to ensure compliance with the terms of the contract.

The Handbook is organized to address each of these steps in detail.

PROCUREMENT PLANNING

Project Approval

During annual budget planning, Business Division Directors request and present projects.² The Executive Director reviews and initially approves all Division budgets, which includes the budget for all proposed projects. The Finance Division aggregates the division budgets in the ERS annual budget, which the Board approves annually during its fall Board Meeting.

In the spring of each fiscal year, executive management reviews projects designated as “Agency Projects.”³ Agency Projects are designated as such due to their scope. Executive management determines if those projects are appropriate for ERS. These projects are then approved in the above-referenced ERS annual budget process.

² For purposes of this Handbook, “projects” refers to procurement-related activities.

³ Agency Projects are determined to have cross-divisional impact and/or will require significant resources.

Defining the Business Need and Establishing the Procurement Objectives

ERS identifies and defines the need for the goods and/or services during the planning stages. Once the need is identified and the Business Division has the appropriate approvals to move forward with the procurement (including, but not necessarily limited to, those discussed below), OPCO is engaged to assist with defining the need, as applicable, and otherwise help with the planning process.

In some instances, OPCO or the Business Division may determine additional information is required to define the need before beginning the procurement process. Depending on the circumstances, such information may be gathered informally. A more formal tool for gathering additional information is the Request for Information (RFI) process. RFIs are used to identify industry standards, best practices, potential performance measures and cost or price structures, or to generally ascertain the level of interest of prospective respondents. OPCO provides guidance to the Business Division on the appropriate means for collecting information depending on the information sought and the deadlines associated with the procurement and resulting contract.

Determining the Cost Estimate

Early in the planning process, the Business Division must determine a cost estimate for the procurement. The cost estimate may dictate the procurement method and whether the procurement requires additional review. The cost estimate may indicate additional requirements such as the completion of the SAO Nepotism Form, review by the Contract Advisory Team (CAT), or reporting to the Electronic State Business Daily (ESBD).

The Business Division shall not artificially split (or parcel) the procurement in order to avoid the procurement dollar thresholds, discussed below, or to circumvent any additional required review submissions, such as CAT review. The Business Division must make a good faith determination as to the estimated total value at the time of planning.

PROCUREMENT METHOD DETERMINATION

A crucial step in planning is determining which procurement method would best achieve the identified business requirements and procurement objectives. OPCO works with the Business Division to determine the appropriate procurement method for the project. When working to identifying the appropriate procurement method, OPCO will need to know several pieces of information for each purchase: good/service to be procured, cost estimate, and term. The Texas Comptroller of Public Account's (CPA) Procurement and Contract Management Guide and applicable laws guide OPCO when selecting a procurement method.

Acquisition Plan

After approval of ERS' annual budget, the Business Divisions may begin planning purchases for procurement. The first step of this process is creating the planning documents. The planning documents for all purchases procured through a formal solicitation is a unique Acquisition Plan prepared by a Contract Developer for each solicitation. For all other purchases, the procurement planning document used is the purchase requisition.

Procurement Method Descriptions

Set-aside Purchase

These procurements do not require a competitive procurement. Examples of set-aside purchases include procurements using the State Use Program authorized by Texas Human Resources Code, Chapter 122 and the Texas Correctional Industries governed by Texas Government Code, Chapter 497. OPCO advises on which purchases should be made as a set-aside purchase.

Cooperative Purchase

These procurements rely on the solicitation efforts of another agency. Examples of cooperative purchases include those made under the Texas Multiple Award Schedule (TXMAS) program and Department of Information Resources (DIR) technology purchasing program. OPCO advises on additional requirements attached to cooperative purchases.

ERS may use an interagency agreement between two or more agencies as authorized by Chapter 771 of the Texas Government Code.

Spot Purchase

ERS uses spot purchases for purchases valued at \$10,000 and below. A competitive procurement is not generally required.

Sole Source or Proprietary Purchase

These are purchases where only one provider can meet ERS' needs. The Business Division works with OPCO when identifying a purchase as such and the proper documentation is produced.

Emergency Purchase

These are purchases made when unforeseeable circumstances require the purchase to avert a hazard to life, health, safety, welfare, property, or to avoid undue additional costs.

Informal Solicitation

The informal solicitation process may be used for purchases valued at over \$10,000 but no more than \$25,000.

Formal Solicitation

The formal solicitation process is generally used for purchases valued at more than \$25,000.

Invitation for Bids (IFB):

IFB utilizes the competitive sealed bid method. For this method, the requirements must be clearly defined and price is generally the major determining factor for selection.

Request for Proposal (RFP):

The RFP method is used when competitive sealed bidding is not practicable or advantageous. The RFP method allows for the consideration of factors other than price and is less prescribed than the IFB. The key difference between an IFB and RFP is that negotiations are allowed in an RFP. Discussions are allowed with the respondents and best and final offers may be solicited.

Request for Qualifications (RFQ):

The RFQ must be used for the professional services specified under Texas Government Code § 2254 and may be used on other solicitations, such as for consulting services under Texas Government Code § 2254. Generally for an RFQ, respondents are evaluated based on their qualifications and competence. Price is negotiated with the most qualified and competent respondent. If negotiations fail, ERS may negotiate with the next most qualified and competent respondent.

Contact OPCO for more detailed guidance on which procurement method is appropriate, and detailed steps related to the procurement method. The remainder of this Handbook focuses on, and is most applicable to, contracts resulting from a formal solicitation process.

FORMAL SOLICITATION PROCESS

The following processes are used for approved agency projects that are determined to be procured through the Formal Solicitation process.

OPCO Request Forms

The Business Division formally notifies OPCO of the approved projects that require formal solicitations and requests assistance with the procurement process by submitting an OPCO Solicitation Request Form, Acquisition Plan, Communication Plan and Risk Register (included in the Solicitation Request Form), which must include the associated strategic roadmap item. The OPCO Solicitation Request Form can be found on ERS' APAL site. For informal solicitations, the Business Division may submit the OPCO Informal Solicitation Request Form, which can also be found on APAL.

OPCO Lead Time/Fiscal Year Deadlines

Based on the formal solicitation type selected, solicitation risk, and any pertinent deadlines, OPCO and the Business Division then develop a timeline for the solicitation process. The timeline should include all key milestones for completing the solicitation within required deadlines. The time increments for each deadline will vary depending on a variety of factors specific to that solicitation including its complexity, the availability of resources, and any deadlines related to the project.

Solicitation Planning Documents

OPCO, in conjunction with the Business Division, then prepares the planning documents. The planning documents may include the following: the Solicitation Request Form, Acquisition Plan, Communications Plan, and Risk Register, and the Statement of Work is included for each project. Further discussion of this essential part of planning is discussed below.

Risk Assessment: Accountability and Risk Analysis

A risk assessment is first completed during the planning stage. Risk assessment, however, is an ongoing process and risk should be reassessed throughout the contract lifecycle. OPCO is responsible for risk management during procurement initiation through contract award, and maintains high-level contract oversight responsibilities through contract closure.

OPCO works with the Business Division to complete a risk assessment. For the risk assessment, OPCO and the Business Division identify potential risks, determine the risk level, and identify means of minimizing or mitigating the identified risk. These risk responses may affect the rest of the procurement and contract management processes.

Solicitation – Preparation

The first step in the procurement process is to develop the solicitation documents. The standard solicitation language utilized depends on the solicitation type, the complexity, and the service or good being procured.

Statement of Work

While OPCO relies on standard boilerplate solicitation language that is revised to fit the particular procurement, the Statement of Work (SOW) must always be specific to the procurement. An important tool in effective contract management is a clearly written and sufficiently detailed SOW.

The SOW can be performance-based, a design-based specification, or a mixture of both. Performance-based specifications focus on results rather than process, and they also focus on the required goods and services rather than how the goods and services are provided. This type of specification allows the respondent to demonstrate and rely on his/her own expertise, creativity and resources to the process without restricting it to predetermined methods or detailed processes. Design-based specifications outline exactly how the contractor must perform the services or how the goods must perform. Regardless of the specification type, the SOW must clearly define what is important to ERS.

OPCO relies on the Business Division and other subject matter experts for the SOW content. OPCO, however, operates as a resource during the drafting of the SOW and reviews and offers input once the Business Division has completed its draft.

Determination of Payment Type

The solicitation documents must include information regarding contract payment type. The payment type utilized must be one that best ensures delivery of services, encourages efficiencies and effectiveness of service, and provides the best value. ERS bases most contracts on a fee-for-service or a fixed price. Other payment types include: cost reimbursement, cost plus incentive, progress, rate based, variable rate, blended variable rate, and payment for time and materials.

Proposal Criteria

During the solicitation development process, the Business Division will document the criteria that define best value for a particular solicitation. OPCO will review and discuss these criteria with the Business Division. In conjunction with determining the criteria defining best value, the Business Division will also determine the appropriate scoring weights for each criterion. Both the criteria and associated weights are included in the solicitation documents and incorporated into the scoring tool.

Evaluation Team Members will evaluate the respondents' responses based on the criteria provided in the solicitation documents and as reflected on the scoring tool.

Scoring Tool

Based on the proposal criteria and the associated weights, OPCO oversees the development of the scoring tool utilized on a given solicitation. The scoring tool includes more granular weights, if applicable. The Business Division, Director of OPCO (DOPCO) and the Procurement Manager sign off on the granular breakdown of weights for each solicitation before publication of the solicitation document. The scoring tool must be finalized before receipt of responses.

Contract Term

OPCO will work with the Business Division to determine the contract term that is most appropriate and consistent with the performance of ERS' fiduciary duties. For contracts with a term longer than four years, the Business Division will prepare a form stating the justification for the longer term (Term Justification Form). OPCO, OGC, and the Business Division may discuss and review the proposed contract term in connection with the solicitation planning, if applicable, or contractual negotiations. Upon review, approval, and finalization, the Term Justification Form is kept in the contract file.

Contract Drafting

ERS generally includes its standard contract, tailored to the particular procurement, in its solicitation documents. OGC prepares the contract. The solicitation documents permit the respondents to deviate from the contract, but ERS is not obligated to accept such deviations. For some procurements, ERS includes pertinent terms in the solicitation documents and requires the respondents to submit their own contracts as a basis for negotiations. The purpose of the contract is to record the terms of the agreement and to create a legal, binding and enforceable obligation for the parties.

Before a contractor provides goods or services, an authorized representative of the contractor and ERS' Executive Director or the Deputy Executive Director must execute the contract. Once executed, the following may be included as exhibits to the contract: the solicitation documents, the contractor's response, any clarifications to the solicitation documents or the response, and any other pertinent documents.

Historically Underutilized Business Requirements

The solicitation documents also include information regarding Historically Underutilized Business (HUB) requirements. Generally, agencies must make a good faith effort to utilize HUBs in state contracts in accordance with the agency's HUB goals. This requirement may be fulfilled by using good faith efforts to contract directly with HUBs or indirectly through subcontracting opportunities in accordance with Texas Government Code, Chapter 2161, Subchapter F and Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D. Specific HUB procedures are detailed in the CPA's Procurement and Contract Management Guide. Per Texas Government Code, Chapter 2161.003, ERS must follow these procedures for construction contracts and any purchase made with appropriated funds.

ERS' current goals are as follows and mirror the State goals with the exception of "Heavy Construction."⁴

Procurement Category	Goal FY22
Heavy Construction	0.00%
Building Construction	21.10%
Special Trade Construction	32.90%
Professional Services	23.70%
Other Services	26.00%
Commodities	21.10%

⁴ Historically, no ERS projects have qualified as "Heavy Construction."

CAT Review of Contracts of a Value of at Least \$5 Million

The purpose of CAT is to assist state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have a value of at least \$5 million dollars during the full term of the contract, including any extension or renewal periods. Under Texas Government Code § 2262.101(d), agencies must comply with CAT recommendations or provide a written explanation to CAT regarding why a specific CAT recommendation is not applicable to the contract under review.

OPCO is the point of contact for the CAT review process. OPCO is responsible for submission of the solicitation documents to CAT for review. CAT generally will review the solicitation documents and provide recommendations, identify risks, and offer risk mitigations/strategies within 30 days of receipt. If the agency does not receive a response from CAT within 30 days of initial receipt of the solicitation documents, the agency must wait to proceed with issuance of its solicitation until it receives a letter from CAT.

If the initial solicitation document submitted to CAT changes substantially, agencies are required to resubmit the solicitation document for CAT review. Changes in the major contract solicitation are considered substantial when:

- the solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25 percent or more; or
- there are significant revisions, deletions and/or additions to the specifications, scope of work, set(s) of deliverables, performance measures, payment methodology, or other elements of the solicitation.

OPCO and the Business Division will determine if resubmission to CAT is required.

OAG Review of Health Care Contracts Valued at \$250 Million or More

Pursuant to Texas Government Code § 811.009, a representative of the Office of the Attorney General (OAG) will review the terms of a contract with a contract amount of \$250 million or more under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits before it is entered into by ERS. ERS generally sends the solicitation documents, including the contractual agreements, to the OAG at or around the same time that such documents are sent to CAT for review. OGC is responsible for the OAG submission and communications with the OAG regarding the same.

Issuing the Solicitation

ERS' List of Potential Respondents

ERS maintains a notification list for potential respondents interested in responding to certain solicitations. To receive notifications regarding solicitations and to have access once published, respondents should register through ERS' Online Procurement Portal. When a solicitation is published, ERS notifies those potential respondents that have expressed interest in that type of solicitation. ERS also publishes notification on its website at <https://ers.texas.gov/Doing-Business-with-ERS/Vendor-Information/Current-and-Upcoming-Opportunities>.

Formal Notification for Solicitation and Post-Award

ERS also ensures compliance with applicable law when posting notices of solicitations and awards. ERS posts notices for formal solicitations exceeding \$25,000 on the ESBD. For solicitations exceeding \$20 million, a Notice of Intent to Procure is posted to the ESBD at least two 2 months prior to advertising the solicitation. The notice will include a description of the goods or services to be procured and applicable NIGP class and item codes.

At a minimum, ERS follows the statutorily mandated time frames for ESBD postings:

- For at least 14 calendar days – the entire solicitation (including all documentation) must be posted.
- For at least 21 calendar days – only the notice must be posted.

ERS includes in the notice the elements mandated by statute at Texas Government Code § 2155.083(g). Additionally, the notice, when applicable, instructs respondents to login to ERS' Online Procurement Portal to gain access to the solicitation documents. When using ERS' Online Procurement Portal, ERS creates a profile where the solicitation documents can be viewed.

In addition to sending notification to potential respondents that have registered with ERS, ERS also sends notification of the solicitation to all potential respondents on the Comptroller's Centralized Master Bidders List for the advertised commodity code (<https://mycpa.cpa.state.tx.us/tpassscmbsearch/index.jsp>).

Once the contract is awarded, ERS also posts notification on ESD for any contract valued at more than \$25,000. The post-award notification complies with the requirements of the Texas Government Code.

Communications with Respondents During Solicitation Process

Once the solicitation is issued, communications between ERS and potential vendors must follow the procedure outlined in the solicitation. If there are any questions not addressed by the outlined procedure, ERS staff should always consult with OPCO. If a potential vendor fails to obey the outlined procedures, the potential vendor's response may be disqualified.

Written Questions

Generally, ERS does not hold a solicitation conference for potential respondents. Instead, the solicitation document may invite potential respondents to submit written questions during a set time period after publication and before responses are due. Written questions should be submitted as instructed in the solicitation. Responses will be posted as indicated in the solicitation.

Response Receipt

Vendors are expected to submit responses to ERS as stated in the solicitation documents. Generally, responses are required to be submitted through ERS' Online Procurement Portal. ERS' Online Procurement Portal closes to responses after the submission deadline, and can thus certify the date and time of delivery. In the rare case of vendor proposal submission without using ERS' Online Procurement Portal, ERS staff is responsible for certifying the date and time of delivery.

VENDOR SELECTION PROCESS

Response Evaluation Process

ERS creates an evaluation process specific to the needs of a particular situation. This section outlines standard review process.

Preliminary Review

For the preliminary review, OPCO evaluates all of the responses to verify which responses both meet minimum requirements and are responsive and compliant.⁵ Because of the complicated nature of its solicitations, ERS also reserves the right to review for responsiveness and compliance during the later phases of evaluation as well. During this Preliminary Review phase, OPCO also performs mandated Vendor Compliance Verifications, which include, but are not necessarily limited to, checking respondents' franchise tax status and reviewing the Comptroller's Debarred Vendor List and the federal debarment list found on the System for Award Management, or SAM. Responses that do not pass this scrutiny will be deemed nonresponsive and ineligible for subsequent evaluation by the Evaluation Team Members.

Kick-Off and Evaluation Training Meeting

Once OPCO has completed its preliminary review, OPCO holds a Kick-Off and Evaluation Training Meeting for the Evaluation Team Members. The evaluation team is comprised of ERS staff, and sometimes outside consultants, contractors and/or actuaries, who have the necessary technical or program expertise to evaluate the responses. During the Kick-Off and Evaluation Training Meeting, OPCO explains the evaluation process, schedule, and scoring tool to the Evaluation Team Members and answers any questions regarding the terms of the No Conflict of Interest acknowledgement and The State Agency Uniform Nepotism Disclosure Form for contracts over \$1 million.

⁵ For some solicitations, ERS requires vendors to submit Minimum Requirements Questionnaires, which are evaluated on a pass/fail basis, and then ERS performs the Preliminary Review on the full proposal once received.

Review by Evaluation Team Members

After the Kick-Off and Evaluation Training Meeting, Evaluation Team Members review the responses based on their areas of expertise, as reflected on their individual scoring tools. The Evaluation Team Member shall provide scores for each response for each area to which he/she is assigned. In some instances, an Evaluation Team Member may determine a response does not fully answer the question or the answer is otherwise unclear or further information is required to adequately evaluate the response. If it is determined that a documented follow-up answer is required, the questions may be asked in the form of a clarification. Clarifications may be asked during any evaluation phase or finalists phase, depending on the particular solicitation and nature of the clarification. Agreed-upon clarifications become part of the final contract for the selected contractor.

For most solicitations, ERS will perform further due diligence during the review, either for all respondents or just for finalists. This information may be gathered in the form of best and final offers, references (further discussed below), interviews and/or site visits, for example. The solicitation documents will specify these factors, when the factors will be evaluated, and how the factors will be scored.

CONTRACT AWARD

Contract Negotiations

Negotiating specification terms and price is allowed for certain solicitations. When allowed, negotiations may not be used for technical leveling and/or technical transfusion. Technical leveling is the method of encouraging a respondent to bring his/her response to the level of other responses through successive rounds of discussion, usually by pointing out response weaknesses. Technical transfusion is the method of disclosing technical information or approaches from one response to other respondents. ERS may use a variety of negotiation strategies and techniques to determine the best value. Specification and price negotiations typically involve the appropriate Evaluation Team Members with OGC and OPCO support. OGC typically negotiates the legal terms with OPCO and Business Division support. Generally, the solicitation documents indicate that ERS may fail a respondent if the parties cannot agree on the terms of the contract. When negotiations are complete, a contract documenting the parties' negotiation and the terms and conditions of the performance may be finalized.

Best Value Verification

Before selection of the contractor and throughout the evaluation process, the DOPCO or his/her designee will review the solicitation documents, scoring tool, all responses, and related materials to ensure the top-ranked respondent was evaluated based on the best value standard documented in the solicitation documents and as reflected on the scoring tool. The DOPCO shall sign off on the purchasing method and solicitation process utilized. Once the contractor is selected and the contract is finalized, the DOPCO or his/her designee shall sign a form indicating that the final executed contract comports with applicable state law, agency policy, and is consistent with the CPA's Procurement and Contract Management Guide.

Form 1295

Texas Government Code § 2252.908 prohibits agencies from entering into the following contracts with a business entity unless the business entity first submits a disclosure of interested parties form: (1) contracts with a value of at least \$1 million; or (2) contracts that require action or vote by the governing body of the agency before the contract may be signed. The disclosure form (Form 1295) is an online form administered by the Texas Ethics Commission. The contractor must submit the signed and notarized Form 1295 to ERS before execution of the contract. Within 30 days of ERS' receipt of the signed Form 1295, OPCO staff must formally acknowledge the form on the Texas Ethics Commission's website.

Contractor Selection and Award

ERS awards a contract for the purchase of goods and/or services to the respondent providing goods or services that are in the best interest of the trust and that yield best value. For most solicitations, the evaluation process results are presented to the Executive Director or his/her designee for contractor selection. The Board has delegated to the Executive Director the authority to negotiate, enter into, and to administer contracts on behalf of ERS. This delegation is consistent with the broad grant of authority found in ERS' Rules of the Board of Trustees, which provides that "[a]ll the administrative and decisional powers granted by the statutes that govern ERS are vested in the executive director, subject to policies and rules formulated by the board." 34 Texas Administrative Code § 65.1. The Rules further delegate this authority to the

Deputy Executive Director by providing that “[a]ny right, power, or duty conferred on the executive director by statute, rule, or board action may be exercised or performed by the deputy executive director as provided by Tex. Gov’t Code §815.202(f) or if the executive director is incapacitated or otherwise unable to act.” 34 Texas Administrative Code § 65.9. The Board also specifically delegated authority to the Executive Director to execute contracts on behalf of ERS that exceed \$1 million. For certain solicitations, the evaluation process results are first presented to the Executive Director or his/her designee and then presented to the Board during a public board meeting for selection and award. Once the contractor is selected, the Executive Director, or Deputy Executive Director if delegated by the Executive Director, negotiates, executes and administers the contract on behalf of ERS.

As noted previously, ERS posts the requisite contract award notification to the ESBD, as required. Additionally, ERS posts contract data and/or documents to the Legislative Budget Board (LBB) as required by the General Appropriations Act.

CONTRACT MANAGEMENT

The final step in the procurement process is contract management. The objective of contract management is to ensure the contract is performed satisfactorily and vendor responsibilities are performed according to the contract. For complex (formal) contracts, effective contract management ensures contract objectives are met while minimizing risks to the contract. For successful contract management, the responsible Business Division is involved throughout the procurement lifecycle.

Once a contract resulting from a formal solicitation is awarded, the Contract Oversight Team (COT) will generally hold a post-contract award meeting for applicable contracts. At a minimum, the meeting attendees should include members of the Procurement Team, the Contract Manager, and any applicable Subject Matter Experts. During this meeting, COT provides post-award guidance to the Business Division related to identified risks, contract management responsibilities and any contract-specific actions.

Contract Implementation

A post-award meeting or teleconference may be held after contract award with the vendor. The contractor and the ERS staff responsible for managing and/or overseeing the contract will attend or participate in the meeting. If a project manager is assigned to the contract, the project manager may oversee the meeting and any future meetings, if applicable, related to implementation of the contract. The meeting provides an orientation for the contractor to ensure a proper and timely implementation of the contract. Also, contract monitoring will be established.

ERS engages in ongoing communications with the vendor to discuss expectations and timelines. The Business Division is primarily responsible for monitoring a contractor’s performance while OPCO provides additional contract oversight. The Business Division or OPCO, when applicable, informs the OGC as soon as it becomes aware of a legal issue arising in connection with a contract.

Methods for monitoring contractor performance should be specified in the solicitation documents and further discussed during the implementation meetings, if applicable. Effective and efficient contract monitoring is important for early detection and mitigation of issues that may arise. The level and frequency of performance monitoring is dependent on the value, term, risk level and complexity of the contract and may be done through meetings, conferences, site visits, reporting, third parties and risk management.

Enhanced Contract Monitoring

The contracts described under Section 2261.251(b) of the Texas Government Code are subject to ERS’ enhanced contract and performance monitoring procedures. For these contracts, any serious issue or risk that is identified with respect to contract solicitation, purchasing, contractor selection or during contract monitoring will be submitted to the Board on a timely basis.

Performance Measures

One means of monitoring contractor performance is through performance measures. The most common means of measuring performance is performance guarantees (PGs) or service level agreements (SLAs). Contracts may include these performance measures, which set clear expectations in order to hold contractors accountable and to ensure the success of the contract.

The Business Division may consult with OPCO as needed, to determine if PGs or SLAs are necessary. The PGs or SLAs are drafted during the solicitation development. SLAs and PGs have specific defined means of objectively measuring deliverables within the contract, and have a risk defined by their impact to ERS or its members. The performance measures will vary based on the contract. Clearly defined performance measures encourage routine improvement, effectiveness, and efficiency. A key component of contract management is ensuring the contractor complies with these performance measures.

Liquidated Damages

When a contract violation occurs, the subject contract manager and the Business Division Director, in consultation with OGC, determine whether or not liquidated damages should be assessed. If a determination is made to assess liquidated damages, then the recommendation should be processed through the OGC and approved by the Executive Director.

Contractor Reporting

Another means of monitoring contractor performance is through contractor reporting. The contractor shall provide reports as provided in the contract, if applicable. These may include, but not necessarily limited to, status reports, HUB subcontracting reports, performance and activity reports.

These reports are considered part of the contract file, and should be archived accordingly. The Business Division will review the reports and, as appropriate, communicate with the vendor on any identified issues. ERS generally strives to solve any issues early, and with minimal impact to vendor performance and contract delivery.

Change Management

In some circumstances, it may be necessary to amend the contractual terms. Change Management includes changes to contract term or scope, as well as fee schedules or deliverables. As soon as the Business Division becomes aware of a potential contractual change, it should contact OGC and, when applicable, OPCO. If it is determined that it would be in ERS' best interest to move forward with the change, OPCO determines if the change is possible from a procurement perspective, while OGC determines if the change is legal from a legal perspective. The change is evaluated to determine the impact to the agency, the schedule, term and cost of the change. If ERS determines that the change is in its best interest, then ERS and the vendor execute a formal amendment.

Payment Approval

Payment due to the contractor is based on the contractual terms, often reflected in a fee schedule. ERS staff must confirm that billing is in accordance with the contract's progress and performance. After review and approval by ERS staff, payment of invoices shall be made within 30 days and in compliance with the Texas Prompt Payment Law, unless under dispute. The Business Division should consult with OGC when determining whether to dispute invoices/contract payments.

Performance Review

After contract termination or expiration, ERS shall review a contractor's performance for those contracts specified under Texas Government Code § 2155.089(c)(2). These reviews and any resulting classification grades shall be posted on the Vendor Performance Tracking System (VPTS) as provided for under Texas Government Code § 2262.055. ERS may, at its discretion, complete reviews on all other contractors in the manner described above.

Contract Closeout

After termination or completion of the contract, the Contract Manager and OPCO should work together in a timely manner to confirm, at a minimum, the following:

- All deliverables are received and accepted;
- Final payment has been made;
- All contract management actions have been completed or are assigned for monitoring and final resolution;
- The vendor complies with ERS' records retention policy, including determining the correct record series and creating a process for ERS to monitor the vendor's destruction of records under those series; and
- Vendor performance reporting has been completed, if applicable.

The Contract Manager and OPCO should work together to document any lessons learned in order to maximize the success of future contracting.

Records Retention

In accordance with Texas Government Code § 441.1855, ERS shall retain each contract entered into and all contract solicitation documents related to the contract, and shall not destroy such documentation before the seventh anniversary of the date (a) the contract is completed or expires; or (b) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved. Direct specific questions regarding records retention to the Records Management Supervisor.