The image below depicts the HHS Contract Management Lifecycle. The contract lifecycle is a continuous process with the top point of the lifecycle depicting contract planning and development, proceeding to procurement, contract formation, contract management, contract termination and closeout, and returning to contract planning and development to continue the lifecycle.
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1.1 Introduction
CMH February 2019

The Health and Human Services (HHS) System delivers services to Texans through a vast number of contracts expending a significant amount of public funds. The HHS System is comprised of two HHS agencies, the Department of State Health Services (DSHS) and the Health and Human Services Commission (HHSC).

Many HHS contracts present significant areas of business and service delivery risk to the HHS System and Texas. Effective contract management is the lynchpin of quality contracting which ensures qualified individuals receive the services they need and the State gets what it pays for.


In addition, SPD is assigned responsibility for grant management and serves as the contact for grant management related issues and is responsible for maintenance of the Uniform Grant Management Standards (UGMS) (PDF).

Subsequent to Texas Government Code §2261.256(b), during the 84th Legislative session, each state agency was required to develop a Contract Management Handbook (CMH) to establish consistent contracting policies and procedures which comport to the Guide.

The CMH was developed by Contract Oversight and Support (COS), a division within Procurement and Contracting Services (PCS) with input from HHS program areas. COS regularly updates the CMH based on changes in contracting laws, regulations, and policies. Additionally, COS continues to incorporate changes due to audits, state oversight agencies and evolving best practices. Submit questions or suggestions about the materials or requirements in the CMH to COS at PCS_COS@hhsc.state.tx.us.

To receive notice of updates to the CMH, subscribe to the GovDelivery Topic: “HHS Contract Management Handbook Updates”.

This handbook is intended as HHS internal policies and procedures only. It does not create any rights or responsibilities for contractors, nor does it alter any HHS contract. If a rule or statute conflicts with any portion of this handbook, the rule or
statute prevails to the extent of the direct conflict.

1.2 Purpose
CMH February 2019

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

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

- Ethics and standards of conduct;
- Vendor interaction;
- Contracting activities through the contract lifecycle;
- Contract management;
- Grant performance oversight;
- Escalation and reporting of contract performance issues;
- Contract termination and closeout; and
- HHS contract reporting requirements.

HHS agencies can develop additional, consistent, contract management policies and procedures to best meet their organizational structure, program requirements, and business needs. HHS agencies must ensure their respective rules, policies, and procedures do not conflict with the requirements in this handbook. HHS agencies may request exceptions to this handbook as described in Section 1.3.1 below.

1.3 Applicability
CMH February 2019

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

- Contracts for the purchase of good or services;
- Professional Services Contracts including consultant contracts;
- Interagency Contracts
- Interlocal Contracts;
- Sole source, proprietary, and emergency purchase contracts;
- Contract Purchase Orders;
- Transactional Purchase Orders;
- Purchase Orders (associated with an existing contract);
- Grants;
- Client service contracts;
- Administrative contracts;
- Enrollment contracts;
- Statewide term contracts;
- Cooperative or "piggy back" contracts;
- Construction contracts;
- Utility contracts;
- Memoranda of Understanding (MOU);
- Memoranda of Agreement (MOA);
• Letter agreements;  
• Revenue generating contracts; and  
• Other agreements that bind an HHS agency in any manner.

### 1.3.1 Exceptions to CMH Requirements

**CMH April 2016**

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

Exception requests must include the following:

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

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

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

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

### 1.4 HHS Agency Roles and Responsibilities

**CMH April 2016**

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

Program staff must coordinate with the contract manager to:

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

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

### HHS Agency Roles and Responsibilities

<table>
<thead>
<tr>
<th>Key Contract Lifecycle Function</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning and Development: Identify contracting needs, objectives, strategies, timelines, deliverables, performance measures, and contract management needs.</td>
<td>Program staff or contract manager, in consultation with procurement staff, System Contracting, HHS risk and compliance management, and other subject matter experts.</td>
</tr>
<tr>
<td>Procurement: Follow procurement statutes and rules and fairly select the most qualified contractors.</td>
<td>Procurement staff in consultation with program staff, contract manager, System Contracting, and if needed HHS Ethics Office.</td>
</tr>
<tr>
<td>Contract Formation: Develop contracts that provide best value, and that contain clear measures, terms, and conditions needed to hold contractors accountable for performance.</td>
<td>Contract Manager in consultation with program staff, contractor, and if needed procurement staff, Contract Administration, System Contracting, and other subject matter experts.</td>
</tr>
<tr>
<td>Contract Management: Conduct risk assessments, develop monitoring plans, effectively monitor outcomes to enforce contract requirements and terms, file maintenance, record keeping, and payment approval.</td>
<td>Contract Manager in consultation with program staff, contractor, and if needed with procurement staff, Contract Administration, Contract Oversight and Support, System Contracting, HHS Ethics Office, and other subject matter experts.</td>
</tr>
<tr>
<td>Contract Termination and Closeout: Conclude the contract, complete the contract management file, and report on the contractor’s performance.</td>
<td>Contract Manager in consultation with program staff, contractor, procurement staff, and if needed, System Contracting, and other subject matter experts.</td>
</tr>
</tbody>
</table>

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

CMH February 2019

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

- **Responsible (R):** The individual(s) or entity(ies) obligated to perform the work and participate in the decision-making process.
- **Accountable (A):** The individual or entity ultimately accountable for ensuring
the work is complete and for making final decisions.

- **Consulted (C):** The individual or entity consulted by the responsible individual during the completion of tasks or when making a decision.
- **Informed (I):** The individual or entity that is informed of a decision or completion of a task.

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

### Key Contract Lifecycle Responsibilities

<table>
<thead>
<tr>
<th>Phase</th>
<th>(R) Responsible</th>
<th>(A) Accountable</th>
<th>(C) Consulted</th>
<th>(I) Informed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning</td>
<td>Program manager</td>
<td>Program executive</td>
<td>Program manager</td>
<td>System Contracting*</td>
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<td></td>
<td></td>
<td></td>
<td>Contract manager</td>
<td>Information Technology*</td>
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<td></td>
<td></td>
<td>Procurement officer</td>
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<td>Budget</td>
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<td>Contract Administration</td>
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<td></td>
<td></td>
<td></td>
<td>Information Technology*</td>
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<td></td>
<td>HUB Office*</td>
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<tr>
<td>Contract Development</td>
<td>Contract manager</td>
<td>Program executive</td>
<td>Program manager</td>
<td>HHS Ethics Office*</td>
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<td>Contract manager</td>
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<td>Procurement officer</td>
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<td>Budget</td>
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<td>Contract Administration</td>
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<td></td>
<td></td>
<td></td>
<td>System Contracting</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Phase</th>
<th>(R) Responsible</th>
<th>(A) Accountable</th>
<th>(C) Consulted</th>
<th>(I) Informed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement</td>
<td>Procurement Staff</td>
<td>Procurement executive</td>
<td>Program manager</td>
<td>Compliance &amp; Quality Control Information Technology* HHS Ethics Office*</td>
</tr>
<tr>
<td>Contract Formation and Award</td>
<td>Contract manager</td>
<td>Program executive</td>
<td>Program staff Contract Manager Procurement officer Budget System Contracting Compliance &amp; Quality Control Contract Administration Contractor</td>
<td>HHS Ethics Office* Information Technology*</td>
</tr>
<tr>
<td>Contract Management</td>
<td>Contract manager</td>
<td>Program executive</td>
<td>Program manager</td>
<td>Procurement officer</td>
</tr>
<tr>
<td>Phase</td>
<td>(R) Responsible</td>
<td>(A) Accountable</td>
<td>(C) Consulted</td>
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<td>System Contracting *</td>
<td>HHS Ethics Office*</td>
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<td>HHS Ethics Office*</td>
<td>Information Technology*</td>
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<td></td>
<td></td>
<td>Contractor</td>
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</tr>
<tr>
<td>Contract Termination and Closeout</td>
<td>Contract manager</td>
<td>Program executive</td>
<td>Program manager</td>
<td>Procurement officer</td>
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<td>Contract Manager</td>
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<td>Contract Administration</td>
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<td>Contract Oversight &amp; Support</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Contractor</td>
<td></td>
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</tbody>
</table>

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

1.4.2 Procurement and Contracting Services (PCS)
CMH August 2019

Procurement and Contracting Services (PCS) is the centralized office for HHS that handles procurement and contracting services for the HHS System. PCS partners with HHS staff, especially contract managers, to plan procurements, develop solicitation documents, evaluate proposals, conduct negotiations, award contracts, execute contracts, and manage and monitor contracts. Visit the PCS webpage for more information and resources.
1.4.3 System Contracting
CMH April 2019

System Contracting - Legal Services Division is in the Office of General Counsel. This section is responsible for providing legal assistance, guidance, and review for all procurement and contracting activities.

Contract managers should consult with System Contracting and Contract Oversight and Support for contract management issues, including:

- Interpreting and ensuring compliance with state and federal contracting laws and regulations (e.g., approvals from Centers for Medicare and Medicaid Services (CMS), Food and Nutrition Service (FNS), Compliance with Codes of Federal Regulations (CFR), etc.);
- Supporting the agency in dispute resolution, including mediations with contractors;
- Developing letters concerning contractor deficiencies and applying contract remedies; and
- Pursuing early contract termination or suspension, including reviewing settlement claims when terminating a contract for cause.

Attorney assignment requests may be submitted to the System Contracting intake box at SystemContracting@hhsc.state.tx.us.

Each request must include the following information:

- Individual Submitting the request (Name, Title, Phone Number, and Email Address)
- Procurement/Contract Information
  - Requisition Number:
  - Solicitation Number:
  - Contract Number:
  - Purchaser (Name, Title, Phone Number, and Email Address)
  - Contract Manager (Name, Title, Phone Number, and Email Address)
- Project Type:
  - Solicitation; Identify Type
  - New Contract
  - Contract Amendment
  - If Other, Specify
- Project Description
- Total Procurement or Contract Value
- Funding Source(s) (e.g., "Medicaid," "Medicaid and Title XX," "General Revenue")
- Established deadlines and the bases for the deadlines
- Program Information
  - Requesting Agency:
  - Requesting Division/Department:
  - Requesting Program:
  - Program Contact (Name, Phone Number, and Email Address)
NOTE: If requesting review of documents, the draft(s) of document(s) for which review is requested must be attached to the e-mail request.

1.4.4 Compliance and Quality Control
CMH February 2019

HHS has created a Compliance and Quality Control (CQC) Team to review various stages of the solicitation process for on-going procurements, manage the evaluation tool and scoring process, and review, revise and create, where necessary, processes and procedures to ensure compliance with state law and the State of Texas Procurement and Contract Management Guide.

CQC is a division independent of the PCS division created to review PCS and other agency functions to ensure organizational resources and processes align and satisfy all purchasing and contracting requirements.

1.4.5 HUB Office
CMH April 2017

To maximize the inclusion of minority, woman-owned, and service-disabled veteran businesses in state contracting, PCS administers the HUB Program Office. The purpose of the HUB Program Office is to promote full and equal business opportunities for all businesses in an effort to remedy disparities in state procurement and contracting in accordance with the HUB goals specified in the State of Texas Disparity Study and the Texas Government Code.

In accordance with the Comptroller's administrative rules (Texas Administrative Code §20.284), each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following percentages and procurement categories:

- 11.2% for heavy construction other than building contracts;
- 21.1% for building construction, to include general contractors and operative builders contracts;
- 32.9% for all special trade construction contracts;
- 23.7% for professional services contracts;
- 26.0% for all other services contracts; and,
- 21.1% for commodities contracts.

It is the HHS policy to accomplish these goals either through contracting directly with HUBs or indirectly through subcontracting opportunities.

2.0 Section: Standards of Ethical Conduct
CMH February 2019

HHS prohibits all HHS staff from soliciting, accepting, or agreeing to accept anything, regardless of value, from a person or entity that a state employee knows is
interested in, or may become interested in, a contract, purchase, or payment. All HHS agency staff must adhere to the HHS Standards of Ethical Conduct as provided in the HHS Ethics Policy.

2.1 State Employee Conduct
CMH February 2019

POLICY

All State employees are required to act in an ethical, impartial, transparent, and professional manner. State employees must uphold ethical values when carrying out their official duties. All HHS staff should be aware of the following statutory prohibitions related to ethics and standards of conduct:

- Texas Penal Code, Section 36.08 prohibits state employees from accepting a benefit from a person the employee knows, or should know, is subject to the employee’s agency’s regulation, inspection, or investigation. For purposes of this state law, all HHS contractors and potential contractors are subject to HHS’ regulation, inspection, and investigation.

- Texas Government Code, Section 572.069 prohibits state employees from accepting employment from a person or entity involved in a procurement (even if the entity is not selected for the resulting contract) until at least two years after the contract was signed or the procurement terminated, if the employee participated on behalf of the agency in a procurement or contract negotiation involving that person or entity.

- Texas Government Code 2252.901 prohibits state agencies from entering into an employment, professional services, or consulting services contract with a former or retired employee before the first anniversary of the last date on which the individual was employed by the agency if appropriated money will be used to make payments under the contract.

- Texas Government Code Section 2155.004 prohibits a state agency from accepting a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. In other words, a vendor that participates in drafting a request for offer (RFO) or statement of work (SOW) in most cases is not allowed to respond to the same RFO or SOW.

Additional information regarding employee conflict of interest and standards of conduct may be found in the State of Texas Procurement and Contract Management Guide, the HHS Human Resources Policy Manual, the Human Resources Guidance Handbook, and the HHS Ethics Policy.

All HHS employees are expected to be familiar with and abide by these rules of
conduct. A violation may result in disciplinary action, up to and including dismissal, and in some cases, referral to state or federal law enforcement agencies.

2.2 Conduct of HHS Employees Involved in Procurement and Contracting
CMH April 2017

Because HHS goods and services are purchased using public funds, it is critical that all involved staff remain independent and free from the perception of impropriety. Any erosion of public trust or hint of impropriety is detrimental to the integrity of the purchasing and contracting process.

As required by TAC 391.503, all HHS staff involved in procurement, contract administration, contract management, contract monitoring, and contract oversight (herein after referred to as "Contracting Staff") must act in the best interest of the state and avoid any activity that could potentially impair their ability to carry out duties with independence and objectivity or even give the appearance of such an impairment. Failing to abide by these rules or to disclose a potential conflict of interest may result in dismissal and/or referral to law enforcement.

All contracting staff must:
- adhere to ethics requirements adopted in rule, ethics policies, and any code of ethics approved by the Executive Commissioner; and
- disclose, in writing, any potential or actual conflict of interest concerning any contract or procurement in which they are, or may become engaged.

To avoid conflicts of interest, contracting staff must not:
- participate in any work on a contract knowing that they, or a member of their immediate family, has an actual or potential financial interest in the contract, including, but not limited to, prospective employment;
- solicit or accept a benefit from a vendor;
- be employed by, or agree to work for, a vendor (and even receiving an offer of employment should be reported);
- disclose confidential information; or
- be employed at a pay classification B9, or higher, as determined by HHSC, if the employee’s spouse is an officer, manager, or paid consultant of a Texas trade association or business that contracts with the HHS System.

Although an HHS agency may have additional ethics or conflict of interest policies, HHS agencies must ensure their policies do not conflict with these provisions.

Questions pertaining to HHS ethical values and standards may be submitted to: Ethics_in_Action@hhsc.state.tx.us
2.3 Ethics Training Requirements
CMH February 2019

All HHS employees are required to complete ethics training shortly after employment begins and every two years thereafter. Two computer-based ethics training programs are available to HHS staff: Ethics Training for HHS Employees and HHS Ethics Training for Contracting and Procurement Personnel.

HHS staff required to complete HHS Ethics Training for Contracting and Procurement Personnel (Ethics Training for C&PP) are those with:

- procurement and contract approval authority, including executive management, financial and legal staff;
- procurement responsibilities, including bid/proposal evaluators;
- contract management and monitoring responsibilities;
- contract oversight and support responsibilities; and
- discretion to select services or providers for eligible Texans.

New HHS agency employees must complete Ethics Training within 60 days of their employment start date and every twenty-four months thereafter.

For intra-agency transfers, prior to the date of transfer, managers must determine if the staff’s job duties meet the established criteria for completing Ethics Training for C&PP. If staff are required to complete Ethics Training for C&PP, it must be completed within 60 days of their date of transfer and every twenty-four months thereafter. As an alternative, transferring staff may provide documentation of completion of Ethics Training for C&PP within the previous twenty-three months.

Ethics Training is available online via System Training Solutions, which can be accessed through the HHS Portal. HHS Training tracks completion of training requirements and will provide a system generated reminder of required training prior to expiration. After completion, the employee’s Record of Successful Completion becomes a part of the HR employee file.

This policy is consistent with HHS Circular C-031 Ethics Training For HHS Employees.

2.4 Nondisclosure and Conflict of Interest Forms
CMH August 2019

All HHS staff must disclose, in writing, any potential or actual conflict of interest concerning any contract or procurement in which they are, or may become engaged.

**HHS-PCS.122, Nondisclosure and Conflict of Interest Certification**

HHS employees who manage any HHS contract or a portion of an HHS contract or access contract information in the System of Contract Operation and Reporting (SCOR), must complete Form HHS-PCS.122, Nondisclosure and Conflict of Interest Certification:
by the 5th day after the date of being assigned to manage any contract;

- at the time a change occurs which may create a potential conflict of interest;
- no later than twelve months from the date of the most recent execution of the form: and,

- Request your manager to enter the date of completion of Form HHS-PCS.122 into the HHS System Contract Management Requirement Compliance Log (see Section 3.5 for more information)

Form HHS-PCS.122 is a power form. Once it is complete, it will route to the appropriate approvers then to PCS Contract Oversight and Support. Form HHS-PCS.122 is also retained in the employee’s personnel file.

HHS Inspector General staff may complete an equivalent nondisclosure Form- HHSC OIG Nondisclosure Statement. Once complete, IG staff e-mail the form to COS to maintain on file for access to SCOR.

To request a report of staff who have completed a Nondisclosure form, submit a request to PCS_COS@hhsc.state.tx.us

**HHS-PCS.117, Nondisclosure and Conflict of Interest Certification**

Prior to work on a specific solicitation for a procurement with a value of less than $1 Million, the PCS purchaser will require participating HHS staff to complete form HHS-PCS.117, Nondisclosure and Conflict of Interest Certification.

**SAO Nepotism Disclosure Statement for Purchasing Personnel**

Prior to work on a specific solicitation for a procurement with a value of $1 Million, the PCS purchaser will require participating HHS staff to complete the [SAO Nepotism Disclosure Statement for Purchasing Personnel](mailto:SAO_NepotismDisclosureStatementForPurchasingPersonnel.txt). The completed forms are forwarded to the PCS Associate Commissioner and the HHS Ethics Office.

**2.5 Reporting Ethics Violations**

CMH April 2017

All HHS agency staff have a duty to report any potential ethics or standard of conduct violations to the Ethics Office. HHS agency staff have an obligation to remain vigilant for signs of potential violations of ethics rules, policies, and standards of conduct. One or more of the following options are used for reporting and investigating known, alleged, or suspected fraud or other illegal activities in the HHS System.

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

- **Reporting to HHS Ethics Office:** Violations or possible violations may be reported directly to the HHS Ethics Office. The mission of the HHS Ethics Office is to promote employee confidence through ethical decision-making. The HHS Ethics Office is available to employees as a resource to consult and seek guidance and report ethical issues or concerns at any time during the procurement or management of a contract. Further details can be found by visiting the [HHS Ethics Office Website](#) or submitting a question via email to Ethics_in_Action@hhsc.state.tx.us.

### 2.6 Reporting Fraud, Waste and Abuse

**CMH April 2019**

Each HHS employee has an obligation to protect the resources and interests of HHS and the State of Texas. In accordance with HHS Circular C-027, HHS employees must report appropriately suspected fraud, waste and abuse to the State Auditor’s Office (SAO) as well as the Office of Inspector General (OIG).

- **Reporting to the SAO:** Submit reports by calling the Fraud, Waste, and Abuse Hotline at 1-800-TX-AUDIT or by completing the [SAO Online Fraud Report](#).
- **Reporting to the OIG:** Submit reports by calling 1-800-436-6184, completing the [Waste, Abuse & Fraud Form](#) or by mailing the IG at:

  Office of Inspector General  
  Attn: Fraud Hotline  
  MC 1300  
  P.O. Box 85200  
  Austin, Texas 78708-5200

### 2.7 HHS Ethics Rules for Contractors

**CMH April 2017**

As required in rule, contractors interested in working with HHS must implement standards of conduct for their own employees that are at least as stringent as those applicable to HHS contracting staff. Respondents must sign all required ethics and disclosure forms and HHS agency staff may consider a respondent’s standards of conduct when evaluating the award of a contract. In addition, a contractor that violates the rules may be barred from receiving future contracts and must be reported to the Comptroller of Public Accounts for statewide debarment.ii
2.8 Contractor Disclosure
CMH April 2016

To avoid conflicts of interest, potential contractors should disclose in their solicitation response, any actual or potential conflicts of interest in their proposed provision of services or other performance under the contract resulting from the solicitation.

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

2.9 Requirement for Staff Augmentation Contractors
CMH April 2017

Staff augmentation contractors who manage any HHS contract or a portion of an HHS contract must sign and submit Form HHS-PCS.122: Nondisclosure and Conflict of Interest Certification:
- by the 5th day of execution of the staff augmentation contract; and
- update this form annually or no later than twelve months from the date of the most recent execution of the form.

Form HHS-PCS.122: Nondisclosure and Conflict of Interest Certification is retained in the staff augmentation contractor’s personnel file. To request a report of contractors who have completed HHS-PCS.122, submit the request to PCS_COS@hhsc.state.tx.us.

In the event any changes occur prior to the annual certification date, the following steps should be addressed immediately:
- Staff augmentation contractor updates and submits a revised Form HHS-PCS.122: Nondisclosure and Conflict of Interest Certification to management.
- Management reviews the revised form to determine if actions are necessary or an escalation to the HHS Ethics office is merited.
- The resulting actions are documented on the Form HHS-PCS.122: Nondisclosure and Conflict of Interest Certification, in the supervisor/Designee Review section.

2.10 Protection of HHS Confidential Information
CMH February 2019

All HHS staff and contractors who access HHS confidential information, including
Social Security Administration (SSA) information, must execute and comply with the HHSC Acceptable Use Agreement (AUA) and the HHS Information Security Acceptable Use Policy (HHS AUP) that require them to safeguard confidential information. Non-compliance with the AUA or HHS AUP may be cause for removal of access and disciplinary action, up to and including, dismissal and/or civil or criminal prosecution.

2.10.1 Contractor Requirement to Safeguard Confidential Information
CMH August 2019

All HHS contractors with access to HHS confidential information are required to comply with the HHS requirements to safeguard the information from unauthorized use or disclosure. Contractors with access to a state computer system or database are required to complete cybersecurity training during the term of the contract and during any renewal period.

If a contractor is a covered entity and is only contracting with HHS to perform covered entity functions as a healthcare provider, plan or clearinghouse, security and privacy control requirements are identified in the Medicaid Provider Agreement or other obligating agreement.

If the contractor is not a covered entity or is a covered entity contracting with HHS to perform business associate functions, such as administrative, management, quality control, training or utilization review, a data use agreement (DUA) is required. The DUA outlines the security and privacy control requirements for contractors to safeguard agency confidential information.

In addition to the DUA, a contractor with access to HHS confidential information is required to complete the Information Security and Privacy Initial Inquiry (SPI) unless the contractor is a covered entity performing only covered entity functions. The SPI is generally completed by the contractor’s security contact and is used to help HHS identify high security risks associated with the data the contractor is accessing through the contract. For any “No” response in Section B or C of the SPI, the contractor must enter a compliance plan with a completion date of either 30 days, if a HIPAA contract, or 90 days if the contract is non-HIPAA, from the date of signature on the SPI. Upon completion of the compliance plan the contractor must complete and submit to their contract manager a SPI with a “Yes” response for all items in Section B and C. The DUA and SPI are uploaded into the SCOR Documents sub-module.

For information regarding the DUA and SPI, please contact Cynthia Dollar, Special Counsel for Information Privacy and Security at Cynthia.Dollar@hhsc.state.tx.us or by phone at 512-424-6524.

2.10.2 Reporting Privacy Breaches
CMH March 2018

All HHS staff must keep all HHS information and all information obtained as an HHS employee confidential, except as otherwise required by law, e.g., the Public
Information Act, Texas Government Code, Chapter 552 (client-related information may be released only in accordance with sound professional practices, state and federal regulations, and HHS policies and procedures.

All HHS staff, contractors, or other third parties that become aware of, or suspect, a breach of HHS confidential information must report the incident to the HHS Privacy Office at privacy@hhsc.state.tx.us

HHS contractors who are performing services other than covered entity services as a healthcare provider, health plan or clearinghouse are required to report breaches of confidential information within specific timeframes as detailed below:

- **Initial Notice of Breach** must be provided by the contractor to the HHS Privacy Office in accordance with HHS and DUA requirements with as much information as possible about the breach and a name and contact who will serve as the single point of contact with HHS both on and off business hours. Timeframes related to initial notice include:
  - Within one hour of discovery of a breach of Federal Tax Information, Social Security Administration Data, or Medicaid Client Information received from a federal System of records; or
  - Within 24 hours for all other types of confidential information.

- **Formal Notice** must be provided by the contractor to the HHS Privacy Office no later than three business days after discovery of a breach of confidential information.

HHS contractors who are covered entities who are performing covered entity services, such as medical providers or health insurers, must follow the following timeframes for incident reporting:

- **Initial Notice of Breach** must be provided within twenty-four (24) hours of discovery of an incident that the covered entity’s risk analysis has determined **more than a low probability of compromise**. The initial notice should include as much information as possible about the breach and a name and contact who will serve as the single point of contact with HHS both on and off business hours.

- **Formal Notice** must be provided no later than three business days after discovery of an incident that the covered entity’s risk analysis has determined **more than a low probability of compromise**.

- **Annual Notice** is required for all other incidents for which the covered entity’s risk analysis has determined a low risk of compromise or for incidents that only involve unauthorized disclosure of a single individual’s confidential information to a single unauthorized recipient. The covered entity must provide annual notice of such incidents no later than 60 days after the end of the calendar year in which the incident occurred.
No later than 60 days after the end of each calendar year, the covered entity must provide the HHS Privacy Office with a comprehensive list of all incidents involving HHSC confidential information that were reported to the US Office for Civil Rights in accordance with the obligations under HIPAA.

All reports of an actual or suspected privacy breach may be made by completing a Potential Privacy/Security Incident Form and emailing it as an attachment to the HHS Privacy Office mailbox at privacy@hhsc.state.tx.us or leaving a detailed message on the Privacy hotline: (877) 378-9869.

2.11 HHS Agency and Contractor Relationship
CMH March 2018

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

Guidelines for contractor interaction:
- All work performed by the contractor must be related to the procurement’s specifications, Statement of Work, the description of services included in the IT Staffing Services Request Form, or other contract terms and conditions.
- Unless included in the procurement’s specifications, Statement of Work, the description of services included in the IT Staffing Services Request Form, or other contract terms and conditions, contractors may not participate in the:
  o planning or development of a procurement solicitation; or
  o evaluation of a response to a procurement solicitation, including developing the evaluation criteria, methodology and scoring tools and reviewing and appraising evaluations performed by other persons.
- HHS staff must not divulge information that would give or could be perceived to give the contractor or a potential contractor an unfair business advantage or would adversely impact the ability to conduct open and fair competitive procurements. This includes procurement documents and other sensitive materials are properly safeguarded.

2.12 Contractor Requests for Business References
CMH March 2018

HHS staff do not provide endorsements or business references for any contractor or contracted product or service. If a contractor should request an endorsement or a business reference, HHS staff authorized by their supervisor to communicate publicly about the contractor at issue may only provide factual information, such as that the contractor worked for the agency and the type of work performed.

Under no circumstances should HHS staff provide testimonials, quotes, or the agency logo to a current, prospective or former vendor for commercial use. This
prohibition extends to authorizing such parties to include links to the agency website on their company webpages. For more information, refer to the HHS Ethics Policy.

**2.13 Vendor Interaction**
CMH February 2019

**POLICY**

The Health and Human Services system (HHS) provides more than 200 programs to millions of Texans, including the most vulnerable. To accommodate the number of individuals served by HHS and to conserve state funds, strategic planning is necessary to effectively and efficiently provide services today and anticipate needs in the future.

Industry research is essential to keeping up with the latest developments and trends. It enables HHS to spend its limited funding in a strategic manner and to ensure programs are viable and sustainable.

Through interaction with the vendor community, HHS is able to understand what vendors are able to provide and to ensure that they understand the needs of the state. Communication between public procurement professionals and agency staff with the vendor community is imperative and encouraged. If used effectively, communication with industry representatives ensures the best products, resources, and services are procured on behalf of the state.

Texas Government Code Section 2155.090(b) acknowledges that an exchange of information between a state agency and the vendor community, related to future solicitations or as necessary to monitor existing contracts, is an integral part of the state agency-vendor relationship. Steps must be taken, however, to maintain a fair opportunity to compete for all vendors and to avoid even the appearance of favoritism. Agency personnel must be mindful that one-on-one communications with vendors occurring outside of the procurement process are subject to enhanced scrutiny due to the importance of maintaining an equal playing field among all eligible vendors during competitive procurements.

Each employee is expected to use sound reason and their best judgement when interacting with vendor representatives. Employees should be familiar with the agency’s Ethics Policy and the specific Ethics Policy for Contracting and Procurement Personnel and ensure that all training and disclosure requirements related to ethics issues are up to date prior to meeting with any vendor representative. If at any point an employee is faced with an ethical dilemma that is not addressed in the agency Ethics Policies, the employee should cease all communications with the vendor representative immediately and consult with the agency’s procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance.

Although the activities of the Historically Underutilized Businesses (HUB) Program
Office offers opportunities for engagement with contractors for the benefit of HUBs, this policy is intended to promote and guide collaboration between HHS staff and the vendor community. The policy provides parameters to facilitate communication while protecting the integrity of the procurement process. Although the activities of the Historically Underutilized Businesses (HUB) Program Office offers opportunities for engagement with contractors for the benefit of HUBs, this policy promotes and guides collaboration between HHS staff and the larger vendor community. This policy enables communication without jeopardizing any procurement process and assuring the public of the integrity of all interactions.

First and foremost, at the beginning of any vendor interaction, HHS staff should inform all vendor representatives that if at any point during vendor communications or during a meeting agency staff believes inappropriate, unethical, or communications that would compromise a current or potential solicitation has occurred or is about to occur, the communications and or meeting will be stopped immediately.

2.13.1 Vendor Meetings

Generally, the starting point for any vendor interaction is at the program level. Vendors will often seek meetings with program staff to make staff aware of the vendor’s offerings, market trends, and suggestions for program efficiencies.

HHS staff are encouraged to meet with vendors to learn more about the goods, services, and resources that are available. As PCS is an experienced resource regarding vendor interactions, HHS staff should request that a member of PCS is included during vendor communications or meetings. Meetings can be in person or by teleconference.

Meeting with Vendors Currently Under Contract

Requests for vendor meetings from vendors under an active contract are the most common interactions agency staff will encounter. These meetings are an essential element of properly managing and delivering on an awarded contract and may be requested by the vendor or the agency. In addition, meetings may be necessary to introduce personnel, discuss current contract performance, or to seek guidance on service adjustments being provided within the scope of the vendor’s awarded contract. Interactions should be restricted to the scope of the awarded contract and care should be given to not create the perception of favoritism to any vendor for work outside the scope of the current contract. Agency personnel should use caution to avoid providing the vendor a future unfair competitive advantage by sharing future business requirements, information about systems or internal processes, or protocols outside the scope of the current contract that the vendor may be able to use in a future solicitation. When in doubt, staff should consult with the procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance.
Meetings with vendors currently under contract with an HHS System agency are an expected part of the contractual relationship. These meetings are restricted to the scope of the existing contract. Any meeting outside the scope of an existing contract should be conducted in the same manner as a meeting with a vendor not currently contracted with an HHS System agency as described below.

Meeting with Vendors Not Currently Under Contract

Requests for general vendor meetings are not unusual and are a valuable way to stay ahead of market, technology, service, and resource trends and capabilities. These meetings may be requested by the vendor or the agency to introduce key personnel, capabilities, or to seek guidance on the market, product, or service strategies and trends. In some cases, these meetings may involve a request from the vendor to discuss possible contracting opportunities within the agency. Because agency staff may not be aware of a planned or active solicitation, employees should check with the agency’s procurement office before agreeing to a vendor meeting. Agency personnel should use caution to avoid providing the vendor a future unfair competitive advantage by sharing information not otherwise publicly available about systems, future business requirements, internal processes, or protocols the vendor may be able to use in a future solicitation. When in doubt, staff should consult with the procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance. In general, it is acceptable to receive information from the vendor but not to give information to the vendor that is not otherwise publicly available or disclosable under transparency policies of the Texas Public Information Act. For specific questions regarding the Texas Public Information Act, staff should contact the agency’s Public Information Coordinator in the Office of the Chief Counsel.

Finally, prior to scheduling a meeting, staff must check the vendor’s grade on the Vendor Performance Tracking System. Enter the vendor’s name in the “Vendor Name” box and click “Search.” Then, select the correct vendor from the search results. As long as the vendor has a grade of A, B, or C, the meeting may be scheduled. If the vendor has a grade of D or F, email the Deputy Executive Commissioner for Procurement and Contracting Services (PCS) to seek guidance.

Cross-Divisional Meetings

If a vendor would like to discuss a good or service that may possibly benefit multiple program areas in HHS, a cross-divisional meeting should be established. When receiving such a request from a vendor, ask the vendor to submit an email to the Executive Assistant to the Deputy Executive Commissioner of PCS. The email should include the purpose of the meeting and outline any presentation materials that may be needed. The executive assistant will coordinate the meeting with the vendor, the appropriate program areas, and PCS.

Executive-level Meetings

Some vendors have goods or services that apply to the entire HHS system or that may directly affect a key strategy or goal of HHS. In those cases, it is permissible
for the vendor to seek a meeting with the Executive Commissioner, Chief Deputy Executive Commissioner, Chief of Staff, Chief Operating Officer, Chief Program and Services Officer, or Chief Policy Officer. Such meetings will be scheduled by the appropriate office and the Deputy Executive Commissioner for PCS or designee will attend.

### 2.13.2 Vendor Responsibilities

Although the following requirements are the responsibility of the vendor representative, if applicable, reminding the vendor representative of these requirements prior to any meeting is encouraged.

**Texas State Lobby Laws**

Texas Government Code Chapter 305 regulates certain direct communications with an officer or employee of any state agency, department, or office in the executive branch of state government. Vendor representatives who meet the Texas Ethics Commission’s lobby registration requirements must be registered with the Texas Ethics Commission. State lobby laws work hand-in-hand with prohibitions on bribery in the Penal Code. There are criminal and civil sanctions for violation of the lobby law or the Penal Code. Vendor representatives should contact the Texas Ethics Commission with any questions concerning the requirement to register as a lobbyist.

HHS staff should contact the HHS Chief Ethics Officer for any questions or concerns about meeting with vendor representatives that are or may be registered lobbyists.

**Representation Before State Agencies**

Texas Government Code Chapter 2004 requires an individual who has contact with an officer or employee of a state agency to register with the agency. Failure to register as required by Chapter 2004 is a misdemeanor punishable by a fine of not more than $500, confinement in jail for a term not to exceed six months, or both the fine and imprisonment. Vendor representatives should consult with the Texas Ethics Commission or review the Texas Ethics Commission’s guide to Chapter 2004, Government Code to determine if registration is required.

### 2.13.3 Guidelines for Vendor Meetings

In order to assure appropriate communications and efficient use of time, HHS staff must abide by these guidelines:

1. Do not discuss active procurement projects or provide specifications or information about potential, future procurements.
2. Do not accept any confidential information from a vendor. Any information that the vendor provides to HHS staff becomes subject to the Public
Information Act, Government Code Chapter 552. Staff must advise vendors that information may be subject to public release pursuant to the Public Information Act. For specific questions regarding the Texas Public Information Act, staff should contact the agency’s Public Information Coordinator in the Office of the Chief Counsel.

3. Have at least one additional agency representative present at meetings.
4. Document the attendees and purpose for any meeting: an agenda, sign-in sheet, and minutes are recommended.
5. Do not meet with vendor representatives if the subject matter to be discussed or presented relates to a pending solicitation that is in process or development or a current solicitation that is posted. No meeting may occur until the solicitation process is complete.

6. Treat all vendors equally and impartially.
7. Do not share agency strategies that are not publicly known.
8. Do not accept gifts or donations.
9. Do not commit to accept, or plan to accept, products or services.
10. Do not guarantee or imply that a solicitation may result from a meeting.
11. Be familiar with the HHS Ethics Policy and the Standards of Conduct and Conflict of Interest Provisions of the Government Code, Chapter 572, Subchapter C and the Penal Code, Chapter 36, Bribery and Corrupt Influence. Ensure that all HHS staff attending the meeting are up to date on any HHS disclosure and training requirements. For specific questions concerning the HHS Ethics Policy and state ethics laws, including matters involving the standards of conduct, or conflicts of interest provisions, staff should contact the HHS Chief Ethics Officer.
12. Inform all vendor representatives that if at any point during vendor communications or during a meeting agency staff believes inappropriate, unethical, or communications that would compromise a current or potential solicitation has occurred or is about to occur, the meeting and all vendor communications will be terminated immediately.
13. Information technology related meetings should include a representative from IT. Vendor communications and meetings regarding technology demonstrations prior to a formal solicitation process must adhere to the HHS Guidelines for Engaging Technology Vendors Prior to a Formal Solicitation Process, Policy HHS IT-04.

**Opening a Meeting**

To ensure compliance with item 12 referenced above, HHS staff should make the following announcement at the commencement of any vendor communication or meeting:

“HHS is committed to ensuring the integrity of active or potential procurements including ensuring that all vendors have an equal opportunity related to any potential or active procurement. No information related to the subject matter of a procurement that is in the development phase or has been issued may be exchanged or discussed outside of the procurement process. Vendors should contact PCS regarding potential or active
procurement matters.”

**Quiet Period**

Texas Government Code Section 2155.090(b) allows the exchange of information between an agency and a vendor related to future solicitations. However, once an actual solicitation-drafting process has begun, all vendor communication related to or with an appearance of being related to the subject matter of the solicitation must cease to ensure the integrity of the procurement process. Once a solicitation is posted, vendor communication related to or with an appearance of being related to the subject matter of the solicitation must follow the procedure outlined in the solicitation. The time period encompassing solicitation-drafting, open solicitations, and contract negotiation is considered a “Quiet Period.” No meetings other than those within the specific procurement process should occur. The Quiet Period ends once a fully executed contract is issued. HHS staff are encouraged to contact PCS prior to scheduling a vendor meeting to ensure the subject matter to be discussed is not subject to the Quiet Period.

**External Events**

HHS staff should be mindful of any vendor communication that may occur while attending an external event such as an expo, conference, or other event outside of the normal day-to-day business setting. Casual communications in such settings could be perceived as inappropriate by the public, other state employees, and other vendors. HHS staff should avoid any situation or communication that would create even the appearance of impropriety.

**Declining a Meeting**

HHS staff are always free to decline meeting with a vendor or to refer the vendor to PCS rather than meeting with the vendor.

**3.0 Section: SPD Professional Certification and Training**

CMH February 2019

The CPA Statewide Procurement Division (SPD) administers a training, continuing education and certification program for HHS System Agency staff who conduct purchasing or contract management activities. For members of the HHS System Agency governing body, SPD provides an abbreviated training program. SPD offers two levels of certification: Certified Texas Contract Developer (CTCD) and Certified Texas Contract Manager (CTCM).

**3.1 Certified Texas Contract Developer**

CMH August 2019

A state agency employee must complete the Basic Texas Purchaser Course to
engage in purchasing functions on behalf of a state agency if the employee has the job title of “purchaser”; performs purchasing activities as fifteen percent (15%) or more of their job activities; or makes a purchase in excess of $5,000.

A state agency purchaser, who is not already CTCD or CTPM certified, must be certified as a Certified Texas Contract Developer (Formerly Certified Texas Procurement Manager) to engage in contract development functions on behalf of a state agency if the employee develops, evaluates, negotiates, or awards a contract posted to the Electronic State Business Daily on behalf of a state agency.

New HHS staff, or staff that transfer, to a position requiring a CTCD, must obtain the required certification within 18 months of hire or transfer.

3.2 Certified Texas Contract Manager
CMH August 2019

A state agency employee must be certified as a Certified Texas Contract Manager to engage in contract management functions on behalf of a state agency if the employee has the job title of “contract manager” or “contract administration manager” or “contract technician”; performs contract management activities as fifty percent (50%) or more of their job activities; or manages any contract in excess of $5,000,000. HHS agencies must comply with the CPA requirement; however, a HHS employee must be certified as a CTCM if he or she manages any contract in excess of $1,000,000.00. HHS management staff has the discretion to assign a CTCM to any contract.

New HHS staff, or staff that transfer, to a contracting position designated to require a CTCM, must obtain the required certification within 18 months of hire or transfer.

HHS staff who obtain or renew a CTCM are to request their manager or their manager’s designee to enter the issue or renewal date of their certificate and CTCM number into the HHS System Contract Management Requirement Compliance Log (See CMH Section 3.5).

3.3 Training for Governing Bodies
CMH March 2018

Subsequent to SB1681, during the 84th legislative session, HHS staff with delegated signature authority for contracts $1,000,000.00 or greater, as per Circular C-046, must register for and attend the Governing Bodies Webinar Training before signing any agreement bidding and no later than 30 days from the designation as having signature authority for contracts $1,000,000.00 or greater. HHS staff with delegated signature authority for contracts $1,000,000.00 or greater who are designated as a Certified Texas Contract Manager (CTCM) are not required to attend the Governing Bodies Webinar Training.

After viewing the webinar, within five (5) business days, an acknowledgement form
must be completed, signed, and forwarded to the CPA at ctp@cpa.texas.gov with a copy sent to COS at PCS_COS@hhsc.state.tx.us

It is important to save the acknowledgement form using the specified naming convention of “agency#_full name_SB1681” (HHSC is agency 529, DSHS is agency 537). Each Acknowledgement Form is emailed to ctp@cpa.texas.gov and PCS_COS@hhsc.state.tx.us using the same naming convention in the subject line (agency#_full name_SB1681).

3.4 SPD Continuing Education Requirement
CMH February 2019

Certifications issued after January 1, 2018 are issued for three (3) years beginning from the issue date or last renewal date of the certification for Certified Texas Contract Developers (CTCD) and Certified Texas Contract Managers (CTCM). Certifications previously issued for five (5) years will be renewed for three (3) years. Once a certification is renewed, all current rules and procedures apply.

The continuing education requirement for CTCD and CTCM renewing a three (3) year certification is twenty-four (24) hours of SPD-sponsored in-person or online training. One (1) hour may be a non-SPD-sponsored elective of choice. Beginning January 1, 2019, one (1) of the twenty-four (24) hours must be ethics.

If renewing under a dual certification (CTCD and CTCM), thirty-six (36) hours of SPD-sponsored in-person or online continuing education is required. Two (2) hours may be a non-SPD-sponsored elective of choice. Beginning January 1, 2019, one (1) of the twenty-four (24) hours must be ethics.

Beginning January 2019, CTCDs and CTCMs are also required to take the Renewal Refresher course offered by SPD once every three years in order to maintain certification. The Renewal Refresher course does not count towards continuing education hours. The Renewal Refresher course must be completed no earlier than two years following the date of initial certification or last renewal.

CTPMs and CTCMs certified prior to January 2018 renewing a five (5) year certification may renew under the previous requirement of 80-hours of continuing education provided the training meets the previous policy and time line for renewals. Those renewing a five (5) year certification may also elect to renew under the current continuing education requirements stated above. The certification expiration date will remain the same with either option. Once a certification is renewed, all current rules and procedures will apply.

Certified individuals who do not comply with the continuing education requirement, or do not submit the renewal application within thirty (30) days from the date of expiration, will have their certification expire. An extension can be requested if the request is made to the SPD Division within thirty (30) days from the date of the certificate expiration. Approval of the extension request will provide sixty (60) days from the date of the extension approval to complete the renewal requirements.
Failure to comply with the continuing education requirement will cause the individual to be required to retake the required levels of training, retest, and reapply for certification according to the current requirements.

For more information related to SPD training and certification requirements go to the Purchasing and Contract Development Training and Certification Page on the Comptroller’s website.

### 3.5 HHS System Contract Management Requirement Compliance Log

CMH February 2019

The HHS System Contracting Requirements Compliance Log (Compliance Log) is designed to record information pertaining to HHS System staff who:

- Access SCOR requiring annual completion of the HHS-PCS.122, Nondisclosure and Conflict of Interest Certification; and
- Perform contract management activities requiring Certification as a Certified Texas Contract Manager (CTCM).

Subsequent to an identified security risk involved with the sharing of employee ID numbers with individuals other than the staff person’s manager, only a manager, or their designee, can enter or update information into the Compliance Log.

COS tracks the dates of staff completion of the HHS_PCS.122 and CTCM and will forward a reminder to staff before the applicable expiration date.

As a resource, COS created an Introduction to the HHS System Contracting Requirements Compliance Log webinar to provide instruction for creation and update of an employee’s record.

To submit a request or report an issue with the Compliance Log, submit a General Inquiry to the COS Salesforce Landing Page.

### 4.0 Section: Planning and Development

#### 4.1 Procurement and Contract Planning Process

CMH August 2019

**POLICY**

Procurement planning is the process of deciding what to buy, when to buy, and from what source, based on an identified need. Identifying and defining a need begins the contract lifecycle and provides the basis for the contract. Additional information related to HHS procurement policy is available in the HHS Procurement Manual.

By clearly defining the need at the beginning of the lifecycle, the following
outcomes should be achieved:
- Facilitate effective prioritization of the required funding to make the purchase;
- Understand if the service can be provided by internal resources;
- Determine how these proposed goods/services fit with existing programs, systems, etc.;
- Identify type and level of service required to meet the need;
- Identify contract objective;
- Provide framework to develop the statement of work, solicitation, evaluation, and contract documents;
- Determine whether or not confidential information will be exchanged under the contract, identify the Information Owner and Designee, and assess the information security risk level; and
- Provide necessary information to determine how performance and quality of goods or service delivery will be measured, documented and tracked.

Factors that must be considered when assessing need:
- State or federal laws, rules, or regulations;
- HHS agency or system-wide policy;
- Executive commissioner or other applicable official directive.
- The costs and benefits of the proposed contract;
- Potential ethical or conflict of interest/disclosure issues that may arise;
- Potential risks to the HHS agency or the HHS System that may result, if the need is not met;
- Level of priority or importance of the need;
- Availability of funding, staff, expertise, and other resources to meet the need;
- Cost-effectiveness of the goods and services;
- Cost savings and efficiencies in use of contracted goods and services;
- Availability of funds;
- Any legal concerns or potential issues;
- Availability of other sources, including internal resources, to meet the need; and
- Leveraging based on existing opportunities to reduce cost or resources.

4.2 Procurement Lead Times
CMH August 2019

POLICY

Procurement lead time is the interval between a decision to purchase a product or service to when the contract is awarded. Generally, the PCS purchaser, in coordination with the contract manager, and HHS agency program staff, will develop a procurement timeline. The timeline should include all key milestones for completing the procurement within required deadlines. When establishing the timeline, the complexity of the procurement and other factors that may impact the lead time include, but are not limited to, the following:

- Procurement method: Procurement requests are reviewed by PCS to determine the most appropriate procurement method.
• If an emergency purchase is needed as the result of unforeseeable circumstances. Form HHS-PCS.01 Justification for Emergency Purchase is required.
• If a proprietary or sole source procurement is being considered, Form HHS-PCS.02, Justification for Proprietary and/or Sole Source Purchase is required.
• HHS agency budget approval: Budget must verify the availability of funds at the planning stage and prior to contract execution.
• If a Certification of Vendor or Subrecipient Status form, PCS 438, is required. This form is used to document the determination of a Contractor, Recipient or Subrecipient relationship during procurement planning.
• Portal Authority approval must be obtained if a procurement involves the creation of a new website or application, a major redesign of a website or application, or a request for a new hotline or 800 telephone number. This starts with the submission of a Portal Authority Approval Request form. For website projects, review the Website Project guidelines. More detailed information on the portal authority approval process can be found on the Portal Authority Steering Committee page of the HHS Connection website.
• Procurement Oversight and Delegation (POD): For administrative goods over $50,000 and administrative services over $100,000, PCS must obtain a written delegation from the Comptroller of Public Accounts (CPA) POD Team prior to making the purchase.
• Review of draft Statement of Work by the Texas Department of Information Resources (DIR), if applicable.
• Review of information security and privacy controls.
• Preparation of the solicitation document: In addition to the time needed for HHS agency preparation and approval, also consider the time required for PCS to finalize the solicitation document. PCS is responsible for ensuring the document is complete, allows for competition, and follows all applicable statutes, rules, and procedures.
• Draft procurement or RFI: In some instances, federal funding sources require draft solicitations to be posted prior to posting the final solicitation, or the program desires to first issue a Request for Information (RFI) to better study the contracting options available. If so, add additional time for the release of a draft procurement document on ESBD for comments or the issuance of the RFI and the analysis of responses.
• HUB determination: Contracts with an expected value of $100,000 or more will be assessed to determine if subcontracting opportunities are probable.
• System Contracting-Legal Services Division: Review procurement documents for all purchases of $25,000 or more. Additional time should be added if System Contracting will need to draft or prepare contract documents.
• Notification to the Legislative Budget Board (LBB): Submission of an attestation letter is required for certain contracts (expected amount of the contract meets or exceeds or may reasonably be expected to meet or exceed $10 million or $1 million or more for an emergency or non-competitive procurement, excludes enrollments under $10 million).
• Contract Advisory Team (CAT): Procurements that are expected to result in contracts with a value of $5 million or more require review by the CAT. The CAT has 30 days to review and respond to all draft solicitations. The HHS
agency must either accept the recommendation or respond to the CAT with an explanation of why the recommendation was rejected.

- Quality Assurance Team (QAT): Major information resources projects require notice to, review, and in some cases approval by, the QAT.
- DIR approval of major information resources projects.
- Office of the Attorney General (OAG) review for contracts equal to or greater than $250 million.
- Federal funding source approval for federally funded projects related to the development of automated information systems.
- Centers for Medicare and Medicaid approval is required for certain types of Medicaid contracts, such as contracts for Automated Data Processing, Fiscal Agents, Medicaid Management Information Systems (MMIMS) contracts.
- Electronic State Business Daily (ESBD): PCS must submit notice of any procurement valued over $25,000 on the ESBD website. Sole source or proprietary purchases over $25,000 must be posted for 14 days. A 30 day solicitation period is typical for most RFPs. Best practice is for RFOs to be posted for longer than 30 days. Formal IFBs usually require 14 or 21 days, depending on any applicable ESBD requirements. However, if the procurement is very complex and requires respondents to submit significant documentation or complex pricing, additional time for the solicitation period should be allowed to ensure maximum competition and reasonable time to properly price proposals.
- Screening and evaluation of responses: The time needed for screening and evaluating responses will depend on the type and complexity of the procurement. Complex RFPs may have an evaluation team, oral presentations, discussions, and best and final offers.
- Contract negotiation and formation: Timeframes will vary depending on the type and complexity of the procurement.

4.3 Needs Assessment
CMH February 2019

Identifying and defining a business need begins the contract lifecycle and provides the procurement objectives and the basis for the contract.

The needs assessment must contain sufficient detail to identify the key business requirements. By clearly defining the need at the beginning of the contract lifecycle, the following outcomes should be achieved:

- Facilitate effective prioritization of the required funding to make the purchase;
- Understand if the service can be provided by internal resources;
- Determine how these proposed goods/services fit with existing programs, systems, etc.;
- Identify type and level of service required to meet the need;
- Identify contract objective;
- Provide framework to develop the scope of work, solicitation, evaluation, and contract documents;
- Determine whether or not confidential information will be exchanged under the contract, identify the Information Owner and Designee, and assess the
information security risk level; and
- Provide necessary information to determine how performance and quality of goods or service delivery will be measured, documented and tracked.

Factors that must be considered when assessing need:
- State or federal laws, rules, or regulations;
- HHS agency or system-wide policy;
- Executive commissioner or other applicable official directive;
- The costs and benefits of the proposed contract;
- Potential ethical or conflict of interest/disclosure issues that may arise;
- Potential risks to the HHS agency or the HHS System that may result, if the need is not met;
- Level of priority or importance of the need;
- Availability of funding, staff, expertise, and other resources to meet the need;
- Cost-effectiveness of the goods and services;
- Availability of funds;
- Any legal concerns or potential issues;
- Availability of other sources, including internal resources, to meet the need; and
- Leveraging based on existing opportunities to reduce cost or resources.

4.4 Cost Estimate
CMH April 2019

POLICY

During the procurement planning phase, the HHS Agency must develop a cost estimate that will be used for the procurement. The cost estimate must be developed in good faith as it will be used not only in the selection of the appropriate procurement method, but also for compliance with statutory requirements that may be applicable to the purchase based on contract value, funding source or expenditure restrictions and prohibitions\(^v\), as well as, required internal agency approvals. The cost estimate should be documented and included in the contract management file.

A cost estimate is typically developed by using one or more of the following methods:

- **Market Research** - which may include methods such as: online research, review of industry periodicals and information obtained from professional organizations, attendance at trade shows, discussions with other customers, informal budget quote by contacting several vendors to obtain pricing information, utilizing a vendor’s advertised price list, and consultations with industry representatives.
- **Historical Cost** - estimate is developed through a historical spend analysis of the agency’s similar contracts and/or other agency purchasing data.
• **Other:**
  o Estimate developed in collaboration with subject matter experts within the agency;
  o Issuing a Request for Information (RFI) which gathers information directly from the industry about a particular type of product or service;
  o Set amount driven by the funding source, such as a grant for a specified dollar amount; and
  o Benchmarking, the comparison of a particular item, service, or process with other entities or an established industry standard.

4.5 **Statement of Work**
CMH February 2019

**POLICY**

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

It is important that the statement of work:
- Be clearly defined;
- Be logically organized and tailored to the business need
- Be contractually sound;
- Be unbiased and non-prejudiced toward respondents;
- Encourages innovative solutions to the requirements described, if appropriate; and,
- Allows for free and open competition to the maximum extent reasonably possible.

A statement of work can be performance based, a design specification, or a mixture of both.  
- Performance-based specifications focus on outcomes or results rather than processes, and the required goods and services rather than how the goods and services are provided.
- Design specifications outline exactly how the contractor must perform the service or how the goods perform.

All specifications should:
- permit competition between products of equal quality;
- include a statement regarding the qualitative nature of the purchase; and,
- identify the minimum essential characteristics and standards to which the purchase must conform if it is to satisfy the intended use.
PROCEDURES

- A contract manager should participate in the development of the statement of work.
- Primary sources for developing the statement of work are:
  - The needs assessment;
    - The previous procurement for the service;
    - Any current or prior contracts for the service and how those contracts did or did not result in the desired outcomes; and
    - Description of the service maintained by the agency (e.g., in the TAC or agency program handbook).
- Below are common statement of work provisions. Usage will depend on whether goods or services are being purchased and whether the purchase is to support individuals or the agency:
  - **Eligible population:** Define and describe the population eligible to receive services under the resulting contract and ensure it is consistent with the eligibility information in the program handbook, as applicable. Identify who will determine eligibility.
  - **Characteristics of the Service Population:** Define the characteristics of the individuals to be served under the resulting contract. The intent is to give the contractor information on the population it will be serving. For example, will individuals served be court ordered into services, receiving services voluntarily, have open abuse and neglect cases.
  - **Service authorization and referral process:** Identify how individuals will be referred for services provided by the contractor (e.g., agency, self-referral, contractor outreach) and describe the process, including any forms, through which individuals will be referred or approved for services.
  - **Deliverables or service description:** Describe the goods or service the agency is purchasing and what the contractor must deliver under the contract. Specifications must be clear and understandable to the respondents and permit competition between goods or services of equal quality.
  - **Location of work or service areas:** Describe where the work is to be performed (e.g., region, counties, cities, zip codes) and where people will meet to do the work.
  - **Period of performance:** Specify the allowable time for projects, such as start and finish time, number of hours that can be billed per week or month, and anything else that relates to scheduling.
  - **Deliverables schedule:** List and describe what is due and when, including any reports the contractor is required to submit.
  - **Minimum qualifications:** List the minimum acceptable qualifications for the service provider’s staff and organization.
  - **Professional licenses and certifications:** Describe the applicable license and certification standard.
  - **Record keeping:** Describe in detail all records the contractor and service providers are required to keep such as referral records,
individuals’ records, case files, reports, notifications, performance measure supporting documentation, billing records, personnel records, subcontractor files and agreements, licenses, certifications, qualifications, background check results, health records, or investigation records. Specify the format for these records.

- **Established standards:** Describe any regulatory, agency, or industry specific standards that need to be followed in fulfilling the contract.
- **Acceptance criteria:** Specify how the agency will determine if the product or service is acceptable.
- **Type of contract and payment schedule:** Define the payment methodology, basis for payment, and invoicing process.
- **Monitoring Activities:** Describe the strategy to be used to monitor and assess contractor performance.
- **Transition and turnover planning:** Identify any transition activities the new contractor will be required to perform in order to be ready to effectively provide services on the contract effective date. Identify any transition activities the new contractor will be required to perform at the end of its contract in order to effectively transition individuals and services to a subsequent contractor.

### 4.5.1 Writing the Statement of Work

**CMH April 2016**

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

- **Use simple descriptions:** Write so a person unfamiliar with the good or service can easily understand what the agency is buying.
- **Avoid acronyms and definitions:** Avoid acronyms and references to definitions contained in other sections of the solicitation, including a glossary.
- **State requirements once:** The statement of work should not duplicate terms and conditions or other provisions in the solicitation, contract, or terms and conditions.
- **Use non-proprietary terminology:** Requiring the use of proprietary goods or services limits competition and increases the risk of a bid challenge or allegation that the requirements are slanted to a particular contractor.
- **Write with the evaluation criteria in mind:** The statement of work must include all of the requirements that will be used to evaluate and choose a contractor. A well-written statement of work will allow the agency to differentiate between competing proposals.

HHS staff may elect to use the applicable PCS Scope of Work template available on the [PCS Forms Page](#). (See HHS-PCS.552, HHS-PCS.562 and HHS-PCS.572)

### 4.5.2 DIR Review of IT SOW

**CMH February 2019**

Before submitting an IT SOW to a vendor, the HHS System Agency must submit a completed draft SOW to DIR for review at least 30 business days before the target date for submission of the SOW to vendors for certain contracts that exceed
$50,000 to include, but not limited to:

- DBITS;
- Managed Services for IT;
- IT Security Services;
- Web Development; and
- Cloud Services.

The DIR will issue a written determination to accept or reject the submitted SOW. If rejected, the SOW is modified as directed and re-submitted.

The executed SOW must be submitted to DIR for signature or rejection. A SOW executed by HHSC or DSHS under a contract for an IT commodity item is not valid and money must not be paid to the contractor unless DIR signs the SOW. DIR will notify the purchaser of the decision and provide the signed SOW or reason(s) for rejection.

4.6 Attorney General Review of Contracts $250 Million or More

CMH February 2019

Pursuant to Texas Government Code Section 531.018 entitled Certain Contracts For Health Care Purposes; Review by Attorney General, any contract equal to or greater than $250 million in which a person provides goods or services in connection with the provision of medical or health care services, coverage or benefits entered into with HHSC, a health and human services agency or any other state agency under the jurisdiction of the commission, must be reviewed by the Office of the Attorney General (OAG) prior to entering into such contract.

At the request of the OAG, an agency described above must notify the OAG during the planning phases of the procurement so that the OAG can provide any assistance, as necessary, throughout the procurement and contracting process.

The PCS Purchaser, upon notification of a requisition to create a solicitation document for a resulting contract that will equal or exceed $250 million, shall notify the Office of Chief Counsel’s Legal Services Division at Office_of_Chief_Counsel@hhsc.state.tx.us to request a referral to the OAG for the assignment of an assistant attorney general from the Financial Litigation Division of the OAG for assistance and “880” review of a HHSC contract. The request from the purchaser should include a brief description of the contract to be procured, the estimated dollar amount of the resulting contract, and the assigned attorney from the Legal Services Division’s System Contracting Department, for the procurement.

The Office of Chief Counsel will forward a copy of the referral letter and OAG response to the PCS purchaser and the System Contracting attorney. Communications between the OAG and HHSC, including the final review of the contract document, should be facilitated by the assigned System Contracting attorney.
4.7 Contract Performance Standards and Key Measures
CMH August 2019

POLICY

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

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

Contracts must specify remedies for noncompliance and should include any incentives for exceeding standards. Liquidated damages must be tied to specific performance measurements. Performance standards will vary based on the contract and additional standards may be necessary.

Characteristics of Good Key Measures

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

Types of Performance Measures

<table>
<thead>
<tr>
<th>Types and Definitions</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Outcome and Effectiveness:</strong></td>
<td>Measurable indicator of the agency's effectiveness in serving its customers and in reaching the mission, goals, and objectives.</td>
</tr>
<tr>
<td></td>
<td>• Percentage of provider enrollment applications processed in 30 days</td>
</tr>
<tr>
<td></td>
<td>• Percentage of licensed providers inspected annually.</td>
</tr>
<tr>
<td></td>
<td>• Percentage of providers with no violations.</td>
</tr>
</tbody>
</table>
### Types and Definitions

<table>
<thead>
<tr>
<th><strong>Output:</strong> Measurable indicator of the number or volume of services an agency produces. Used to assess workload and the agency's efforts to address those demands.</th>
<th><strong>Examples</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Number of substance abuse beneficiaries in the program.</td>
<td></td>
</tr>
<tr>
<td>• Number of inspections conducted.</td>
<td></td>
</tr>
<tr>
<td>• Number of provider applications processed.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Efficiency:</strong> Measurable indicator of productivity expressed in unit costs, units of time, or other ratio-based units. Used to assess the cost-efficiency, productivity, and timeliness of agency operations, outcomes, and outputs.</th>
<th><strong>Examples</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Average cost per case.</td>
<td></td>
</tr>
<tr>
<td>• Average cost per inspection.</td>
<td></td>
</tr>
<tr>
<td>• Average time for complaint resolution.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Explanatory/Input:</strong> Indicator of factors, agency resources, or requests received that can impact an agency's performance.</th>
<th><strong>Examples</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Percentage of medical school graduates entering a primary care residency.</td>
<td></td>
</tr>
<tr>
<td>• Number of business facilities registered.</td>
<td></td>
</tr>
<tr>
<td>• Number of cases received.</td>
<td></td>
</tr>
</tbody>
</table>

### 4.8 Contractor Compensation

CMH April 2016

**POLICY**

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

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

### 4.9 Determination of Payment Type

CMH April 2016

**POLICY**

Determination of the appropriate compensation method to make payment to the contractor helps ensure the state receives the best value.

HHS agency staff must determine the most effective compensation method or primary payment type during the procurement planning stages. The payment type selected will be one that best ensures:
• Delivery of services;
• Efficiencies and effectiveness of those service; and
• The best value to the program and individuals served.

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

HHS utilizes several payment types, including:
• Cost Plus Incentive
• Fee-for-Service
• Fixed Price
• Progress
• Rate Based
• Variable Rate
• Blended Variable Rate
• Time and Material
• Contingency Fee

4.10 Determine Contract Value
CMH February 2019

POLICY

In accordance with The Guide, contract value is defined as “the estimated dollar amount that an agency may be obligated to pay pursuant to the contract and all executed and proposed amendment, extensions and renewals of the contract”.vi In other words, the contract value is the total maximum potential value of the contract as all potential renewals and state match amount, as applicable, are included.

It is imperative that a reasonable estimate of the contract value is established at the beginning of the procurement process because it drives the approval path and determines applicable statutory requirements.

Staff must not under-estimate the contract value in order to circumvent required review submissions, such as to the Contract Advisory Team (CAT).

The payment method and source of funds should not be considered in determining the maximum potential contract value. PCS procurement staff must be notified before any changes to the maximum potential contract value is approved.

4.11 Historically Underutilized Business (HUB) Determination
CMH February 2019

POLICY

Under Texas Government Code §2161.252, when issuing a new solicitation for a contract with a contract value of $100,000 or more (includes renewal periods), state agencies must determine if subcontracting opportunities are probable. If
subcontracting opportunities are probable, the agency must require a HUB Subcontracting Plan for each response received. When making a subcontracting determination, the HUB Program Office may consult with HHS agency program staff, the contract manager, and PCS purchasing staff.

4.12 Determination of Subrecipient, Recipient, or Contractor Relationship
CMH February 2019

POLICY

The determination of a subrecipient, recipient, or contractor relationship is made during the planning phase for a Request for Applications (RFA), Request for Proposals (RFP), Request for Qualifications (RFQ) or a Request for Offers (RFO). The determination process involves various stakeholders that may include: contract staff, program staff, federal funds coordinator, System Contracting, and PCS; with the final determination from the COS director or designee.

HHS agencies must comply with UGG and UGMS when determining how contract purchases of a goods or services will be carried out through the contractor or subrecipient relationship. Form PCS 438 must be completed to help stakeholders in their assessment of the standards, principles, and requirements that will govern the contractual relationship. The PCS 438 form serves as a tool to assist in the final determination of the relationship. The approved PCS 438 form is uploaded into the SCOR Contract module, Documents sub-module.

**Relationship Characteristics**

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Subrecipient or Recipient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Normally operates in a competitive environment</td>
<td>Determines who is eligible to receive program assistance</td>
</tr>
<tr>
<td>Provides similar goods and services to many different purchasers</td>
<td>Has responsibility for programmatic decision making</td>
</tr>
<tr>
<td>Provides goods and services that are ancillary to the operation of the program</td>
<td>Federal or state funds are used to carry out the program for public purpose</td>
</tr>
<tr>
<td>Provides goods and services within the normal business operations</td>
<td>Performance is measure against federal or state program objectives</td>
</tr>
<tr>
<td>Is not subject to federal or state program compliance requirements</td>
<td>Is responsible for adhering to federal or state program compliance requirements</td>
</tr>
</tbody>
</table>
### Definitions

<table>
<thead>
<tr>
<th>Federal: Definitions from the Uniform Grant Guidance (UGG)</th>
<th>State: Definitions from the Uniform Grant Management Standards (UGMS)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contract:</strong> A legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see §200.92 Subaward). <em>(2 CFR §200.22)</em></td>
<td><strong>Contract:</strong> A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Procurement contracts do not include grants and cooperative agreements covered by 31 USC 6301 et. seq. or by the Uniform Grant Management Standards. <em>(UGMS, § III. State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A, _._3)</em></td>
</tr>
<tr>
<td><strong>Contractor:</strong> An entity that receives a contract as defined in §200.22 Contract. <em>(2 CFR §200.23)</em></td>
<td><strong>Subcontractor or Vendor:</strong> A purveyor of goods or services engaged by a primary contractor to provide goods, services or both through a procurement relationship generally available to any purchaser for a stated price.” <em>(UGMS, § II. Cost Principles for State and Local Governments and Other Affected Entities, Attachment A, (B)(22))</em></td>
</tr>
<tr>
<td>Federal: Definitions from the Uniform Grant Guidance (UGG)</td>
<td>State: Definitions from the Uniform Grant Management Standards (UGMS)</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
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<td><strong>Federal award:</strong> Has the meaning, depending on the context, in either paragraph (a) or (b) of this section: (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability; or (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability. The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of §200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations. Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs). See also definitions of Federal financial assistance, grant agreement, and cooperative agreement. (2 CFR §200.38)</td>
<td><strong>Grant:</strong> An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account. (UGMS, § III. State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A, _3)</td>
</tr>
<tr>
<td><strong>Recipient:</strong> A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients. (2 CFR §200.86)</td>
<td><strong>Grantee:</strong> The entity to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.</td>
</tr>
</tbody>
</table>
Federal: Definitions from the Uniform Grant Guidance (UGG) | State: Definitions from the Uniform Grant Management Standards (UGMS)
---|---
**Subrecipient:** A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program.

A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. (2 CFR §200.93)

**Subrecipient:** A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program.

**Subgrantee:** The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

“Subgrantee” is synonymous with “subrecipient”.

(Subrecipient, Recipient, or Contractor Determination)

<table>
<thead>
<tr>
<th>Federal Award</th>
<th>State Award</th>
<th>Federal and State</th>
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<tbody>
<tr>
<td>Federal Award To HHS Agency</td>
<td>State General Revenue Funds</td>
<td>State General Revenue and Federal Award To HHS Agency</td>
</tr>
<tr>
<td>TO EITHER Subrecipient OR Contractor</td>
<td>TO EITHER Recipient OR Contractor</td>
<td>TO EITHER Subrecipient OR Contractor</td>
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</tbody>
</table>


The program area is responsible for the following steps when determining the contractor, subrecipient or recipient relationship status:
1. Coordinate with stakeholders to determine the relationship between the state and entity.
2. Coordinate the completion of form PCS 438.
3. Submit the completed subrecipient/contractor determination packet via the COS Technical Assistance (COSTA) Landing Page
• Select “Contractor or Subrecipient Determinations” from the drop-down menu.
• Complete all the required fields, and follow the prompts to upload the determination packet.
• The packet contents include:
  o the PCS 438,
  o statement of work, and
  o funding information
    ▪ If the funding is Federal or Both, include the Grant Application or Notice of Grant Award (NOGA).
    ▪ If the funding is State, type the citation of funding in the Comments field
4. After COS designates the final determination and returns the completed form PCS 438 to the program area it is uploaded into the SCOR Contract module, Documents sub-module, within 10 days from the contract begin date.

In the event that the program requests a re-determination, the program may resubmit form PCS 438 with additional supporting documentation for reconsideration within 5 business days from the date of the decision. COS will process the request for a re-evaluation within 3 business days and consult with HHS-PCS and HHS Office of Chief Counsel, as necessary.

5.0 Section: Procurement
CMH February 2019

POLICY

PCS Procurement Operations staff conduct procurement activities on behalf of the HHS System to procure goods and services to provide critical services to individuals and provide administrative support of agency operations.

5.1 CAPPSS Financials
CMH February 2019

On September 5, 2017, HHS upgraded and renamed the Health and Human Services Administration System (HHSAS) Financials, a Financial PeopleSoft system, to the Centralized Accounting and Payroll/Personnel System (CAPPSS) Financials. CAPPSS Financials established one consolidated database to improve and streamline business processes related to requisitions and procurement. Actions related to contract establishment and amendments for all contracts are initiated in CAPPSS Financials.

Before PCS can initiate procurement processing, program management must approve the request in CAPPSS and budget check the requisition.

To access CAPPSS Financials, security permissions for the user must be established through the HHS Portal.
CAPPS Resources are available on the HHS Connection Contracting and Procurement Page.

5.2 Requisition Entry into CAPPS Financials
CMH February 2019

POLICY

All HHS procurements are initiated through the submission of a requisition into CAPPS Financials (CAPPS Fin.). Responses to wizard questions assist determination of the procurement method and requirements. However, not all contracts or amendments are routed through CAPPS for approval and execution.

5.2.1 $0 Open Enrollment Client Services Contracts
CMH February 2019

Although the program area will enter a requisition request into CAPPS e-pro to initiate HHS client services contracts with no stated value where the vendor meets all required qualifications, these contracts are collaborated and routed for approval and execution within the program area, not CAPPS.

After the program area enters a requisition request into CAPPS e-pro, PCS will notify the program contact of the assigned procurement number and, if applicable, posting of the business opportunity. As responses or applications are received, staff within the program area will review the response or application for completeness and conduct screening activities to determine if the potential contractor is qualified to contract with HHS (See CMH Section 6.6, Required Screening of Potential Contractors). If qualified, the program area will coordinate with System Contracting to ensure mandatory terms and conditions are incorporated into the contract and determine whether the contractor will access confidential information, and ensure the Data Use Agreement (DUA) or approved language has been incorporated into the contract. Once finalized, the program area will route the contract for internal approval, contractor signature and execution by the HHS signature authority in accordance with the program area’s internal procedures.

Following contract execution, the program area will complete and forward a CAPPS Data Entry Request Form with the signature page of the executed contract to PCS Contract Administration at PCS_ContractAdministration@hhsc.state.tx.us to request set up of the contract in CAPPS Financials. This entry causes the contract data to migrate to SCOR. Within 10 days of the contract being set up, the contract manager must verify the accuracy of data displayed in SCOR, complete any additional data entry into SCOR and, if applicable, complete data entry into ancillary systems, and upload the contract into the SCOR Contract module, History sub-module. Once the contract manager completes data entry into SCOR and, if applicable, ancillary systems, the contract is active and will allow payments for services to be processed.
5.2.2 Revenue-Generating Contracts
CMH February 2019

POLICY

Revenue-generating contracts are binding agreements between a HHS System agency and another party that defines the terms under which HHS will receive revenue. Revenue generating contracts do not originate in nor are they routed in CAPPS Financials. HHS System agencies that have active revenue-generating contracts are responsible for entering information and uploading applicable documents into the SCOR Revenue module where general contract information, expected revenue, and receipt of revenue are tracked for LBB reporting. A contract number is auto-generated in SCOR. Staff must have the Revenue security role to enter contracts into the SCOR Revenue module. Revenue generating contracts should be entered and uploaded into the SCOR Revenue module within 30 days of execution. If any changes to the agreement occur, the program area ensures the information is updated in SCOR. More information on revenue contracts can be found in the HHS SCOR User Guide.

5.3 Procurement Methods
CMH February 2019

Texas Government Code Section 2155.144 requires HHS agencies to use procurement methods that provide best value to the agency.

5.3.1 Competitive Procurement
CMH February 2019

Procurements for goods and services must, whenever possible, be accomplished through competitive bidding. A competitive bidding procurement method is used when the requirements are clearly defined and described by detailed specifications. For a purchase made through competitive bidding, the solicitation must include the factors other than price that will be considered in determining which bid offers the best value for the State. The purchase price and whether the goods or services meet all specifications are the most important best value considerations. With the exception of printing services, competitive bidding is not required if the total contract value is $5,000 or less.
Comparison of Competitive Procurement Methods

<table>
<thead>
<tr>
<th>Method</th>
<th>Use When</th>
<th>Advantages</th>
<th>Disadvantages</th>
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</table>
| IFB    | Products or services are standardized or uniform | Simple award process  
Most important considerations for determining best value are price and whether the goods or services meet specifications | Defined specifications may be difficult to develop  
Does not encourage innovation  
Prohibits negotiation |
| RFP/RFO| Negotiation is preferred  
Vendor is expected to provide innovative ideas or solutions | Allows customized proposals to meet the same business need  
Allows negotiation  
Price and other considerations are used to determine best value | Procurement led time is much greater  
More complex evaluations |
| RFQ    | Vendor selection is dependent on the vendor’s skills and qualifications  
Price becomes a factor after vendor selection | Emphasizes the competency and experience of the vendors | Vendor selection occurs before price is negotiated  
Two step process |

5.3.2 Request for Applications
CMH February 2019

A Request for Applications (RFA) is used when a HHS System Agency awards grant funds to other entities such as other state agencies, local governments, non-profit organizations or private entities. An RFA must include the grant objective, guidelines, any limitations on spending or eligibility, the evaluation criteria and other information needed to submit an application. When issuing an RFA, as applicable, Title 2, Part 200 of the Code of Federal Regulations (2 CFR 200), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance-UGG) and the Uniform Grant Management Standards (UGMS) must be considered to the extent applicable.
5.4 Procurement Process

5.4.1 Drafting the Solicitation
CMH February 2019

Depending on the procurement method, a solicitation may be required. Drafting of the solicitation involves collaboration between the program area, PCS, Budget, IT, Legal Services, CQC and other key stakeholders. It is imperative the solicitation is written in a manner that attracts responses that meet the program area’s business need. If an RFP, the evaluation criteria are those requirements included in the solicitation document that will be used to evaluate proposals and determine the best value to the state.

Examples of solicitation templates are available in the Comptroller's Procurement Forms Library.

5.4.2 Review of the Solicitation

Compliance and Quality Control Review
CMH February 2019

All solicitations for RFPs, RFAs, RFOs, RFQs and RFIs must be submitted to the HHS Compliance and Quality Control (CQC) for review and approval prior to posting. This includes all solicitations with an evaluation criteria and tool. Evaluation tools, scored criteria and sub-criteria, and score sheets will be reviewed for accuracy, reasonableness and other factors that ensure an effective solicitation. IFBs may be subject to review by HHS CQC prior to posting if specifically requested by the Director of CQC. Bids are subject to spot checks by HHS CQC prior to award at the discretion of the Director of CQC.

Contract Advisory Team (CAT) Review
CMH September 2017

The Contract Advisory Team (CAT)\textsuperscript{viii} assists state agencies in improving contract management practices by reviewing and making recommendations on solicitation and contract documents that have an expected value of at least $5 million dollars during the full term of the contract, including renewal periods.

By statute, state agencies must comply with CAT recommendations or provide a written explanation for not complying with the recommendation.\textsuperscript{ix}

Generally, grant agreements where the recipients eligible for award are governmental entities or non-profit business entities are not subject to a CAT review. However, the CAT will review grant agreements where the recipients eligible for award are for-profit business entities. Federally funded grants do not require review by the CAT.
PROCEDURE

- PCS is the point of contact for the CAT review process and will work with the HHS agency to consult with CAT.
- PCS will work with the HHS agency to comply with CAT recommendations or provide CAT a written explanation as to why a recommendation is not applicable to the procurement under review.
- If substantial changes are made to the initial solicitation documents submitted for CAT review, PCS will resubmit the solicitation documents for CAT review (i.e., estimated value for the contract term (not including renewal periods) increase by 25 percent or more; or significant revisions/deletions/additions to an element of the solicitation.)
- PCS will post the solicitation after recipient of CAT letter.
- PCS will maintain the HHS agency’s response to the CAT recommendation within the procurement file.

Quality Assurance Team (QAT) Review– Major Information Resources Projects
CMH August 2019

In accordance with the Texas General Appropriations Act, Article IX, Section 9.02, enacted by the 85th Legislature (2017), HHS agencies must notify the QAT when it advertises a competitive bid for a major information resources project (MIRP) to include the requisition number for each solicitation advertised.

Following the 86th Legislative session (2019), Texas General Appropriations Act, Article IX, Section 9.01 was amended to add the requirement that, prior to the start of vendor negotiations, HHS must submit to QAT a draft copy of a contract for a MIRP with an initial value expected to exceed $10 million, with a final negotiated copy submitted to QAT for review upon conclusion of vendor negotiations. QAT will either provide HHS with recommendations or waive review. HHS cannot submit the final negotiated copy of the to the vendor for execution prior to receiving either the QAT’s recommendations or waiver. If QAT provides recommendations, HHS must comply with the recommendations or submit to the QAT a written explanation regarding why the recommendation is not applicable to contract under review. In addition, Section 9.01 was amended to add the requirement that a contract resulting from a solicitation issued for identical or similar goods or services for development of the same MIRP for which HHS cancelled a contract must be submitted to QAT prior to execution.

HHS must conduct a cost-benefit analysis to compare canceling or continuing any contract related to a major information resource project subject to the QAT that is more than 50 percent over budget or over schedule.

A major information resources project is any information resources technology project which is:
Specifically designated as such by the Legislature in the General Appropriations Act; or,

Identified in the HHS biennial operating plan whose development costs exceed $5 million and that:

- Requires one or more years to reach operation status;
- Involves more than one state agency; or,
- Substantially alters the work methods of HHS personnel or the delivery of services.

More information is available on the DIR Website.

**5.4.3 Solicitation Advertisement**  
CMH August 2019

Solicitations for procurements with a contract with a maximum potential contract value of more than $25,000 (include renewal periods) are posted to the Electronic State Business Daily (ESBD), the State’s online directory listing procurement opportunities for 14 calendar days or more. Major consulting services contracts must also be posted to the ESBD. Grant applications and announcements are posted at Texas.gov, the official website of the State of Texas, see the eGrants website.

**5.5 Vendor Response**  
CMH February 2019

Each response is examined to determine whether it is responsive to the solicitation or not. Only responses responsive to the solicitation may be evaluated.

If a single response to a competitive solicitation is received, PCS will review the solicitation for restrictive specifications and contact several potential respondents to ask why they elected not to submit a response. The HHS agency will decide to either proceed with the evaluation process or re-advertise with a revised solicitation.

**5.6. Respondent Evaluation**  
CMH August 2019

To select the respondent that provides best value to the State, HHS agency staff conduct an evaluation of the response in accordance with the evaluation procedure published in the solicitation.

At a minimum, an RFP evaluation team should consist of three to five scoring members who represent different subject matter areas related to the final product or service. The contract manager should ensure appropriate subject matter representation on the team, including program, contract management, finance, IT, and others as needed. The PCS purchaser serves as the evaluation team facilitator.
and is a non-scoring member. Scoring and non-scoring members of the evaluation team must be noted in the procurement file.

The PCS purchaser will ensure all evaluation team members complete any required ethics, confidentiality, and non-disclosure forms prior to reviewing or discussing any proposals. For procurements with an expected value of $1 million or more, the SAO Nepotism Disclosure Statement for Purchasing Personnel is required. The evaluation team cannot commence any discussions until each member has signed a non-disclosure statement and a preliminary assessment regarding actual or potential conflicts of interest have been conducted.

Each member of the evaluation team is provided:
- The entire solicitation to include any addenda and Q&A documents;
- A list of responses; and,
- A copy of each response determined to be responsive to the solicitation.

Each response is evaluated independently against the evaluation criteria published in the solicitation. Evaluators will record their scores for each response on the evaluation tool’s scoring matrix. Unless prohibited by statute or agency policy, evaluators will review and score the entire response, including the price component, to facilitate a comprehensive evaluation of the response.

Evaluators must not communicate with a respondent. All questions related to the response must be directed to the PCS purchaser facilitating the evaluation process who may follow up with the respondent to obtain clarification or seek assistance from a technical advisor. A respondent’s clarification must be in writing and signed by an authorized representative.

After reviewing the responses, if permitted by the solicitation, the HHS agency may provide respondents the opportunity to provide an oral presentation. Oral presentations and demonstrations must be fair to all respondents. After oral presentations or demonstrations are completed, HHS agencies may work with PCS to request a best and final offer (BAFO) from the respondents. BAFO may be requested prior to negotiation and may be used to narrow the field of competition. BAFOs are only used in the evaluation of RFPs.

After all evaluator score sheets are complete, the evaluation chair will submit them to HHS Compliance and Quality Control (CQC) to aggregate all scores and review rescoring, if applicable. The QC Financial Analysts will provide the final master score sheet to the purchaser.

The procurement director or designee must certify in writing that each response to the solicitation was assessed using the written criteria in the solicitation or established by HHS and the scoring is accurate. Any scoring changes must be documented and justified in writing. If awarded to a vendor who did not receive the highest score, written justification of the award is required. Any justification/certification must be uploaded into the SCOR, Procurement module.
6.0 Section: Contract Formation and Award

6.1 Contract Negotiations
CMH August 2019

POLICY

The outcome of contract negotiation will depend on the procurement method and the items being negotiated, but will always be guided by obtaining the best value for the state. If negotiation of the contract terms and conditions is permitted (e.g., RFO, RFPs, consulting or professional services, etc.), negotiation must not materially alter the requirements of the published solicitation. Negotiation is not permitted under an Information for Bid (IFB) unless only one qualified bid is received. For a Request for Proposal (RFP) with more than one potential contractor, negotiations may be used to further evaluate offers to limit negotiations to responses that received the highest or most satisfactory evaluations.

Negotiations may include discussions of any ambiguities or deficiencies in the business proposal, the cost proposal, service delivery strategies, and any other items. Negotiation may also be used to obtain clarifications, improvements, and revisions to the original offer. All changes or revisions to the offer must be documented in writing.

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

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

Before HHS awards a contract for a good or services, the Director of Procurement, or designee, must certify the procurement file and checklist is consistent with the model procurement file checklist created by the Comptroller of Public Accounts (CPA). The certified checklist must be uploaded into SCOR, Procurement module.

6.2 Purchase Order or Contract
CMH February 2019

When contract negotiations are complete, the terms and conditions of the agreement are documented to prevent misunderstanding or conflict and create a legal, binding, and enforceable obligation.

Purchase orders and contracts are documents used by HHS Agencies to purchase goods or services. The main difference between the two documents is their duration. While purchase orders represent single, short term, transactions, contracts are used to register the long-term agreement between the involved
parties and may also include renewal options. Although terms and conditions are typically listed in both purchase orders and contracts, terms and conditions are more specific in contracts and is used when there are a more complex set of terms associated with the purchase.

The CPA’s State of Texas Procurement and Contract Management Guide offers the following definitions for a contract and a purchase order:

- **Contract** - a legally enforceable, agreement between two or more parties.
- **Purchase Order** - a document issued by a customer to a seller, indicating types, quantities, and agreed prices for products or services the seller will provide to the customer.

For HHS procurement operations, additional guidance is provided below to distinguish the characteristics associated with two documents:

- **Transactional Purchase Order (TPO)** - is a legally enforceable agreement to purchase a good or service, established for a single procurement term not to exceed 12 months (no stated renewals). The point in time purchase (not affiliated with an existing contract) begins and ends with the delivery or completion of the purchased good or service- other than the warranty of the good or service to meet expectation. No signature document is required. Once accepted, a TPO becomes a contract. Examples of a TPO include an annual lease for a building or a one year maintenance agreement.
- **Contract** - is a legally enforceable, agreement between two or more parties that includes contract management activity and is typically established for multiple years and may include one or more renewal period. A Contract Purchase Order (CPO) is a contract.

### 6.3 Contract Terms

**CMH September 2019**

As per the State of Texas Procurement and Contract Management Guide, the essential elements to form a bidding contract are:

- **Offer** – manifestation of the willingness to enter into a bargain;
- **Acceptance** - manifestation of assent to the terms;
- **Legal purpose** – the objective is for a legal purpose;
- **Consideration** – both parties make binding promises;
- **Certainty of subject matter** – agreement on the essential terms; and,
- **Competent parties** - parties are competent and authorized to enter into a contract.

Essential provisions that must be included in every contract are:

1. Terms which address -
   - Scope of Work;
   - Financial provisions (e.g., price and payment terms);
   - Contract term and termination provisions; and,
   - Identification of the contracting parties.
2. Texas required contract clauses in accordance with Section 2262.051(d)(1) of
the Texas Government Code to be included in both solicitations and contracts. See the State of Texas Procurement and Contracting Guide, Appendix 22, Texas Required Contract Clauses.

3. Recommended contract clauses are provisions typically included in most contracts, but are not limited to the following:
   - Administrative provisions;
   - Provisions that allocate risk and specify remedies;
   - Provisions relating to the identification and safeguarding of confidential information; and,

At a minimum, a HHS contract must contain the following terms and conditions:
   - Begin and end date;
   - Description of the goods and services to be provided;
   - Data Use Agreement and Security and Privacy requirements, as applicable;
   - Payment and invoicing information;
   - Renewal periods available to the HHS agency including extension language: "Following the base term and any allowable extensions, System Agency may extend any resulting Contract for not more than one additional option period to address immediate operational or service delivery needs. If the resulting Contract does not include a defined option period, the extension is limited to one year." (does not apply to a TPO);
   - Any service level standards or agreements;
   - Points of contacts and notice provisions;
   - The process to change or amend the contract;
   - Description of the evaluation criteria of the contractor’s performance;
   - A clause that the contract is subject to cancellation by the HHS agency;
   - Specific insurance requirements, not generalized language;
   - For contracts executed on or after 9/1/2020, a clause that “The requirements of Subchapter J, Chapter 552, Government Code, (PIA) may apply to this [bid/contract as applicable] and the contractor or vendor agree that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter;
   - Termination provisions; and
   - A clause that states continuation is contingent on the availability of state or federal funding

In addition, contracts that are procured by HHS that are neither made by the CPA nor under purchasing authority delegated to the agency by or under Section 51.9335 or 73.115, Education Code, or Section 2155.131 or 2155.132, Government Code, must include in the contract file a written explanation of the decision to include or not include in the contract a provision for liquidated damages or another form of liability for damages caused by the contractor or for including any provision that limits the liability of a contractor for damages, see Government Code, Section 2261.204 and HHS Liability Provision Documentation form.
System Contracting is responsible for the development of uniform or standard contract terms and conditions applicable to specific contracted services. Many contract templates have been established. If a contract template is not available, submit a request to the assigned contract attorney.

6.4 Grant Awards
CMH April 2016

POLICY

A grant is a financial award provided by the state or federal government to an eligible grantee (subrecipient or recipient) that is not expected to be repaid. It is the policy of HHS that the HHSC federal funds manager review and approve all federal funding plans for HHS services in Texas.

The State of Texas is the prime recipient of federal funds and the subrecipient (contracted entity) is a non-federal entity that expends pass-through federal funds from the state.

HHSC is responsible for establishing business processes to coordinate and monitor the use of federal funds received by HHS agencies. This includes ensuring that HHS agencies have access to federal funds information for their programs, as well as providing technical assistance to both HHS agencies and external entities seeking federal grants.

Grantees are responsible for the administration and financial management of all funds and resources received from HHS. Grantees are to comply with and follow all applicable Federal and state laws, rules, and regulations in the administration of grant awards from Federal or state sources.

Grantees must also comply with HHS rules, policies, and procedures, including any specified terms in the contract. The executed contract between HHS and a grantee, including all attachments, exhibits, and resources referenced in the contract, govern the grant agreement between the parties.

6.4.1 Federal Uniform Grant Guidance
CMH April 2016

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

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

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

6.4.2 State Uniform Grant Management Standards
CMH April 2016

State funded grants must be administered according to the state's Uniform Grant Management Standards (UGMS) published by CPA. UGMS were established to promote efficient use of public funds through a standardized set of financial management procedures and definitions. The Comptroller of Public Accounts develops and maintains UGMS.

6.4.3 HHS Grant Technical Assistance Guide
CMH February 2019

HHS COS-Grants has published a Grant Technical Assistance Guide (GTAG) to aid grantees in managing their grant awards. The GTAG offers guidance on financial administration topics to clarify the applicable laws, rules, and regulations, including HHS policy and procedures pertaining to the administration and financial management of HHS grant awards. The GTAG can be found on the HHS external website under Doing Business with HHS/Grants Page.

6.5 Coordination and Preparation of Contract Documents
CMH August 2019

The contract manager is responsible for the coordination and preparation of the appropriate contract agreement and related documents. HHS staff must not adopt terms and conditions from another contract, even a boiler plate, without a thorough and independent review of how those terms and conditions relate to the procurement.

The contract manager will:
- Coordinate with System Contracting to ensure the best value standard, mandatory terms and conditions are incorporated into the contract;
• Coordinate with the HHS Special Counsel for Data Privacy and Security to determine whether the contractor will access confidential information, and ensure the Data Use Agreement or approved language has been incorporated into the contract;
• Coordinate with PCS to ensure:
  o necessary procurement documents including: responses, negotiations, statement of work, performance measures, and any other pertinent incorporation by reference documents, are included in the contract; and,
  o for major information technology projects with a maximum potential contract value exceeding $10 million, the proposed terms of the contract before starting negotiations and the final negotiated unsigned contract are provided to QAT for review.

The contract manager must review the draft contract for content and accuracy to include:

• **Contractor name**: The contractor name on the contract and all required forms is the complete and correct legal name of the entity;
• **Signature authority**: The individual designated to sign the contract on behalf of the contractor and the HHS agency are authorized to bind the party in contracting decisions;
• **Contract forms**: All required forms are attached to the contract, as applicable:
  o The appropriate contract terms and conditions;
  o The solicitation document;
  o The contractor’s response;
  o Any negotiated changes;
  o Required budget documents;
  o A Data Use Agreement and complete Security and Privacy Inquiry; and,
  o Other required forms (e.g., The Certification Regarding Lobbying form required for contracts, grants, loans, and cooperative agreements that utilize federal funds.)
• **Payment and invoicing information**: If there is a total dollar amount it must be correct and budgets must be calculated accurately; and
• **Effective dates**: The effective begin and end dates are specified and correct.

The contract manager ensures the contract addresses concerns or issues raised during review.

**6.5.1 Certification Regarding Lobbying**
CMH September 2017

The [Certification Regarding Lobbying](#) form is required for contracts, grants, loans, and cooperative agreements that utilize federal funds (see form title “Grants.gov Lobbying Form”). The Certification Regarding Lobbying is required once during the life of the contract. If any federal lobbying reporting becomes necessary, a [Disclosure of Lobbying Activities Form (SF-LLL)](#) should be provided by the
6.6 Required Screening for Potential Contractors
CMH April 2019

POLICY

HHS agencies must demonstrate due diligence to ensure potential contractors (inclusive of subrecipients and recipients) are eligible to do business with the State of Texas before contract award. This policy also applies to entities before an HHS agency enters a revenue generating contract. Governmental entities and institutions of higher education are excluded from HHS screening requirements.

Before contract execution, the purchaser or program area, whichever is applicable, must access and search various databases to screen a potential contractor’s eligibility to conduct business with HHS to include:

- **Legal Status** - Go to the Texas Secretary of State webpage. Enter the complete legal entity name to verify the status of the entity is in existence. If an entity is using an assumed name (or dba) to conduct business in Texas, the name must be on file with the SOS or at the local county clerk offices where an office exists or services are rendered. An entity governed by the laws of a jurisdiction other than Texas, is a “foreign entity”. The Texas Business Organizations Code (BOC) requires foreign entities transacting business in Texas to register with the Texas SOS. For more information, go to the Texas SOS Foreign or Out-of-State Entities Page. SOS registration is not required if an individual (sole proprietor), general partnership, hospital district/authority or a Texas governmental entity.

- **Texas Identification Number (TIN)** - Go to the Texas Secretary of State webpage. Enter the 11 digit TIN as the Tax ID to verify the legal entity’s Tax ID is the TIN established by the Comptroller and is the TIN entered on the contract application for receipt of payment. Staff may also see the Notification of Processed Form sent from the TINS Team. If a TIN has not been set up, request the applicant to complete an Application for TIN and return it to you. Once the Application for TIN has been completed and returned, send it to Vendor Maintenance to Vendor@hhsc.state.tx.us

- **Warrant/Payment Hold** - TINS set up is required to conduct this search. In accordance with Texas Government Code 2252.903 this check is to be completed not earlier than the 7th day before or not later than the date of contract execution.

- **Franchise Tax Account Status** - Go to the Texas Comptroller of Public Accounts Taxable Entity Search. Enter the legal entity’s complete, legal name in the “Entity Name” field. Select “View Details”. “Right to Transact Business in Texas” indicates an entity’s franchise tax account status. Verify the legal entity’s franchise tax account status is shown as “Active”. If the legal entity has forfeited its right to transact business in the state, a contract cannot be awarded until the issue is resolved. Governmental agencies are exempt from
• **Texas Debarred Vendor List**- Go to the Texas Comptroller of Public Accounts [Debarred Vendor List](#) to verify the legal entity is not listed as debarred from doing business with the state. HHS may not award a contract to a debarred vendor.

• **System for Award Management (SAM) Federal Exclusion**- Go to: [Centralized Master Bidders List - HUB Directory Search](#) to search by single entity as well as each individual owner, partner, board member and controlling persons to verify the legal entity and individuals are not excluded from contracting with the federal government. It may be necessary to also search by date of birth and social security number to verify results using the name of an individual. A contract cannot be awarded to an excluded party.

• **OIG List of Excluded Individuals and Entities - Federal Exclusions**: Go to the Office of Inspector General [Exclusions Database](#) to search by single entity as well as each individual owner, partner, board member and controlling persons to verify the legal entity and individuals are not excluded from contracting with the federal government. It may also be necessary to also search by date of birth and social security number to verify results using the name of an individual. A contract cannot be awarded to an excluded party.

• **HHSC-IG List of Excluded Individuals and Entities - State Exclusions**- Go to the Office of Inspector General [Exclusions Database](#) to search by single entity as well as each individual owner, partner, board member and controlling persons to verify the legal entity and individuals are not excluded from contracting with the state. It may be necessary to also search by date of birth and social security number to verify results using the name of an individual. A contract cannot be awarded to an excluded party.

• **Texas Legislative Prohibitions**- Go to the Texas Comptroller of Public Accounts [Divestment Statutes List](#) to verify the legal entity is not identified on any of the Divestment Statute Lists. A contract cannot be awarded to a legal entity identified on one or more of the Divestment Statute Lists.

• **Vendor Performance Tracking System (VPTS)**- Go to the Texas Comptroller of Public Accounts [Vendor Performance Report Search](#) to review the legal entity’s reported performance grades. Acceptable performance grades are A, B or C. Low performance grades (D or F) may prevent a vendor from being the "best value" in a procurement. If two or more contracts with the legal entity have been terminated by the state for unsatisfactory performance during the preceding three years, consult management before awarding a contract.

Additional screening may be required as per program rule or contract requirement, such as:

• **Criminal History Check**: If applicable, verify the owners and related parties associated with a legal entity do not have a criminal conviction which prohibits the HHS agency from contracting with the legal entity.

• **Employability Status Check**: If licensed by HHSC Regulatory Services, verify each owner or partner/board member/managing employee/controlling
person is not identified in the Nurse Aide Registry as revoked or the Employee Misconduct Registry. The check can be conducted at the Department of Aging and Disability Services Employability Status Check Search.

- **Licensure/Certification**: If the legal entity is required to be licensed or certified, verify the license/facility identification number, license/certification expiration date, and status of the license/certification (if applicable).

If the result of any of the above checks identifies an issue with the potential vendor’s eligibility, contract staff must consult program management to determine the appropriate action. HHS staff must maintain documentation to support the outcome of the required checks and applicable escalation communication in the procurement file.

### 6.7 Disclosure of Interested Parties

**CMH August 2019**

**POLICY**

As directed by Texas Government Code (TGC), Title 10, Subtitle F, Section 2252.908, disclosure of interested parties applies to a contract with a value of $1 million or more entered into on or after January 1, 2016. Open enrollment contracts, contracts with other governmental entities, contracts with publicly-traded companies, and contracts with electric or gas utilities are exempt.

As a result of the 86th legislative session, TGC, Title 10, Subtitle F, Section 2252.908 (b) was amended to apply disclosure of interested parties to a contract for services that would require a person to register as a lobbyist under Chapter 305 entered into on or after September 1, 2019.

The Texas Ethics Commission (TEC) adopted rules in the Texas Administrative Code (TAC Chapter46) to implement the law. TEC developed the Certificate of Interested Parties (Form 1295) and an online filing application, TEC Form 1295 Electronic Filing Application.

HHS agencies may not enter into a contract with a value greater than $1 million or more or award a contract that would require the successful respondent to register as a lobbyist under Texas Government Code, Chapter 305 unless the business entity submits a Certificate of Interested Parties by the time it submits the signed contract. After contract execution, PCS will forward the Form 1295 with other contract related documents to the contract manager.

HHS agencies may not amend a contract with a begin date on or after 1/1/2016 if a Form 1295 was not previously filed and the contract is being amended to increase the value of the contract to greater than $1 million or the contract would require the successful respondent to register as a lobbyist under Texas Government Code, Chapter 305. If a Form 1295 was previously filed, another filing is required if the contract is being amended to increase the value of the contract by at least $1
million. After execution of the amendment, PCS will forward the Form 1295 to the contract manager.

PROCEDURE

- Contractor files Form 1295 electronically with the TEC using the online filing application.
- Contractor prints a copy of the completed Form 1295 that includes the unique certification number from the certification of filing.
- Contractor's authorized agent signs the Form 1295.
- Contractor submits the Form 1295 with the executed contract or amendment to PCS.
- Purchaser or contract manager acknowledges receipt of the filed Form 1295 with the certification of filing, using the Commission’s filing application, not later than the 30th day after the date PCS receives the Form 1295. Go to the Texas Ethics Commission Login Page. View the Instructional Videos for Governmental Entities and State Agencies to learn how to log-in and acknowledge Form 1295.
- Contract manager uploads the Form 1295 into the SCOR Contract module, Documents sub-module.

The information reported by a contracting entity on the Certificate of Interested Parties (Form 1295) submitted in support of an HHS contract may require revision during the term of the HHS contract. If a change to the disclosure of interested parties should occur, the contractor must complete a Certificate of Interested Parties, Form 1295, to reflect the updated information. The new Form 1295 is submitted to the HHS contract manager to acknowledge receipt of the Form 1295, using the TEC online filing application, within 30 days from HHS receipt of the filed 1295, and uploaded into the SCOR Contract module, Document sub-module by the contract manager.

TEC posts the completed Form 1295 to its website within seven business days after receiving the HHS agency's submission and sends confirmation to PCS COS.

Additional information may be found on Implementation of House Bill 1295 Page on the TEC website.

6.8 Contract Award

6.8.1 Notification of Contract Award
CMH August 2019

In the following cases, HHS must provide notice of contract awards:
- ESBD--If the maximum potential contract value exceeds $25,000.00, the notice of award is posted to the ESBD. Proof of the ESBD posting is maintained in the procurement file.
- QAT - if an award of a major information resources project, notice is provided to the QAT within ten business days of award.
• Legislative Budget Board (LBB)- contracts which meet a certain threshold, unless exempt, are reported through the LBB Contracts Database:
  o Maximum potential contract value greater than $14,000.00 for construction, professional services or consulting services contracts;
  o Maximum potential contract value greater than $50,000.00 for all other contract types;
  o Maximum potential contract value greater than $100,000.00 for major information systems;
  o Maximum potential contract value greater than $1 million for non-competitive/sole source or emergency procurements; and,
  o Maximum potential contract value greater than $10 million for all other contract types.
  o Additional information is available on the LBB Website.

• HHS Website –
  o For contracts not posted to the LBB contracts database, HHS System Agencies must post each DIR SOW entered into by HHS and contracts for the purchase of goods or services from a private vendor with a maximum potential contract value greater than $0. MOU, IAC, ILA are excluded.
  o State law requires Texas state agencies to publish the purpose of each grant exceeding $25,000 awarded from state appropriations on their websites. The Comptroller’s office must post a list of links to the grant information displayed on the agencies’ websites.

• Respondents – HHS may choose to send written notice of non-selection.

6.8.2 Additional Notification to the Legislative Budget Board- Attestation Letters
CMH August 2019

Policy

HHSC is required to provide notification to the Legislative Budget Board (LBB) as required by Article IX, Section 7.12, General Appropriations Act for the 2018-2019 Biennium (Sec. 7.12) by submission of an attestation letter for certain contracts in the format required by the LBB. For purposes of Sec. 7.12, a contract is defined as a contract, grant or agreement, including a revenue generating contract, an interagency or interlocal grant or agreement, purchase order or other written expression of terms of agreement or an amendment, modification, renewal, or extension of such for the purchase or sale of goods or services that was entered into or paid for, either in whole or in part, by a state agency or institution of higher education.

An attestation letter must be provided to the LBB for a contract if the expected amount of the contract meets or exceeds or may reasonably be expected to meet or exceed either of the following thresholds:

• $10 million; or
• $1 million in the case of a contract awarded:
as a result of an emergency or following an emergency procedure allowed by statute; or
- without issuing a request for proposal, request for bid, or other similar process common to participation in the competitive bidding processes required by statute, rule, or ordinary and commonly recognized state policies and procedures. Enrollments under $10 million are excluded from the attestation requirement.

PROCEDURE
CMH August 2019

As applicable, HHS program staff must complete PCS 805, LBB Attestation Letter, and route it with the contract. A new contract may not move forward to execution without the PCS 805.

The PCS 805, LBB Attestation Letter, is a powerform and provides:
- a description of the contract;
- certification concerning the process used to award the contract; and
- certification concerning management controls.

When separate HHS divisions and agencies are responsible for procurement, contracting functions and contract management, separate certifications are required for contract award and contract management. However, when a single HHS division is responsible for procurement, contracting functions and contract management, one certification is required to satisfy the requirements of Sec. 7.12. Certification is made by provision of the DEC signature(s) and date of the attestation letter.

Contract Award Certification

The Deputy Executive Commissioner (DEC) for PCS will review the procurement process used to award the contract and, if appropriate, certify that the process used was consistent with:
- the State of Texas Procurement and Contract Management Guide; and
- all applicable statutes, rules, policies and procedures related to procurement and contracting of goods and services, including compliance with conflict of interest disclosure requirements.

If PCS did not manage the procurement, the DEC for the program area responsible for the procurement shall complete the attestation for contract award. Contract award activity for which program area is regularly responsible includes:
- provider enrollments;
- affiliation agreements;
- interagency agreements; and
- memorandums of agreement/memorandums of understanding (MOUs/MOAs).

Contract Management Certification
The DEC for the program area/or DSHS or DFPS Commissioner or his/her designee for the area responsible for contract monitoring, management, and oversight will certify the program has an effective process and adequate management controls to:

- verify vendor performance and deliverables for the contract;
- only pay for goods and services that are within the scope of the contract or procurement; and
- calculate and collect any liquidated damages associated with vendor performance.

If the responsible DEC or Commissioner is unable to make certification, they must work with the Legal Services Division to determine if the requirements of Sec 7.12 are inapplicable or if a legal justification exists for the alternative process. If a legal justification is identified, the DEC will certify the alternative process used, identify the individual(s) directing the use of that alternative process and document this in the attachment to the attestation letter.

The DEC for PCS and the program area or agency commissioner responsible for the contract will work together to provide any other information requested by the LBB.

It is the responsibility of PCS to upload the solicitation, contract and PCS 805, into the LBB Portal before the first payment under a contract will be made, but no later than 30 calendar days after the date the contract is awarded; however, for an emergency procurement, the solicitation, contract and PCS 805 must be uploaded within 48 hours of making a payment.

At least 30 days prior to extending an existing contract beyond the base term and optional extensions provided for in the contract, notice of the extension is provided by PCS on the form prescribed by the LBB and uploaded with all information and documents specified in Article IX, Section 7.12.(d) to the LBB contracts database regardless of whether the documents are otherwise required to uploaded to that database.

Failure to satisfy the notification requirements of Article IX, Sec. 7.12 could result in enhanced monitoring by the LBB, auditing by the State Auditor’s Office, required agency consultation with the Quality Assurance Team and/or Contract Advisory Team, or contract cancellation.

**6.9 Contract Execution**

CMH February 2019

A HHS contract is fully executed after acceptance by all parties. While it is HHS policy that no contract can take effect prior to its execution, in the case of grants, this is not a legal requirement.
6.10 Delegated Signature Authority
CMH August 2019

POLICY

Pursuant to Chapter 531, Texas Government Code, and Chapter 1001, Texas Health and Safety Code, the executive commissioner is responsible for all HHS agencies’ purchasing and contracting. Both Chapters 531 and 1002 authorize the executive commissioner to delegate specific powers and duties relating to contracts in order to facilitate HHS agency operations.

This policy applies to all HHS agencies’ binding and non-binding commitments reduced to writing, including but not limited to:

- Contracts
  - including when the HHS agency is the performing agency or recipient of funds (revenue generating);
  - memoranda of understanding (MOU);
  - memoranda of agreement (MOA);
  - interagency contracts;
- Grants and Grant Applications;
- Amendments (e.g., renewals, extensions, budget adjustments, etc.);
- Purchase orders not associated with a signed contract; and
- Binding and non-binding commitments which require the execution of an agreement, contract or amendment.

HHS Circular C-046, Approval and Signature Authority for HHS Agency Contracts, defines and clarifies delegation of approval and signature authority and threshold limits for HHS agency contracts.

PCS Contract Administration (CA) maintains a copy of the HHS agency delegated signature authority and related approval documentation and posts the HHS agency delegated signature authority matrices on the HHS Procurement and Contracting Page.

6.10.1 Changes to Signature Authority
CMH September 2017

To maintain a current list of names of persons with signature authority at all times, when a staff change occurs in a specific job position that has signature authority, e-mail a notice of the change to Contract Administration (CA) by the management authority over the vacated position at ContractAdministration@hhsc.state.tx.us. Notice of the change is sent as soon as possible, preferably at least 5 days before the effective date of the proposed change, and must include the:

- name and job title of the person who no longer has the job title/position;
- name and job title of the person assuming the job title/position; and
- the effective date of the change.
6.11 Electronic Signature of Contracts
CMH February 2019

DocuSign is a tool used by many program areas to obtain electronic signatures from the vendor and the HHS signature authority to execute the contract. Only individuals with signature authority will be given DocuSign accounts.

Program staff must complete PCS.515, Routing Request, for any document requiring DocuSign signature routing. The information provided on the PCS.515 will be used by PCS to create the DocuSign path for contractor signatory and HHS signatory execution. HHS signatory must comply with HHS Circular C-046, Approval and Signature Authority for HHS Agency Contracts.

To contact PCS regarding DocuSign, send an email to: PCS_DocuSign@hhsc.state.tx.us.

6.12 Ownership or Name Change
CMH August 2019

Contractors sometimes undergo ownership changes, name changes, or other changes. Sometimes, contractors seek to assign contracts or to assign payments under contracts. Most organizational changes will result in a new TIN. Examples of circumstances that result in a new TIN include, but are not limited to, sales and mergers. Name changes do not typically result in a new TIN. All changes must be permitted under the terms of the contract and reported by the contractor to the contract manager. All contract changes require a contract amendment.

In the event of any change, the contract manager should review applicable provisions of the Comptroller’s Texas Procurement and Contract Management Guide, review the terms of the contract and consult program management and System Contracting to determine the appropriate action.

A contractor name change requires a letter from the original contractor on the original contractor’s letterhead (the “required letter”) stating the circumstance of the name change, stating the original name and the new name, and stating the effective date of the change. An authorized representative of the contractor must sign and date the required letter. Upon receipt of the required letter, the contract manager may request a copy of the assumed name certificate filed with the Texas Secretary of State or a sales tax permit as proof of the name change. Name changes do not typically involve any change in the contractor’s TIN.

Because the Legal Entity name in SCOR comes directly from CAPPs through a daily file from the Comptroller, a request to HHS Vendor AP needs to be made to update the Legal Entity name in CAPPs which will then update SCOR. To request a name change in the CAPPs supplier name field, if DSHS, the contract manager will notify the Contract Management Unit of the name change; if HHSC, the contract manager will complete Comptroller Form PCR 74-157, Payee Change Request and send it to HHSC Vendor AP at: vendorap@hhsc.state.tx.us.
Form PCR 74-157 can be found on the HHS External Webpage. To use this link, a FMX User ID is required.

When completing Form PCR 74-157, please note the following additional instructions for completing Section 3:

- Item 9 – Enter the 11-digit Texas Identification Number (TIN)
- Item 10 – Do not enter the mail code (leave blank). This is only needed when it is a location change.
- Item 11 – Indicate the incorrect name that is appearing
- Item 12 – Enter the correct name you want Vendor Maintenance to change to

If a new TIN, whether or not the contractor’s name changes, the contract manager must conduct all vendor checks under the new TIN (See Section 6.6). If the new TIN is eligible to do business with the State of Texas, due to the connectivity between CAPPs and SCOR, the contract awarded to the previous TIN is amended to change the end date to coincide with the begin date of the contract established through CAPPs with the new TIN. CAPPs Financials will not allow a TIN change on an existing contract as this will break the connection between CAPPs and SCOR.

Texas Government Code, Section 2262.056 prohibits vendors from assigning the vendor’s rights under a services contract to a third party without approval by the HHS System agency. In addition, a proposal to transfer by assignment contract responsibilities for a major information resources project (MIRP) exceeding $10 million for services and involves storing, receiving, processing, transmitting, disposing of, or sensitive personal information in a foreign country requires approval by the HHS executive commissioner or other similar agency administrator or designee. Assignment of such a contract is not valid and no appropriated funds can be used for contract payments unless notice of the assignment has been provided to the Legislative Budget Board (LBB) and Quality Assurances Team (QAT) at least fourteen days prior to the date of approval to include a contract signed by the assignor or proposed assignee but not signed by HHS.
7.0 Section: Contract Management
CMH February 2019

POLICY

Once a contract is fully executed, contract management begins. The objective of contract management is to ensure the responsibilities of the HHS System Agency and the contractor are properly discharged. Effective and efficient contracting requires adherence to contract management standards, and best practices, as well as statutes, regulations, and policies.

While not HHS-specific, the State of Texas Procurement and Contract Management Guide (The Guide) published by the Texas Comptroller of Public Accounts gives an overall structure for understanding general contract management responsibilities in Texas. Contract managers should refer to the Guide for basic contracting principles expected of state agencies and their staff.

7.1 System of Contract Operation and Reporting (SCOR)
CMH August 2019

On September 5, 2017, the Health and Human Services Contract Administration and Tracking System (HCATS) was replaced by the System of Contract Operation and Reporting (SCOR) for managing all general administrative and client services contracts. The implementation of SCOR allows HHS to meet legislative mandates set out in Senate Bill 20 of the 84th Legislative session (SB 20). By implementing SCOR, HHS will operate a single system of record for the management and reporting of contract information.

Actions related to contract establishment, contract amendments, and contract termination begin in CAPPS Financials with contract details merging into SCOR in “real-time.” SCOR serves as the official electronic repository for HHS System Agency procurements and contracts. Information pertaining to contracts with an end date before 9/5/2017 is available in agency-specific instances of HCATS. Procurement documents related to contracts with a begin date before 5/1/2019 remain in CAPPS or a separate file.

Prior to gaining access to SCOR, HHS staff must complete Form PCS-HHS.122 found on the PCS Forms Page and become familiar with the SCOR User Guide at SCOR User Guide.

HHS staff request access to SCOR through the HHS Portal. HHS staff should consult their supervisor to determine the appropriate SCOR security role before submitting a request to the HHS Portal. For more information, see the SCOR User Guide at SCOR User Guide.

The SCOR Contract Manager Guide is a resource developed for contract managers to promote consistent use of SCOR and compliance to this Handbook. HHS contract managers are required to adhere to the SCOR Contract Manager Guide.
HHS program areas are required to document business processes related to data entry and document upload to SCOR as well as quality assurance activities to promote the highest degree of data integrity.

To contact the SCOR Administrator or SCOR Team, send an email to PCS_SCOR@hhsc.state.tx.us

7.2 Contract Manager Responsibilities

CMH September 2017

The contract manager is responsible for ensuring all contract requirements are satisfied, goods and services are delivered in accordance with the contract and the financial interests of the HHS System Agency are protected. The contract manager must have a thorough understanding of the all components of the solicitation and contract to ensure the contract is performed satisfactorily and the responsibilities of the HHS System Agency and contractor are properly discharged.

Responsibilities of a contract manager include:

- Being involved throughout each stage of the contract lifecycle;
- Serving as the single point of contact for agency communication with the contractor regarding all matters pertaining to the contract;
- Being well versed in the contract terms, including its purpose, scope, requirements, deliverables, and milestones to ensure the contractor is held accountable for timely performance;
- Promoting the use of best practices throughout the contract lifecycle;
- Establishing specific, time-bound, performance measures and requirements to ensure contractor accountability;
- Hosting a post award contractor conference to ensure all parties are aware of the performance requirements and administrative procedures agreed in the contract;
- Verifying completion of data entry into the SCOR Contract Detail sub-module and uploading contract documents into the SCOR Contract History or Documents sub-module within 10 days from the contract effective date;
- Maintaining thorough and up to date documentation as required in SCOR;
- Assessing level of risk and establish a contract monitoring plan;
- Monitoring and documenting the contractor’s performance and entering results into SCOR;
- Reviewing and recording deliverables status into the SCOR Deliverables sub-module;
- Verifying the accuracy of invoices and authorizing payments consistent with the contract terms;
- Consulting System Contracting to address legal concerns or issues;
- Managing, approving and documenting changes to the contract through the amendment process authorized by the terms of the contract;
- Elevating to management, Legal and PCS-Contract Oversight and Support whenever there is a dispute or deficiency with the contractor's performance, in a timely manner;
- Exercising remedies, as appropriate, when a contractor’s performance is
deficient;

- Confirming service and deliverables are complete prior to the expiration date of the contract;
- Completing contract closeout processes to include, as applicable, submission of a vendor performance report (Form 147) to PCS_VPTS@hhsc.state.tx.us; and
- Complying with record retention requirements.

The contract lifecycle offers a framework in which to plan for contract management requirements, timelines, and contingencies.
<table>
<thead>
<tr>
<th>Contract Lifecycle Phase</th>
<th>Tasks</th>
</tr>
</thead>
</table>
| **Planning** | • Ensure planning activities comply with applicable state and federal rules and regulations, HHS and agency policy, and legislative mandates  
• Conduct and document the needs assessment  
• Designate a contract manager  
• Define contract objectives  
• Identify those who need to be involved from planning to execution  
• Identify needed levels of approvals  
• Collaborate with stakeholders  
• Identify potential constraints for contracting  
• Identify potential risks based on type of service and dollar amount  
• Complete a cost estimate  
• Complete Subrecipient or Contractor determination, as applicable  
• Develop the statement of work/specifications  
• HUB determination  
• Develop performance measures  
• Consider best value factors  
• Determine contract value based on budget approval |
| **Procurement** | • Develop procurement timeline and ensure procurement requirements are met  
• Prepare solicitation document  
• Develop evaluation criteria  
• Create and finalize evaluation tool prior to posting of solicitation  
• Obtain applicable external reviews  
• Post solicitation  
• Conduct solicitation conferences, if applicable  
• Identify subject matter experts to participate in the evaluation, ensuring conflict of interest and non-disclosure statements are complete  
• Evaluate responses to solicitation |
| **Contract Formation and Award** | • Review contract and required documents  
• Ensure required screening is completed and no exclusions prohibit HHS from contracting with the vendor  
• Award contract  
  Coordinate appropriate signature based on identified signature authority  
• Announce/post Award  
• Conduct post award contractor conference, if applicable |
| **Contract Management** | • Within 10 days from the contract effective date, verify data entry within the SCOR Contract Detail sub-module, upload the executed contract into the SCOR Contract History sub-module and upload other contract documents into the |
### Contract Lifecycle Phase

<table>
<thead>
<tr>
<th>Tasks</th>
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<tbody>
<tr>
<td>SCOR Contract Documents sub-module.</td>
</tr>
<tr>
<td>• Maintain official contract record including accurate and timely SCOR data entry and document uploads</td>
</tr>
<tr>
<td>• Verify accuracy of invoices and authorize payments consistent with the contract terms and policy</td>
</tr>
<tr>
<td>• Assess risk</td>
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<tr>
<td>• Coordinate and communicate with contractor and agency staff on an ongoing basis</td>
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<tr>
<td>• Manage and document any changes to the contract according to the contract terms and policy</td>
</tr>
<tr>
<td>• Track and review deliverables, performance measures and outcomes</td>
</tr>
<tr>
<td>• Conduct contract monitoring activities to identify performance deficiencies and recommend or implement appropriate remedies (i.e. corrective action plan, sanctions, and liquidated damages) as per the contract;</td>
</tr>
<tr>
<td>• Identify and resolve disputes with the contractor timely and escalates unresolved or significant issues according to policy</td>
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<tr>
<td>• Report contract sanctions to COS</td>
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<td>• Negotiate contract renewals and amendments</td>
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<tr>
<td>• Monthly HUB reporting monitoring, when applicable</td>
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<td>• Provide technical assistance as needed</td>
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</tbody>
</table>

### Contract Termination and Closeout

<table>
<thead>
<tr>
<th>Tasks</th>
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<tbody>
<tr>
<td>• Provide official notification to the contractor of the decision to terminate the contract to include the basis for the decision to terminate the contract</td>
</tr>
<tr>
<td>• Determine any settlements and negotiate as needed for contract closeout</td>
</tr>
<tr>
<td>• Resolve any outstanding issues</td>
</tr>
<tr>
<td>• If a termination, amend the contract via CAPPS to change the end date of the contract</td>
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<tr>
<td>• Notify COS of termination action</td>
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<tr>
<td>• Complete closeout in the SCOR Close Out sub-module</td>
</tr>
<tr>
<td>• Submit PCS 147, Vendor Performance Close Tracking Form to <a href="mailto:PCS_VPTS@hhsc.state.tx.us">PCS_VPTS@hhsc.state.tx.us</a>, if applicable</td>
</tr>
<tr>
<td>• Comply with record retention requirements</td>
</tr>
</tbody>
</table>

## 7.3 Contract Management Tips and Best Practices

**CMH September 2017**

Contract management best practices are techniques that may be used to improve the contracting process.
# Contract Management Best Practices

<table>
<thead>
<tr>
<th>Topic</th>
<th>Recommendations</th>
</tr>
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<tbody>
<tr>
<td>Be Timely and Proactive</td>
<td>- Assign a contract manager early in the procurement process to actively participate throughout the contract lifecycle.</td>
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<td></td>
<td>- Update SCOR when a new contract manager is designated.</td>
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<td>- Designate a lead contact, as back up.</td>
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<td></td>
<td>- Meet internal and external deadlines and submit reports and other information as required.</td>
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<td></td>
<td>- Make mutually agreeable arrangements ahead of due dates if a deadline cannot be met.</td>
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<tr>
<td>Communicate Effectively</td>
<td>- Keep open, consistent, and clear communication with those involved in the contract, including program staff, management, and contracting partners.</td>
</tr>
<tr>
<td></td>
<td>- Work to ensure common understanding of key terminology, both internally and externally.</td>
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<tr>
<td></td>
<td>- Seek advice early on, from System Contracting, program staff, and management, before a problem worsens and become more difficult to resolve or increases risk to the agency.</td>
</tr>
<tr>
<td></td>
<td>- Document contract performance issues timely.</td>
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<tr>
<td></td>
<td>- Identify and communicate with appropriate internal and external stakeholders, including those with authority to act on behalf of the contractor.</td>
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<tr>
<td></td>
<td>- Communicate and consult with HHS agencies on contractor performance issues that may impact the entire HHS System.</td>
</tr>
<tr>
<td></td>
<td>- Determine roles and responsibilities, including knowing who has authority for decisions, who is responsible for taking actions, and who should be consulted and informed.</td>
</tr>
<tr>
<td></td>
<td>- Adhere to HHS policies that delineate levels of approval authority, including those with signature authority.</td>
</tr>
<tr>
<td>Know the Contract</td>
<td>- Understand the terms and conditions of the contract to ensure successful contract outcomes.</td>
</tr>
<tr>
<td>Understand the Impact of Decisions</td>
<td>- Use all available information, data, and reports when analyzing a potential course of action.</td>
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<tr>
<td></td>
<td>- Continually assess contractor risk, and take into consideration how potential decisions and actions can decrease, or increase, contract risks.</td>
</tr>
<tr>
<td></td>
<td>- Seek input on key decisions from subject matter experts to reduce the risk of unintended consequences, foster mutual cooperation, and promote effective contract management.</td>
</tr>
</tbody>
</table>
7.4 Contract Manager Designation
CMH February 2019

POLICY

HHS is legally required to assign appropriate personnel to each contract to perform effective contract management. A lead contact is assigned to a TPO to provide oversight of the purchase.

The HHS Agency or Division must designate which staff positions require a Certified Texas Contract Manager (CTCM). As per the Comptroller of Public Accounts, a state agency employee must be certified as a CTCM if the employee has a job title of “contract manager” or “contract administration manager” or “contract technician”; performs contract management activities as fifty percent (50%) or more of their job activities; or manages any contract in excess of $5,000,000.00.

HHS agencies must comply with the CPA requirement; however, a HHS employee must be certified as a CTCM if he or she is the assigned contract manager for any contract with a value of $1,000,000.00 or more or is the contact lead for any TPO in the amount of $1,000,000.00 or more.

Contracts which do not require management by a CTCM include:
- enrollment contracts (Texas Administrative Code 391.103), and

New HHS staff, or staff that transfer, to a contracting position designated to require a CTCM, must obtain the required certification within 18 months of hire or transfer.

HHS staff who obtain or renew a CTCM are to request their manager or their manager’s designee to enter the issue date of their certificate and CTCM number into the HHS System Contract Management Requirement Compliance Log (See CMH Section 3.5). To submit a request or report an issue with the Compliance Log, send a request to the COS Salesforce Landing Page.

7.5 Contractor Communication, Training and Technical Assistance
CMH September 2017

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

The Contractor module in SCOR contains information related to a contractor at the legal entity level. HHS staff may use this module to identify the number and types of HHS contracts, as well as, the contract managers assigned to the contractor’s contracts. In addition, HHS staff can view monitoring findings and other documents
pertaining to the contractor. This information is helpful to coordinate training or technical assistance at the legal entity level.

7.5.1 Training
CMH September 2017

Contract managers and agency staff may provide training to contractors to address program requirements, reporting requirements, changes in agency policies, or to meet state and federal requirements. Contract managers should coordinate with their agency leadership regarding curriculum, materials, presenters, training dates, and locations.

The contract manager must ensure training is adequately documented to include the following items and uploaded into the SCOR Documents sub-module:
- Date, time and location of training;
- Sign-in sheet with the name and signature of each contractor in attendance;
- Copy of the curriculum and/or materials.

7.5.2 Technical Assistance
CMH March 2018

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

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

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

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

Technical assistance should not be provided to a contractor when an open or ongoing audit is taking place.

The contract manager must ensure technical assistance is adequately documented to include the following items and uploaded into the SCOR Documents sub-module:

- The name of the contractor;
• The contract number;
• Date of technical assistance;
• Summary of technical assistance provided, and;
• Action items, if any.

7.6 Contract Oversight
CMH September 2017

POLICY

Contract managers must conduct contract oversight activities to verify the contractor is performing all contract obligations and for the HHS System Agency to be aware of and address any developing issues. Contract oversight includes planned, ongoing, periodic, or unscheduled activities that measure and ensure compliance with the terms, conditions, acquisition, service delivery, and related requirements of a contract.

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

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

7.6.1 Oversight of Grant Performance
CMH February 2019

POLICY

Contract managers who manage grant funded contracts must ensure grants are managed properly and that Federal and State dollars are spent in accordance with applicable laws and regulations. Grants should be managed according to the same contract management requirements and best practices in this handbook. However, federal and state requirements take precedence if any conflict exists between the handbook and these requirements.

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

- maintain effective control over, and accountability for all grant funds, property, and other assets;
- adequately safeguard all assets and assure that they are used solely for authorized purposes;
evaluate and monitor compliance with statutes, regulations, and the terms and conditions of the awards;
- take prompt and appropriate action when instances of noncompliance are identified; and
- take reasonable measures to safeguard protected personally identifiable information and other information designated as or considered sensitive.

In overseeing grant performance, program staff and contract managers must ensure grantees achieve goals and complete deliverables. HHS agencies oversee grant performance by conducting programmatic and fiscal monitoring. Contract managers must strive to ensure fiscal and program compliance by reviewing the results of fiscal and programmatic monitoring. Fiscal monitoring may include reviewing internal controls, indirect costs and expenditures for allowability, reconciling expenditures with service delivery, and monitoring the overall fiscal compliance of the grantee. Programmatic monitoring may include monitoring performance measures and reporting requirements.

By closely monitoring performance throughout the grant period, potential problems can be addressed to keep grantees on course. Monitoring can be done through formal methods such as reporting, on-site reviews, and desk reviews. Grant management includes:

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

### 7.7 Risk Assessment

CMH March 2018

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

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

By assessing risk and allocating monitoring resources accordingly, HHS agencies can more effectively focus limited resources on contracts that pose the highest risk to the State. A risk-based approach does not mean lower risk contracts are not
monitored; rather more complex or higher risk contracts may receive more frequent or in-depth monitoring.

This policy does not apply to transactional purchase orders (TPOs), revenue generating contracts, Memorandums of Understanding or Agreements (MOUs/MOAs) that have no monetary value, administrative contracts less than $25,000 or term contracts through the Comptroller of Public Accounts. Term contracts through the Comptroller may be identified by the following Purchase category Codes (PCC):

- A – Purchases of items from TPASS term contracts using the TPASS automated purchasing system (SmartBuy)
- C – Purchase from TPASS managed (non-automated) term contracts
- G – Purchases on the open market by TPASS
- I – Purchases of items from DIR contracts
- X – Purchase of items from TXMAS contracts

The Risk sub-module in SCOR displays the Baseline Risk Level for each contract with a completed Baseline Risk Assessment. The Baseline Risk Assessment is comprised of six indicators; three are assessed at the contractor level; three are assessed at the contract level. To enter information into the Risk sub-module, staff generate and use the Risk –Baseline Evaluation Report. The Baseline Risk Assessment is completed at a “point in time” and can be completed at any time, especially, as a part of contract monitoring.

Within sixty (60) days from the contract begin date, the contract manager or designee must generate the SCOR Risk-Baseline Evaluation report, enter the results into the SCOR Risk sub-module and upload the report into the SCOR Documents sub-module.

Risk must also be assessed on an ongoing basis in order to identify changes that may require an adjustment in the prioritization of contract oversight activities. Subsequently, within sixty (60) days from the contract amendment date to increase the contract amount or extend the contract term, the contract manager or designee must generate and review the SCOR Risk-Baseline Evaluation report to determine impact, if any, to the contract monitoring plan. The contract manager ensures the results of the SCOR Risk-Baseline Evaluation report are entered into the SCOR Risk sub-module and uploaded into the SCOR Documents sub-module.

As per the program area’s internal operations, contract managers may also be required to complete a program-specific risk assessment instrument (PRAI); this may be completed in collaboration with program staff. The PRAI should include a variety of risk factors that, in aggregate, are used to determine the overall program risk level (high, medium, or low) and assist development of a contract monitoring plan. The results of the PRAI must be entered into the SCOR Risk sub-module and the completed PRAI uploaded to the SCOR Documents sub-module. The PRAI results are utilized to determine the monitoring schedule.
An example of a PRAI is form 5896 used by State Operating Facilities staff.

7.8 Contract Monitoring
CMH April 2016

POLICY

Contract monitoring is the systematic review of a contractor’s records, business processes, deliverables, and activities to ensure compliance with the terms and conditions of the contract.

The goals of contract monitoring are to:

- protect the health and safety of those that receive services,
- ensure delivery of quality goods and services, and
- protect the financial interest of the State.

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

7.8.1 Contract Monitoring Plan
CMH March 2018

Contract managers must refer to the SCOR Baseline Risk Assessment and, if applicable, the program-specific risk assessment instrument (PRAI) in order to prioritize monitoring activities and establish a contract monitoring plan. A contract monitoring plan establishes the monitoring schedule and activities required for individual contracts. It also tracks the status and progress of monitoring requirements. Each program is expected to develop a contract monitoring plan based on risk that defines which contracts will be monitored within what timeframe (volume and frequency). If new or greater risks are identified for a contract, it may be added to the contract monitoring plan.

The contract monitoring plan must:

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

Contracts identified on a contract monitoring plan are to be monitored as per the plan. Contract monitoring plans, to include adjustments, are reviewed and approved in accordance with the program area’s internal operations and made available upon request.

A fiscal monitoring plan may also be developed by the HHSC or DSHS Fiscal Monitoring Unit for certain subrecipient or recipient contractors based on level of
risk.

Once a contract monitoring plan has been developed, it is entered into the SCOR Monitoring sub-module. The SCOR Monitoring sub-module allows contract managers to document contract monitoring activities. See the SCOR Contract Manager Guide for more information.

Examples of Contract Monitoring Plan Development Using PRAI Scores:

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

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

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

- Determine that the agency/program will monitor a given percentage (e.g. 20 percent) of the highest risk contracts during FY 2017.
- Once all PRAIs are completed, establish risk thresholds for high, medium, and low based on the actual score values.
  - If the PRAI has a possible range of values from 30 to 156, but the top 20 percent of the highest risk values actually produced were between 70 and 92, then:
    - High risk could be defined as a score of 81 or more
    - Medium risk as a score between 70 and 81.
  - High risk requires on-site monitoring of programmatic, fiscal, and administrative activities.
  - Medium risk requires either an on-site monitoring or desk review targeting particular areas of risk.
7.9 Contractor Screening
CMH April 2019

HHS agencies must demonstrate due diligence to ensure contractors (inclusive of subrecipients and recipients) remain eligible to do business with the State of Texas. This policy also applies to entities with which an HHS agency has a revenue generating contract. Governmental entities and institutions of higher education are excluded from HHS screening requirements.

Vendor compliance verification is completed prior to contract renewal or in conjunction with a scheduled contract monitoring event.

Vendor screening is completed by accessing and searching various databases. Contract managers must maintain documentation to support the outcome of the required checks and applicable escalation communication in the SCOR Documents sub-module or secondary contract management file.

Screening requirements include:

**Legal Status** - Go to the Texas Secretary of State webpage. Enter the complete legal entity name to verify the status of the entity is in existence. If an entity is using an assumed name (or dba) to conduct business in Texas, the name must be on file with the SOS or at the local county clerk offices where an office exists or services are rendered. An entity governed by the laws of a jurisdiction other than Texas, is a “foreign entity”. The Texas Business Organizations Code (BOC) requires foreign entities transacting business in Texas to register with the Texas SOS. For more information, go to the Texas SOS Foreign or Out-of-State Entities Page. SOS registration is not required if an individual (sole proprietor), general partnership, hospital district/authority or a Texas governmental entity.

**Texas Identification Number (TIN)** - Go to the Texas Secretary of State webpage. Enter the 11 digit TIN as the Tax ID to verify the legal entity’s Tax ID is the TIN established by the Comptroller and is the TIN entered on the contract application for receipt of payment. Staff may also see the Notification of Processed Form sent from the TINS Team. If a TIN has not been set up, request the applicant to complete an Application for TIN and return it to you. Once the Application for TIN has been completed and returned, send it to Vendor Maintenance to Vendor@hhsc.state.tx.us

**Warrant/Payment Hold** - TINS set up is required to conduct this search.

**Franchise Tax Account Status**- Go to Texas Comptroller of Public Accounts Taxable Entity Search. Enter the legal entity’s complete, legal name in the “Entity Name” field. Select “View Details”. “Right to Transact Business in Texas” indicates an entity's franchise tax account status. Verify the legal entity's franchise tax account status is shown as “Active”. If the legal entity has forfeited its right to transact business in the state, a contract cannot be awarded until the issue is resolved. Governmental agencies are exempt from this check.

**Texas Debarred Vendor List**- Go to the Texas Comptroller of Public Accounts Debarred Vendor List to verify the legal entity is not listed as debarred from doing business with the state. HHS may not award a contract to a debarred vendor.

**System for Award Management (SAM) Federal Exclusion**- Go to: Centralized Master Bidders List - HUB Directory Search to search by single entity as well as
each individual owner, partner, board member and controlling persons to verify the legal entity and individuals are not excluded from contracting with the federal government. It may be necessary to also search by date of birth and social security number to verify results using the name of an individual. A contract cannot be awarded to an excluded party.

**OIG List of Excluded Individuals and Entities- Federal Exclusions:** Go to the Office of Inspector General [Exclusions Database](#) to search by single entity as well as each individual owner, partner, board member and controlling persons to verify the legal entity and individuals are not excluded from contracting with the federal government. It may also be necessary to also search by date of birth and social security number to verify results using the name of an individual. A contract cannot be awarded to an excluded party.

**HHSC-IG List of Excluded Individuals and Entities- State Exclusions**- Go to the Office of Inspector General [Exclusions Database](#) to search by single entity as well as each individual owner, partner, board member and controlling persons to verify the legal entity and individuals are not excluded from contracting with the state. It may be necessary to also search by date of birth and social security number to verify results using the name of an individual. A contract cannot be awarded to an excluded party.

**Texas Legislative Prohibitions**- Go to the Texas Comptroller of Public Accounts [Divestment Statutes List](#) to verify the legal entity is not identified on any of the Divestment Statute Lists. A contract cannot be awarded to a legal entity identified on one or more of the Divestment Statute Lists.

**Vendor Performance Tracking System (VPTS)**- Go to the Texas Comptroller of Public Accounts [Vendor Performance Report Search](#) to review the legal entity’s reported performance grades. Acceptable performance grades are A, B or C. Low performance grades (D or F) may prevent a vendor from being the "best value" in a procurement. If two or more contracts with the legal entity have been terminated by the state for unsatisfactory performance during the preceding three years, consult management before awarding a contract.

Additional screening may be required as per program rule or contract requirement, such as:

**Criminal History Check:** If applicable, verify the owners and related parties associated with a legal entity do not have a criminal conviction which prohibits the HHS agency from contracting with the legal entity.

**Employability Status Check:** If licensed by HHSC Regulatory Services, verify each owner or partner/board member/managing employee/controlling person is not identified in the Nurse Aide Registry as revoked or the Employee Misconduct Registry. The check can be conducted at the Department of Aging and Disability Services [Employability Status Check Search](#).

**Licensure/Certification:** If the legal entity is required to be licensed or certified, verify the license/facility identification number, license/certification expiration date, and status of the license/certification (if applicable).

If the result of any of the above checks identifies an issue with an existing vendor, contract staff must consult program management to determine the appropriate action.
7.10 Contract Monitoring Activities
CMH February 2019

Contract monitoring activities can be conducted in a variety of ways, as long as they are objective; address contract complexity, value, and risk; and are documented the SCOR Monitoring sub-module. There are standard items each agency may review across all contracts. However, monitoring activities, questions, methods, and tools should also target specific elements or issues of concern unique to each contract. In determining what monitoring activities to conduct for a given contract, consider the following:

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

Examples of Monitoring Activities:

- **Billing validation**: A review of invoices, documents that support service delivery, and expenditure requests to determine if the rates and services are the same as allowed by the contract and to validate claims. Determine if the supporting documents such as cost reports, third party receipts for expenses, etc. adequately support the request for payment. If the contractor consistently provides incorrect invoices or the supporting document is insufficient to support the request, additional monitoring, such as an on-site visit, may be necessary.

- **On-Site visit**: Monitoring conducted at the contractor's location or service delivery site to review information and documents, personnel, physical facilities, live operations, service delivery, records, or other observable characteristics to objectively validate compliance with contract requirements. A site monitoring checklist is used to identify contract compliance requirements from which to assess the contractor’s performance. To assess compliance, it may necessary to review invoices, service delivery documents, personnel files, policies and procedures, internal controls, system reports and data, and audit files, as well as face -to-face interviews may be effective methods to use during site visits.

- **Desk review**: Monitoring conducted at an HHS agency office to review information and documents to objectively validate compliance with contract
requirements. Reviewing reports submitted by the contractor or other documents such as invoices, files, internal controls, system reports and data, audit files, financial records, personnel files, or phone interviews may be effective methods to use during desk reviews.

- **Third party monitoring:** Monitoring conducted by an independent party to validate and verify compliance with contract requirements. This monitoring may be conducted as either a site visit, desk review or both.

- **Process improvement monitoring:** An approach using statistical data and pool sampling methodology (e.g. six sigma) that measures overall quality to help determine likelihood of compliance and applies root cause analysis to negative findings to support corrective measures. This approach is also used to conduct targeted monitoring for specific requirements to ensure compliance with quality standards.

- **Team approach:** Monitoring conducted by multiple individuals either simultaneously or at different times with different scopes. A team approach may be most appropriate for extremely complex or large contracts. It may include implementation of a contract management governance framework or committee, which includes formal structures to oversee contractors' obligations and objectives and ongoing communication to promote positive performance and adherence to the contract. All representatives of the review team should be on the same page regarding any issues and corrections, sanctions, or remedies.

- **Inspection and Testing:** Inspection at the contractor’s place of business to determine whether the goods or services comply with the contract under which they were purchased. Tests may be performed on samples. When products tested fail to meet all applicable specifications, the costs of the sample used and any testing performed shall be borne by the contractor.

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

### Examples of Monitoring Types

<table>
<thead>
<tr>
<th>Monitoring Type</th>
<th>Description</th>
<th>Possible Actions</th>
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| Fiscal Monitoring     | A review of a contractor’s financial operations, which may include review of internal controls for program funds in accordance with state and federal requirements, an examination of principles, laws and regulations, and a determination of whether costs are reasonable and necessary to achieve program objectives. | - Review the terms of their contracts, accounting systems, billings to the funding agency appropriately, and submitted reports for compliance with State and Federal laws, rules and regulations;  
- Report on the grantee’s compliance with HHS contract terms and provisions in regard to fiscal |

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<table>
<thead>
<tr>
<th>Monitoring Type</th>
<th>Description</th>
<th>Possible Actions</th>
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<tr>
<td></td>
<td>(This activity involves assessment of financial statements, records, and procedures. It is similar to an audit, but with a lesser degree of detail and depth, and usually a higher degree of frequency.)</td>
<td>• Review, accept, and verify Cost Allocation Plans; • Review, reconcile, and accept Grantees’ Property Inventory Reports. • Verify that goods and services billed were actually delivered according to contract requirements</td>
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<tr>
<td>Programmatic Monitoring</td>
<td>A review of a contractor's service delivery system to determine if it is consistent with contract requirements including outputs, outcomes, quality and effectiveness of programs. In programmatic monitoring, service-related information is reviewed for compliance with process and outcome expectations as identified in standards, rules and contracts. This activity assesses the degree to which the identified need is being met and the quality of the service being provided.</td>
<td>• Review the provisions of the contract to determine desired outputs and outcomes • Review materials to determine if goods or services are being provided appropriately • Interview agency personnel, contract staff, individuals receiving services, or others to determine if the services are being performed according to the contract</td>
</tr>
<tr>
<td>Administrative Monitoring</td>
<td>A review of a contractor’s internal controls and operating processes.</td>
<td>• Review personnel files/records • Verify required training and licensure • Verifying background check requirements • Verify contractor insurance coverage • Review compliance with subcontractor requirements • Validate internal control processes, such as adherence to contractor's written policies/processes or application of information security protections • Review of complaints and resolution</td>
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</table>
### Monitoring Type

<table>
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<tr>
<th>Description</th>
<th>Possible Actions</th>
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</table>
| Activities to determine whether the delivered goods comply with the contract under which they were purchased | • Inspection of goods  
• Testing using standard industry testing methods  
• Verify the invoice is correct |

### 7.10.1 Sampling

CMH April 2017

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

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

Use of a standard sampling methodology helps eliminate the appearance of bias during the sampling selection. This methodology gives each item in the population an equal chance of being reviewed and allow for random selection of individual items. However, it may be necessary to utilize an alternative sampling methodology when there is a small population or it is needed to evaluate risk for fraud, waste, and abuse.

### 7.10.2 Grantee Single Audit Requirement

CMH September 2017

Grantees who spend $750,000 or more in federal awards or $750,000 or more in state awards during that entity’s fiscal year must have a single audit performed by an independent, third-party auditor. A copy of the single audit report is submitted to the PCS Single Audit Unit (SAU) and is uploaded into the SCOR Contractor module, Single Audit sub-module.

As established in **HHS Circular C-041, Grantee Contractors Guidelines to Re-procure Single Audit Services**, grantees required to obtain a single audit must re-procure single audit services every six years. The contract manager must verify the recipient or subrecipient is compliant with this requirement through the use of a tracking system or attestation of compliance from the contractor.

A grantee not meeting the $750,000 threshold is not required to undergo a single audit, but must provide financial statements to the Single Audit Unit and abide by UGG on cost principles and administration.
7.10.2.1 Single Audit Desk Reviews
CMH March 2018

The SAU will conduct a desk review of the single audit report. Major issues may be discovered that the various HHS divisions will need to address within the requested timeframe, and ensure the grantee takes appropriate and timely action on all single audit non-compliant issues.

PROCEDURE:

- The Single Audit Unit (SAU) reviews the single audit via a desk review and PCS uploads it to the Single Audit sub-module in SCOR.
- The SAU determines if a Funding Agency Notification of Finding Letter is applicable.
- The Funding Agency Notification is sent to COS.
- COS conducts initial research related to the Funding Agency Notification such as viewing the single audit in SCOR and performing a basic analysis of audit findings.
- COS forwards the Funding Agency Notification and relevant information to the HHS program’s point of contact and Fiscal Monitoring Unit(s) for review and approval of any contractor management responses.
- Based on information provided from the program, COS will draft a COS Response Letter documenting the results.
- Within (15) business days from the date the SAU provided notice, COS will submit the COS Response Letter to the SAU, the program (s) which contract(s) with the auditee and forward to Contract Administration for uploading into the Single Audit sub-module in SCOR.

7.10.3 Assessing Internal Controls
CMH February 2019

Internal controls are necessary to promote efficiency, reduce risk, and help ensure the reliability of financial information. A well planned and operational internal control system provides reasonable assurance that an entity can achieve goals and objectives as set in the contract terms and conditions.

Internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework” (Framework), issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Effective internal controls include the following components:

- Control environment: Sets the tone of an organization, and includes factors such as integrity, ethical values, management's philosophy, and operating style.
- Risk assessment: The identification and analysis of relevant risks to achieving objectives and determining how the risks should be managed.
- Control activities: The policies and procedures that help ensure management
directives are adhered to.

- **Information and communication**: Pertinent information must be identified, captured and communicated in a form and timeframe that enable employees to carry out responsibilities.
- **Monitoring**: Internal control systems must be monitored to assess the quality of the system's performance over time.

If a program area requires submission of a contracted agency’s Internal Controls, contract managers should assess the adequacy of the agency’s internal controls by using the five generally accepted control activities shown below with examples:

- **Segregation of duties**: Different individuals are assigned responsibility for different elements of related activities. For example, the same individual should not receive cash, deposit the cash, record the receipt of the cash, and also be responsible for purchasing goods and services and subsequently disbursing funds through the accounts payable system.

- **Proper authorization**: Transactions and activities should include the proper authorization that will help ensure that all company activities adhere to established guidelines unless responsible managers authorize another course of action. For example, a fixed rate sheet may serve as an official authorization of price for staff. A properly stated control should be in place for authorized deviations from this rate sheet.

- **Adequate documents and records**: Controls designed to ensure adequate recordkeeping include the creation of invoices and other documents that are easy to use and sufficiently informative; use of pre-numbered, consecutive documents; and timely preparation.

- **Physical control over assets and records**: Helps protect the organizations assets. These control activities may include electronic or mechanical controls, such as employee ID cards, fences, a safe, cash registers, fireproof files, and locks. They may include computer-related controls dealing with access privileges or established backup and recovery procedures. When evaluating controls for the safeguarding of assets it is important to consider the various types of assets which tend to be more vulnerable, such as, money at hand or easily accessible in the form of cash deposits, checks, loans, accounts receivable, and marketable securities (bonds, notes, shares, stocks) that an organization owns.

- **Independent checks**: Carried out by employees who did not do the work being checked. For example, a supervisor verifies the accuracy of an employee's petty cash drawer at the end of the day.
7.10.4 Monitoring DUA Compliance:
CMH March 2018

HHS Circular C-049, HHS System Office of the Chief Data Officer, established the Office of Chief Data Officer (OCDO) for managing data and creating a governance structure for data created, managed or maintained with the HHS System.

A contract manager may include an assessment of compliance with DUA requirements when monitoring contracts that contain confidential information. The table below provides an assessment that may be used in conjunction with existing monitoring processes:

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Monitoring Questions</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policies &amp; Procedures</td>
<td>• Does the contractor have written policies and procedures regarding the protection of confidential information?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Policies &amp; Procedures</td>
<td>• Do the contractor's policies and procedures include limitations on the use and disclosure of confidential information.</td>
<td>Yes No</td>
</tr>
<tr>
<td>Policies &amp; Procedures</td>
<td>• Do the contractor's policies and procedures include protocols for responding to a breach?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Training</td>
<td>• Does the contractor have a training curriculum regarding protection of confidential information?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Training</td>
<td>• Have all staff authorized to access confidential information taken the training?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Training</td>
<td>• Was the training taken in a timely manner by all authorized staff (within 30 days of hire for new staff, annually for existing workforce)?</td>
<td>Yes No</td>
</tr>
<tr>
<td>Sub-contractors</td>
<td>• Does the contractor have a signed Subcontractor Agreement Form (DUA Attachment 1) for all subcontractors?</td>
<td>Yes No</td>
</tr>
</tbody>
</table>
| Safeguards for Protection of Confident Information (Paper, Oral, & Electronic) | • Can the contractor demonstrate compliance with minimum safeguards for protecting confidential information? Consider the following, as applicable:  
  • Secured physical premises (building, locked file cabinets)  
  • Unique computer login/password for each authorized user  
  • Secured Wi-Fi (Password-Protected; Not Public)  
  • Records destruction (shredder v. trash can) | Yes No   |
| Safeguards for Protection         | • Encryption software | What encryption software |
Category | Monitoring Questions | Response
--- | --- | ---
of Confidential Information (Paper, Oral, & Electronic) | (brand/version) does the contractor use?

If non-compliance with the DUA is identified, the contractor must complete the Security and Privacy Inquiry (SPI) form and submit it to their contract manager.

### 7.10.5 Monitoring of Staff Augmentation Contractors

CMH September 2017

Monitoring of staff augmentation contractors includes documentation of their tasks and attendance as a form of verification that the agency is receiving value from the acquisition. Documentation may include the following:

- **A Contract Employee File** – documentation may include resumes, results of selection process, job description, time sheets, progress reports, feedback, evaluation notes
- **Status Report** of tasks performed or deliverables completed at scheduled intervals (monthly, bi-weekly, weekly)
- **Timesheet** or time tracking system should include a reconciliation of any approved leave or modified schedule approvals.

When monitoring results in issues or findings, contract managers must also follow-up with additional action to ensure findings are resolved.
**7.10.6 Contract Monitoring Documentation and Follow-Up Activities**

CMH September 2017

During the course of a contract monitoring, contract managers must ensure documentation of monitoring activities and results is complete, factual, thorough, and substantiates findings, such as performance deficiencies or instances of non-compliance.

Once the monitoring review is concluded, a monitoring report is developed. The final monitoring report identifies, documents and communicates to the contractor the facts, findings, and conclusions resulting from the review. The report should be clear and concise. In addition, confidential sample or employee identifying information must not appear in the report.

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

Monitoring information is entered in the SCOR Monitoring sub-module and the completed monitoring tool, or as applicable, final report, is uploaded into the SCOR Documents sub-module unless prohibited from view by state or federal rules or regulations, such as WIC Grocer contracts.

### Examples of Monitoring Follow-Up

<table>
<thead>
<tr>
<th>Nature of the Finding</th>
<th>Possible Action Response</th>
<th>Other Optional Steps</th>
</tr>
</thead>
</table>
| Contractor misunderstanding of requirements | Communication with contractor | • Technical assistance  
 • Follow-up monitoring to verify compliance  
 • Corrective action plan |
| Contractor non-compliance with requirements  
 (Non-systemic) | Formal corrective actions | • Escalate to program management and COS  
 • Require a Corrective Action Plan  
 • Impose contract remedies as specified in the contract |
<table>
<thead>
<tr>
<th>Nature of the Finding</th>
<th>Possible Action Response</th>
<th>Other Optional Steps</th>
</tr>
</thead>
</table>
| Recurring contractor non-compliance issues | Contract Remedies to resolve the problem and/or eliminate negative impact. | • Escalate to program management and COS  
• Implement enhance monitoring  
• Reduce services or dollars associated with the contract  
• Collection of improper payments/disallowances  
• Impose adverse actions:  
  o Suspension of referrals or services  
  o Suspension of payments  
  o Assess liquidated damages or penalties  
  o terminate prior to contract end date  
• Report the contractor to VPTS for unsatisfactory performance, to the appropriate licensing organization, the IG, or law enforcement |
| High Risk  
Examples: Significant harm or risk of harm to individuals  
Significant misuse of agency funds or resources  
Concerns of fraud, waste, or abuse | |

**7.11 Enhanced Contract and Performance Monitoring**  
CMH August 2019

**POLICY**

State agencies are required to establish enhanced monitoring protocols for high dollar and high risk contracts. As defined by the State of Texas Procurement and Contract Management Guide, enhanced monitoring is an increased level of monitoring, beyond the regular monitoring typically used to assess progress of the contractor toward meeting identified goals and outcomes established in response to an assessment of unsatisfactory performance.

HHS agencies consider a high dollar contract to be a contract with a value of $10 million or more, regardless of the contract begin date. Enhanced monitoring is also applicable to $0 contract agreements with expenditures that reach the $10 million threshold in actual expenditures. Memorandum of Understanding, Interagency Contracts and Interlocal Agreements are exempt from enhanced monitoring requirements.

HHS agencies may expand the scope of contracts that require enhanced monitoring beyond the $10 million threshold as defined above for their respective agency based on legislative, federal, and state requirements. For example, GAA, Article IX, Section 17.10 was amended by the 86th Legislature (2019) to allow HHS to request to exempt managed care contracts in the Medicaid and CHIP program from the requirement to seek competitive bids before extending or renewing a contract that has been in effect for more than five fiscal years as of August 31, 2019. The request
must be submitted to the LBB, outline the justification for the exemption, and state that HHS agrees to enhanced oversight of the contract upon LBB approval of the exemption and LBB determined level of enhanced oversight unless waived. If the LBB determines the requirements have not been met, corrective actions may apply.

When a contract has a value of, or expenditure reach, $10 million the contract manager must review the contract to assess the prescribed monitoring protocol to include, as applicable, the schedule of deliverables, to determine if the specified protocol is sufficient to assess ongoing performance. In addition, the contract must include a provision for enhanced monitoring in response to an assessment of unsatisfactory performance.

To implement enhanced monitoring, the contract manager must:

- develop an enhanced monitoring plan (i.e. monitoring frequency, key requirements, noted areas that will be monitored and monitoring activities). Enhanced monitoring activities may include, but are not limited to:
  - training and technical assistance (provider meetings);
  - submission of contractor reports of status or progress toward meeting identified goals and outcomes established in response to assessments of unsatisfactory performance; or
  - additional HHS reviews of the contract (desk or onsite) with documented follow-up requirements for any significant findings.

- notify the contractor in writing (letter or e-mail) that enhanced monitoring protocols have been activated for the remaining contract period unless this provision was contained within the Terms and Conditions. The notice should include:
  - Reference to Texas Government Code 2261.253(c);
  - The contract number; and
  - Components of the enhanced monitoring plan.

The contract manager is required to complete enhanced monitoring activities as per the enhanced monitoring plan and upload the enhanced monitoring plan and monitoring documents into the SCOR Contract module, Documents sub-module.

**Enhanced Monitoring Reporting and Compliance:**

- Contract managers must report any serious issues or risks identified with respect to contracts requiring enhanced monitoring to the COS Mailbox at PCS_COS@hhsc.state.tx.us; enter in the subject line “Enhanced Monitoring”.

- COS will report identified issues and risks to HHS Executive staff.

**Enhanced Monitoring Exceptions:**

An exception has been granted for $0 open ended client services contracts which are routinely monitored every 24 months, or sooner. This exception does not exclude these contracts from enhanced monitoring should additional factors emerge, such as legislative, federal and state requirements.
7.12 Review for Amendment, Renewal or Re-procurement
CMH April 2016

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

7.12.1 Contract Amendments
CMH August 2019

POLICY
A contract amendment is a formal, written change to an existing contract. Needed contract modifications can be identified by the contractor, agency program staff, or the contract manager.

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

A request to amend a contract is required if there is a change to the contract terms and conditions, such as:
- The service description or the statement of work;
- Performance measures;
- Dollar amount;
- Geographic service area;
- Contract period outside of the contract period stated in the contract; or
- An extension to the contract within the contract period stated in the contract (renewal).

HHS must not use appropriated funds to pay for an extension to an existing contract beyond the base term and optional extensions provided for in that contract unless certain conditions are met. The duration and cost of the extension is limited to not more than one additional option period as defined in the contract to address immediate operational or service delivery needs. If the contract does not contain a defined option period, the extension is limited to one year.

Before amending a contract related to a major information resources project, HHS must notify the governor, lieutenant governor, speaker presiding officers of the
house and senate standing committees with primary jurisdiction over appropriations, and the QAT if the total value of the amended contract exceeds or will exceed the initial contract value by 10% or the amendment requires the contractor to provide consultative, technical expertise, or other assistance defining project scope or deliverables. Notice to the QAT must include justification for the amendment.

A contract with expenditures exceeding $5 Million cannot be amended to exercise a renewal option until a vendor performance report has been completed and entered into the Comptroller’s Vendor Performance Tracking System (See Section 10.1, Vendor Performance Reporting, for additional information).

To amend a non-enrollment contract, a requisition is entered into CAPPS Financials. The amendment will route through the program area’s approval chain. After all approvals in the approval chain have been completed and the requisition has passed the budget check, the requisition will go to the PCS queue for processing. Some proposed amendments require PCS review, such as:

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

To amend an enrollment contract, which does not route in CAPPS Financials, the contract manager, in coordination with System Contracting, will process the amendment through execution. After execution, the contract manager will complete and submit a CAPPS Data Entry Request- Amendment form with a copy of the executed amendment’s signature page to PCS Contract Administration.

To amend a revenue-generating contract, the contract manager will update the record in SCOR. A new procurement is required if the proposed change is outside of the scope of the executed contract. Consult System Contracting as needed to determine if a change requires an amendment to the contract or a new procurement.

7.12.2 Certificate of Interested Parties (Form 1295)
CMH August 2019

HHS agencies may not amend a contract with a begin date on or after 1/1/2016 if a Form 1295 was not previously filed and the contract is being amended to increase the value of the contract to greater than $1 million. In addition, HHS agencies may not amend a contract with a begin date on or after 9/1/2019 requiring the successful respondent to register as a lobbyist under Texas Government Code Chapter 305.

If a Form 1295 was previously filed, another filing is required if the contract is being amended to increase the value of the contract by at least $1 million. (See Section 6.7, Disclosure of Interested Parties, for additional information).
After execution of the amendment, PCS will forward the Form 1295 to the contract manager. The contract manager will acknowledge receipt of the filed Form 1295 with the certification of filing, using the Commission’s filing application, not later than the 30th day after the date PCS receives the Form 1295 and upload the Form 1295 into the SCOR Contract module, Documents sub-module.

7.12.3 HUB Program Office Notification
CMH April 2017

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

When the original statement of work expands beyond the subcontracting opportunities designated by the CPA class or item codes in the original solicitation, the contractor may be required to submit a revised HUB Subcontracting Plan.

If the HUB Program Office determines additional HUB subcontracting opportunities exist, the assigned HUB Coordinator, and contract manager will work with the contractor to assist them with developing and revising an adequate HSP. Once evaluated, the HUB Program Office will submit the conclusion to the contract manager, who will ensure its inclusion in the contract file.

Additional HUB information can be found on the Historically Underutilized Business Opportunities Program Page.

7.13 Contractor Performance Issues and Contract Remedies
CMH September 2017

POLICY

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

The contract manager is responsible for investigating and addressing unacceptable contractor performance as quickly as possible.

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

PROCEDURES

The following outlines the process for remedies if a contractor fails to perform:
• **The contract manager must document and communicate performance issues and damages**

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

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

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

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

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

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

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

• **The contract manager must determine if non-performance is excusable.**

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

- **The contract manager must determine the appropriate remedy.**

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

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

  The contract manager consults with program staff, budget, Financial Services, Legal Services, COS and executive management, as necessary, to determine the appropriate remedy for the documented performance issue. Possible actions include:

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

  The contract manager must consult with Legal Services before utilizing the following contract remedies:

  o Assessment of damages;
  o Withholding of payment;
  o Bonds, corporate parent guarantees, or letters of credit;
  o Free or discounted hardware, or programming credits;
  o Stop work orders, contract suspension, or termination (See CMH Section 8.1);
  o Debarment from program.

- **If applicable, the contract manager requests COS facilitate an Adverse Action Review Committee (AARC) process**

  Community Services contracts which transitioned from DADS to the Medical and Social Services Divisions of Medicaid and Chip Services (MCS) and Access and Eligibility Services (AES) utilize the AARC process for determining the appropriate contract remedy. (See CMH Section 7.15)

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

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

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

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

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

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

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

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

- **The contract manager must report fraud, waste, and abuse to the IG.**

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

7.14 Escalation of Contract Issues
CMH April 2016

POLICY

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

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

Examples of Significant Issues for Escalation Include:

- Loss or misuse of agency funds;
- Risk the contract will exceed budget limitations or timeframes;
- Harm or risk of serious harm to individuals;
- Repeated non-compliance;
- Publicized or political concerns;
- Patterns of complaints or high-profile complaint;
- Appearance of impropriety or potential conflict of interest; and
- Suspicion of fraud, waste, or abuse.

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

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

7.15 Adverse Action Review Committee
CMH February 2019

COS facilitates Adverse Action Review Committee (AARC) processes to provide consistency in determining and imposing actions with contractors, as applicable, that fail to comply with contract terms.

The AARC process is intended for situations where judgment is involved in determining a contract action because the contract does not specifically state the
action that will occur for a specific noncompliance. In addition, this process applies when the contract does specifically state the action that will occur for a specific noncompliance but staff would like to consider an alternative approach.

HHS program areas may submit requests to the COS AARC at COS_AARC@hhsc.state.tx.us to facilitate an AARC or to request additional information.

HHS staff must copy the COS AARC mailbox on notice of adverse action to a contractor and upload the notice into the SCOR Contract module, Documents sub-module. When COS is copied on an adverse action notice, COS will enter the information into the SCOR Contract module, Adverse Action sub-module. Data entered into the Adverse Action sub-module will be reflected in the SCOR Risk-Baseline Evaluation Report.

8.0 Section: Contract Termination, Closeout, and Settlement

8.1 Contract Termination
CMH April 2016

POLICY

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

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

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

8.1.1 Types of Contract Termination
CMH September 2017

Termination – Non Adverse

- **Expiration of Contract:** Contracts that have reached the end of their term expire on their own, and there is no action is required by either party to terminate the relationship; including contracts that have available renewals that the agency does not exercise. Once a contract has expired, both parties are relieved of any further performance obligations, except as provided for in the contract. Notice of termination is not required; however closeout procedures must be followed.

- **Voluntary Termination:** The parties mutually agree to end their relationship and terminate the contract, relieving the parties of any further performance
obligations. To voluntarily terminate a contract, the parties must document the mutual agreement to end the relationship and closeout the contract. If the contractor wishes to terminate the relationship, the contact manager must require documentation from the contractor.

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

**Termination – Adverse**

- **Involuntary Termination:** Occurs when an HHS agency no longer wishes to continue with the services of the contractor or when the agency is unable to continue the contractual relationship. All involuntary terminations should include HHS agency review and approval in consultation with System Contracting.

- **Termination for Cause:** Termination for cause is the contractual right of an HHS agency to terminate, in whole or in part, the contractor's right to proceed with the contract due to the contractor's failure to deliver goods or services or to perform according to the terms and conditions of the contract. This type of termination requires a legitimate basis in the contract itself such and involves a contract breach such as:
  - Failure to deliver goods or services within the time specified in the contract;
  - Failure to perform any significant provision of the contract;
  - Failure of progress, which could jeopardize the carrying out of the contract;
  - Failure to comply with HHS agency rules, policies or procedures;
  - Submission of falsified documents, fraudulent billings, or making false statements;
  - Failure to obtain or maintain required licensure certification;
  - Inappropriate use or mismanagement of state or federal funds;
  - Performance that results in threats to individual health or safety; and
  - Continued instances of unacceptable performance.

**8.1.2 Termination Decision**

CMH April 2016

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

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

8.1.3 Notice of Termination
CMH March 2018

When a contract is terminated before its expiration date, a termination notice must be sent to the contractor. When practical, the HHS agency should give the contractor at least a 30 day notice. The HHS agency representative with authority to sign the contract may delegate the signature of the termination notice to a member of the program area’s management team.

The contract manager should send termination notices for involuntary terminations by certified mail, return receipt requested, or by courier with a signature receipt request. The contract manager or designee must upload the notice and verification of receipt of the notice in the SCOR Documents sub-module.

For voluntary termination, the notice may be sent by email or fax as appropriate.

8.1.4 Notice of Termination without Cause
CMH April 2016

If the termination is without cause or voluntary, the notice, at a minimum, must contain:
- The effective date of the termination;
- The reason for the termination;
- Any outstanding deficiencies and required corrective actions;
- Appropriate contract citations that allow the termination;
- Record retention requirements; and
- A description of the closeout procedure.

8.1.5 Notice of Termination with Cause
CMH April 2016

If the contract is being terminated for cause, the letter must be approved by the HHS agency’s management and System Contracting and must contain the following at a minimum:
- The effective date of the termination;
- A statement of all contract provisions that the contractor failed to meet;
- Any related materials demonstrating contractor failures;
- Contract citations that allow the termination;
- Notice of the contractor's rights of recourse, if any;
- Record retention requirements; and
- A description of the closeout procedure.

8.2 Contract Closeout
CMH March 2018

POLICY

Contract closeout is the final step of the contract lifecycle. Contract closeout is a simple, but detailed process. The complexity of each closeout can depend on factors such as:
- Whether the contract is a TPO;
- Whether the contract is competitively or noncompetitively procured;
- Whether it is a grant agreement with a contractor or subrecipient;
- Whether it is administrative, goods, or client services; and
- The status of the contract deliverables at the time of contract termination.

The contract closeout process may include, as applicable to the contract:
- Completion of all administrative actions;
- Assignment of a status to each deliverable in the SCOR Contract module, Deliverable sub-module;
- Settlement of all contract disputes, claims, and agreements;
- Protection of any HHS and HHS agency confidential information;
- Settlement of financial claims;
- Audit of any records or payments;
- Cancellation of any goods or services not yet received;
- Transferring of caseloads and files;
- Transferring of equipment, hardware, software and goods;
- Transferring access to any information or reporting systems;
- Disposition of equipment; and
- Vendor performance (VPTS reporting).

The contract manager should initiate closeout activities when there is a reasonable certainty the terms and conditions of the contract have been met, and the contract will not be renewed or extended. Unless otherwise stated in the contract, the closeout process must be completed and entered in the SCOR Close-Out sub-module within 90 days of the contract end date, unless extenuating circumstances exist, for example, COS has not provided notice to the contract manager the VPTS report has been uploaded to the SCOR Documents sub-module. If contract closeout is delayed for extenuating circumstances, the contract manager should enter a brief explanation of the delay into the comment field in the SCOR Close-Out sub-module.

If a contract is closed out in error, contact the SCOR Administrator at PCS_SCOR@hhsc.state.tx.us to update the closeout status in SCOR.
8.2.1 Grant Closeout
CMH April 2016

In addition to the activities identified in CMH Section 8.2, a recipient or subrecipient must submit all financial, performance, and other reports required in the grant no less than 45 days and no later than 90 days after grant expiration or termination. Final reports and invoicing requirements are subject to grant record retention and access requirements.

8.3 Contract Settlement
CMH April 2016

POLICY

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

The contact manager must:
- Negotiate a fair and prompt settlement that accurately reconciles and finalizes the work and any payments;
- Protect the interests of individuals served by an HHS agency and the HHS System;
- Verify completion of contract terms, including performance measurements;
- Identify and document any performance issues or deficiencies, and take appropriate corrective actions;
- Consult with HHS agency management; and
- Consult and obtain approval from System Contracting on reaching the settlements.

Each HHS agency must have documented settlement procedures that include required documentation and approval taking into account the type and complexity of the agency’s contracts.

These procedures must include, at a minimum:
- Determining approval authority for the settlement agreement;
- Required routing of the settlement agreement within the HHS agency for approvals;
- Obtaining contractor and HHS agency signatures on the settlement agreement; and
- Reviewing the contractor's compliance with the settlement agreement.

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

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

### 8.3.1 Provide Contractor with Settlement
CMH September 2017

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

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

Contractor notices are uploaded into the SCOR Documents sub-module.

### 9.0 Section: Contract Records
CMH September 2017

Maintaining and documenting contract management activities is critical to effectively managing contracts, making informed decisions, settling claims or disputes, and accurately accounting for and reporting contract data. On September 5, 2017, the Health and Human Services Contract Administration and Tracking System (HCATS) was replaced by the System of Contract Operation and Reporting (SCOR) for managing all general administrative and client services contracts. Prior to September 5, 2017, HCATS or other contract management systems served as the official source of record for HHS Agency contract information. As of September 5, 2017, SCOR is the official source of record for HHS contract information.
HHS contracts and agreement (including agreements such as MOUs and MOAs) must be uploaded into the SCOR Contract History sub-module. Supporting documents are uploaded to the SCOR Contract Documents sub-module. HHS staff must not upload documents with protected health information, such as copies of social security cards, copies of voided checks, etc. If a contract document has been determined by System Contracting to require protection, prohibiting the document from being viewed, staff must request assistance from the SCOR Administrator through the SCOR Mailbox at PCS_SCOR@hhsc.state.tx.us. The request must include System Contracting’s approval to protect the document. The SCOR Administrator will assign and manage password protection for the document.

Contract managers must ensure the contract information in SCOR is:
- updated throughout the lifecycle; and
- accurate and complete.

If corrections to information in SCOR are required, contract staff either make the necessary correction or submit a request to the SCOR Mailbox.

Examples of documents uploaded to SCOR include:
- Formal correspondence
- Disclosures and conflict of interest forms
- Risk assessments
- Deliverables
- Monitoring Documents
- Performance outcomes and reports
- Single Audits
- Data Use Agreement (DUA) and Information Security and Privacy Initial Inquiry (SPI) forms
- Closeout documentation
- VPTS reports (PCS Form 147)
- Legislative required documentation (i.e. Certificate of Interested Parties, Attestations, Certification Regarding Lobbying, etc.)

Supplemental contract records, including automated systems, electronic files, and paper records, may also be maintained to complete the contract record.

**9.1 Disclosure of Contract Records**
CMH April 2017

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

Additionally, most government contract documents are public and must be released upon request unless disclosure is expressly prohibited or confidential under law. All requests for public information must be handled in a timely fashion, and specific, formal protocols apply to requests made under the PublicInformationAct.
Other than routine communication with staff, external stakeholders, or members of the public, only HHS Open Records staff are permitted to respond to public information or other external requests for information. If contract staff receive an information request, refer the requestor to Openrecordsrequest@hhsc.state.tx.us. The HHS Open Records Office will coordinate the development of the response, consult Legal Services and release the response to the requestor.

9.2 Contract Records Retention
CMH April 2017

In accordance with the Texas Government Code 441.1855, all contracts and related documents must be retained by the State for a minimum of seven years after a contract is complete (expired, terminated, or otherwise closed) or the last action related to the contract (audit, litigation or other administrative review) is resolved, whichever is later. HHS requires contractors to adhere to the seven year retention provision as well. Consult with System Contracting and HHS agency records retention personnel for detailed retention requirements.

9.3 Absent Contract Records Requirements
CMH March 2018

POLICY

For purposes of this policy, “absent records” refers to a contractor’s records that are:

- lost;
- destroyed by fire, natural disaster or other cause;
- damaged beyond access or use; or
- no longer in the contractor’s possession for any other reason (e.g. stolen) before the retention period has been met.

Impact to the Contract Monitoring Plan

The contract manager is responsible to assess the impact of absent records on the scheduled monitoring of the contractor’s performance. The contract manager will determine the need for revisions to the contract monitoring plan. The original contract monitoring plan should proceed if no revisions are necessary. Necessary revisions to the contract monitoring plan require approval of the Deputy Associate Commissioner. Whether or not the monitoring plan is revised, the contract manager must fulfill the duties outlined below.

Contract Manager Duties upon Notification or Discovery of Absent Records

If a contract manager is notified of, or otherwise discovers, absent records, the contract manager must take the following actions:

(1) Obtain the following information from the contractor regarding the absent records and the circumstances giving rise to the absence:
• a summary of the circumstances causing the absence of the records;
• if deemed necessary or reasonable under the circumstances, copies of relevant photographs or other documentation;
• a listing (as specific as possible) of the absent records to include a description of the records’ contents and the time period covered by the records;
• a copy of all correspondence, including claims filed, with the contractor's insurance company, if applicable; and
• certification that the reported information is true, complete, and correct. The certification may be in any written form, including an email. The certification is not required to be notarized, but should be completed by an individual with authority to provide the certification on behalf of the contractor.

(2) Confirm the contractor followed all safeguarding, storage, and reporting requirements as set forth in the contract. To determine whether there are contractual storage or reporting requirements, the contract manager should review the contract and submit questions regarding contractual requirements that remain after contract review to HHS Legal System Contracting at SystemContracting@hhsc.state.tx.us.

If the contract manager determines the contractor has not complied with the requirements, the contract manager must consult with program management and PCS COS to determine if additional action will be taken (e.g. notification to Privacy Office, adverse action review due to breach).

(3) Send the contractor written correspondence (letter or email) instructing the contractor to provide written notification within 48 hours to both the contract manager and the HHS Privacy Office of either of the following events:

a. discovery by the contractor that records previously reported as destroyed were not destroyed, but lost, stolen, or otherwise absent in such a form that the records may still exist; or
b. the contractor has obtained copies of the absent records.

(4) Upload all submitted documentation and correspondence to the SCOR Contract module, Documents sub-module and notify the HHS Privacy Office the information has been uploaded into SCOR.

(5) Provide a copy of the incident summary and listing of absent records to the HHS Records Management Office via email at records@hhsc.state.tx.us. The HHS Records Management Office will determine if any additional reporting to the Texas State Library and Archives Commission is required and will complete such reporting if necessary.

Contract Manager Duties upon Notification Records are No Longer Absent

If a contract manager receives notification from the contractor that the contractor
has either determined that records previously thought to be absent may still exist (e.g. contractor initially thought records were destroyed, but later learned they were stolen) or that copies of the records have been located, the contract manager must:

- consult with program management to determine what additional action, if any, will be taken including, but not limited to, whether a new monitoring event should be scheduled; and
- confirm with the HHS Privacy Office that the contractor notified the HHS Privacy Office of the event.

Questions regarding privacy, confidential information, or related issues should be directed to the HHS Privacy Office at Privacy@hhsc.state.tx.us.

10.0 Section: Required Reporting

10.1 Vendor Performance Reporting
CMH August 2019

POLICY

By statute, the CPA must track and evaluate vendor performance based on information reported by state agencies.\textsuperscript{x1} State agencies must consider performance information and contractor ratings contained in the VPTS when determining whether or not to award a contract to a particular contractor. See Section 6.6, Required Screening for Potential Contractors.

HHS System Agencies are required to accurately report contractor performance to the CPA Vendor Performance Tracking System (VPTS) to allow state agencies to share vendor information and facilitate better oversight of contracts. VPTS reporting is required for all non-exempt contracts (includes TPOs):

- within 30 calendar days from the contract end date if the incurred expenditures total $25,000 or more;
- at least once per year during the term of the contract and at each key milestone in the contract if the incurred expenditures exceed $5 million dollars; and
- before amending a contract to execute a renewal period if the incurred expenditures exceed $5 million dollars.

VPTS reporting is required for non-exempt contracts and open enrollment contracts with an expenditure greater than $0 when there are significant performance issues during the term of the contract that were not resolved and resulted in termination of the contract prior to the end date stated in the contract. Grant funded procurements determined to be a contractor by the respective agency are required to comply with vendor performance reporting.

Exemptions from VPTS reporting include:
• Open enrollment contracts (exemption applies to reporting at close-out only);
• Interagency contracts;
• Interlocal agreements;
• Memorandums of Understanding;
• Sub-contracts issued by a company with which the state has a contract; and
• Grant-funded procurements determined to be a subrecipient or recipient by the respective state agency.

In assessing contractor performance, the contract manager should consider whether the contractor met the requirements in the contract and, if applicable, consult with other staff involved in the contract to determine fulfillment of the best value criteria. This information is used to score (A-F) the contractor’s performance.

Vendor performance reports must:
• Be documented on the PCS 147 form;
• Be based on solid, well documented contract management and monitoring activities;
• Include the rationale for the performance rating;
• Include supporting documents for reports of unsatisfactory performance (Grade of D or F); and
• Be submitted with any necessary documentation to the VPTS Mailbox at PCS_VPTS@hhsc.state.tx.us.

COS completes PCS 147 for significant performance issues referred to the Adverse Action Review Committee (AARC) which result in contract termination.

PCS is responsible for reviewing and submitting vendor performance information to the CPA VPTS on behalf of the HHS System. HHS agencies must establish and document a process for submitting vendor performance reports to PCS Contract Oversight and Support (COS) (through the HHSPCSVendorPerformancemailbox) within 30 days from the contract end date of all applicable contracts or when there are critical performance issues during the term of a contract. The agency process must include a description of the level of agency authority that will review and approve VPTS submissions before submittal to PCS COS.

After the vendor performance report has been entered into the VPTS, the vendor performance report (PCS 147) is uploaded by the SCOR team into the SCOR Contractor module.

For more information about vendor performance reporting see: CPA VPTS web page.

**10.2 Federal Funding Accountability and Transparency Act Reporting**
CMH February 2019

The Federal Funding Accountability and Transparency Act (FFATA) requires any person or entity receiving contract or grant funds directly from the federal government to report certain information regarding those funds through a centralized FFATA Subaward Reporting System (FSRS) at www.USASpending.gov.
In brief, FFATA requires the following:

- Subrecipient contract awards totaling $25,000 or more must be reported.
- Prime awardees (those agencies or entities receiving funds directly from the federal government) must report certain information regarding those funds.
- If certain criteria apply, the compensation of the top five executives within a subrecipient’s organization must also be reported.
- Grant information reported for American Recovery and Reinvestment Act (ARRA) grants is not required to be reported in FFATA.

FFATA and subsequent rules published on the OMB require subrecipients to have a Data Universal Numbering System (DUNS) number and to register its organization in the System for Award Management (SAM). To request a DUNS number, vendors go to the Dun & Bradstreet website. Questions regarding the DUNS number should be directed to Dun & Bradstreet.

According to federal guidelines, a FFATA form is required once a year per contractor. HHS System forms regarding FFATA Reporting include: PCS-804, FFATA Reporting Guidance Letter and Forms for Subrecipient and PCS-804a, Attachment C – FFATA Reporting Instructions/Template. These forms are available on the PCS Forms Page.

Exemptions to FFATA reporting requirements include sub-awards valued at less than $25,000 and funds received by entities with gross incomes of less than $300,000 in previous tax year. Questions regarding FFATA requirements or reporting are to be sent to the FFATA Administrator at FFATA_Admin@hhsc.state.tx.us

10.3 Reporting HHS Contracts
CMH August 2019

The following reports and notifications related to state contracting are required by the Legislature, Legislative Budget Board (LBB), Texas Comptroller of Public Accounts (TxCPA) rules, or other statutory authority.
<table>
<thead>
<tr>
<th>Type</th>
<th>Required Report and/or Notification</th>
<th>Mandated By</th>
<th>Responsible Party</th>
<th>Receiving Body</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Resources Projects</td>
<td>Major Information Resources Project Plan (over $5 million) filed</td>
<td>Gov. Code §2054.304</td>
<td>Information Technology (IT) Staff</td>
<td>Quality Assurance Team</td>
<td>Before spending 10% of allocated funds or soliciting vendors for the project</td>
</tr>
<tr>
<td>General Appropriations Act (GAA)</td>
<td>Report: Fees, Fines and Penalties Assessed and Not Collected (related to contracts)</td>
<td>Gen. App. Act, Art. IX, §7.08 (a) &amp; (b)</td>
<td>Agency Finance Divisions</td>
<td>LBB</td>
<td>Before November 1</td>
</tr>
<tr>
<td>Texas Historical Commission (THC)</td>
<td>Notification of intent to alter, renovate, or demolish any state building over 50 years of age</td>
<td>Title 9, Natural Resources Code §§191.097 &amp; 191.098</td>
<td>Agency Staff Involved with the Purchase (Facilities Staff)</td>
<td>THC</td>
<td>60 days prior to work</td>
</tr>
<tr>
<td>Texas Historical Commission (THC)</td>
<td>Repair exceeding $100,000 to a building with Historic Designation must submit a copy of all bids and evaluation of bidder qualifications</td>
<td>Gov. Code §2166.254</td>
<td>Agency Staff Involved with the Purchase (Facilities Staff)</td>
<td>THC</td>
<td>Prior to contract award</td>
</tr>
<tr>
<td>OTHER</td>
<td>Information Technology Report regarding purchases that do not use DIR contracts</td>
<td>Gov. Code §2157.068 DIR IT Commodity Purchasing Program Guidelines and instructions</td>
<td>Information Technology (IT) Staff</td>
<td>DIR</td>
<td>Semiannually, March 31 and September 30</td>
</tr>
<tr>
<td>Type</td>
<td>Required Report and/or Notification</td>
<td>Mandated By</td>
<td>Responsible Party</td>
<td>Receiving Body</td>
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<tr>
<td>OTHER</td>
<td>Planned Procurement Schedule (PPS)</td>
<td>HB 1516; Gov. Code §2054.1015</td>
<td>Information Technology (IT) Staff</td>
<td>DIR</td>
<td>Based on a rolling 12-month reporting period</td>
</tr>
<tr>
<td>Construction</td>
<td>Contract Notification– Construction Contracts exceeding $14,000</td>
<td>Gov. Code §2166.2551</td>
<td>PCS</td>
<td>LBB</td>
<td>10 days after award</td>
</tr>
<tr>
<td>Consulting Contracts</td>
<td>Major Consulting Contracts (exceeds $15,000)– Publication in ESBD before Initiating, renewing, amending or extending Contract</td>
<td>Gov. Code §2254.029</td>
<td>PCS</td>
<td>TX Secretary of State</td>
<td>Not later than 30 days prior to award</td>
</tr>
<tr>
<td>Consulting Contracts</td>
<td>Major Consulting Contracts (exceeds $15,000)– Request Finding of Fact from Office of Governor</td>
<td>Gov. Code §2254.028</td>
<td>PCS</td>
<td>Governo r's Budget &amp; Planning Office; LBB</td>
<td>Before entering the contract</td>
</tr>
<tr>
<td>Consulting Contracts</td>
<td>Major Consulting Contracts (exceeds $15,000)– Notice of Award in ESBD</td>
<td>Gov. Code §2254.030, .031 and .033</td>
<td>PCS</td>
<td>TX Secretary of State</td>
<td>Not later than 20 days after award, renewal, or extension</td>
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<td>Consulting Contracts</td>
<td>Contract Notification– Consultant Services exceeding $14000</td>
<td>Gov. Code §2254.0301</td>
<td>PCS</td>
<td>LBB</td>
<td>10 days after award</td>
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<tr>
<td>Type</td>
<td>Required Report and/or Notification</td>
<td>Mandated By</td>
<td>Responsible Party</td>
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<tr>
<td>Electronic State Business Daily (ESBD)</td>
<td>Notice Regarding Planned Procurements exceeding $25,000</td>
<td>Gov. Code §2155.083</td>
<td>PCS</td>
<td>TxCPA</td>
<td>Upon the posting, a minimum of 14 or 21 days</td>
</tr>
<tr>
<td>Electronic State Business Daily (ESBD)</td>
<td>Notice Regarding Awarded Procurements exceeding $25,000</td>
<td>Gov. Code §2155.509</td>
<td>PCS</td>
<td>TxCPA</td>
<td>Upon award</td>
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<td>Historically Underutilized Business Report</td>
<td>HUB Report</td>
<td>34 TAC §20.287</td>
<td>PCS</td>
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<td>March 15 and September 15</td>
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<tr>
<td>Major Information Resources Projects</td>
<td>Contract Notification-Major Information System Contracts exceeding $100,000</td>
<td>Gov. Code §2054.008</td>
<td>PCS</td>
<td>LBB</td>
<td>10 days after award</td>
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<tr>
<td>Major Contracts</td>
<td>Report: Major contracts of $1,000,000 or more</td>
<td>Gov. Code §2262.101</td>
<td>PCS</td>
<td>CAT</td>
<td>Prior to agency approving requisition</td>
</tr>
<tr>
<td>Major Contracts</td>
<td>ESBD Notice-Major contracts of $5,000,000 and over</td>
<td>Gov. Code §2262.101</td>
<td>PCS/Purchase</td>
<td>TxCPA</td>
<td>Depending upon the posting, a minimum of 14 or 21 days</td>
</tr>
<tr>
<td>Major Contracts</td>
<td>Report: Major contracts of $1,000,000 or more</td>
<td>Gov. Code §2261.254</td>
<td>PCS</td>
<td>Internal to Governing Body</td>
<td>TBD</td>
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<tr>
<td>Type</td>
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<td>Mandated By</td>
<td>Responsible Party</td>
<td>Receiving Body</td>
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<td>Medical / Health Services Contracts</td>
<td>Review of contract terms and conditions before a contract of $250 million or more for health care goods and services is executed by an HHS agency</td>
<td>Gov. Code §531.018</td>
<td>PCS</td>
<td>Attorney General</td>
<td>Prior to solicitation</td>
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<tr>
<td>Professional Services Contracts</td>
<td>Contract Notification - Professional, exceeding $14,000</td>
<td>Gov. Code §2254.006</td>
<td>PCS</td>
<td>LBB</td>
<td>10 days after award</td>
</tr>
<tr>
<td>Recycled, remanufactured, or environmentally sensitive commoditie s or services</td>
<td>Annual Expenditures Report for Recycled Material</td>
<td>Gov. Code § 2155.448 (c); HHSAS Support - PCS</td>
<td>PCS</td>
<td>TxCPA</td>
<td>January 1</td>
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<tr>
<td>Recycled, remanufactured, or environmentally sensitive commoditie s or services</td>
<td>First Choice waiver of Expenditures ($150 or more) for Recycled Materials Report</td>
<td>Gov. Code §2155.448 (b) &amp; (c); 1 TAC §113.135 (e)</td>
<td>PCS</td>
<td>TxCPA</td>
<td>January 1</td>
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<tr>
<td>General Appropriations Act (GAA)</td>
<td>Contract Notification - Contacts exceeding $50,000</td>
<td>Gen. App. Act, Art. IX, §7.04</td>
<td>PCS</td>
<td>LBB</td>
<td>Before the 30th day after awarding the contract</td>
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<tr>
<td>OTHER</td>
<td>Agency Web Posting of Vendor Contracts exceeding $100,000</td>
<td>Gov. Code §2054.126(d) (4)</td>
<td>PCS</td>
<td>Public Information</td>
<td>Quarterly</td>
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<td>Required Report and/or Notification</td>
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<td>Responsibl Party</td>
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<tr>
<td><strong>General Appropriations Act (GAA)</strong></td>
<td>Agency Web posting of Interagency contracts exceeding $10,000,000</td>
<td>Gen. App. Act, Art. IX, §17.13</td>
<td>PCS</td>
<td>Public Information</td>
<td>Not later than the 30th day after the end of each fiscal year</td>
</tr>
<tr>
<td><strong>Historically Underutilized Business Report</strong></td>
<td>Annual and Semi-Annual HUB Report</td>
<td>34 TAC §20.287</td>
<td>PCS</td>
<td>TxCPA</td>
<td>March 15 and Septembe r 15</td>
</tr>
<tr>
<td><strong>Historically Underutilize d Business Report</strong></td>
<td>HUB Participation/Internal Assessment/Expenditure Analysis</td>
<td>Gen App Act, Art. IX, §7.06, §7.07, and §7.08</td>
<td>PCS</td>
<td>TxCPA and LBB</td>
<td>December 1</td>
</tr>
<tr>
<td><strong>Historically Underutilize d Business Report</strong></td>
<td>Legislative Appropriation Request</td>
<td>Gov. Code §2161.127</td>
<td>PCS</td>
<td>LBB</td>
<td>2 years prior to Legislative Session</td>
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<tr>
<td><strong>OTHER</strong></td>
<td>State Use Program Exception Report</td>
<td>Human Resource Code §§ 122.0095 &amp; 122.016</td>
<td>PCS</td>
<td>TxCPA TWC</td>
<td>15th of each month</td>
</tr>
<tr>
<td><strong>OTHER</strong></td>
<td>Agency Procurement Plan</td>
<td>Gov. Code §2155.132(c) &amp; 34 TAC §20.132(b)</td>
<td>PCS</td>
<td>TxCPA</td>
<td>November 30</td>
</tr>
<tr>
<td>Type</td>
<td>Required Report and/or Notification</td>
<td>Mandated By</td>
<td>Responsible Party</td>
<td>Receiving Body</td>
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<tr>
<td>OTHER</td>
<td>Delegated Purchases Report</td>
<td>Gov. Code §2155.132(c);1 TAC §113.11 (j)</td>
<td>PCS</td>
<td>TxCPA</td>
<td>May 1 and November 1</td>
</tr>
<tr>
<td>Cyber Security Training</td>
<td>Contractor Compliance Report</td>
<td>Gov. Code §2054.5192</td>
<td>PCS</td>
<td>DIR</td>
<td></td>
</tr>
</tbody>
</table>

For more information regarding reports that state agencies must prepare and submit to other state agencies, local government entities, and the public, see: [Texas State Library and Archives Commission](https://www.tsl.org).
11.0 Section: Glossary
CMH February 2019

Absent Records: Contractor’s records were lost, destroyed by fire, natural disaster or other cause, damaged beyond access or use or are no longer in the contractor’s possession for any other reason (e.g. stolen) before the retention period has been met.

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

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

Amendment: Written addition or change to a contract.xii

Assignment: Transfer of contractual rights from one party to another party.xiii

Assignee: The person to whom an assignment is made.

Assignor: The person who makes the assignment.

Assumption: the act of taking on the property, interest, rights or obligations from a party of the original contract.

Best Value: Factors to be considered in determining lowest overall cost and value in making certain purchases. Ref. Texas Government Code, Section 2155.074 (Non-Information Technology Related) and Texas Government Code, Section 2157.003 (Information Technology Related).

Biennium (State of Texas): A period of 24 consecutive months, beginning on September 1 of each odd numbered year. Example: September 1, 2017 through August 31, 2019.xiv

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

CAPPS: Centralized Accounting and Payroll/Personnel System.

Client Services Contract: A contract to provide goods or services that is primarily for the direct benefit of an individual receiving services from an HHS agency and is for the purpose of carrying out one or more of HHS agency’s programs.

Contract Advisory Team (CAT): A team created to assist agencies in improving contract management practices. CAT reviews contracts of $5 million or more. The team consists of six members, one from each of the following offices:
• Health and Human Services Commission;
• Comptroller of Public Accounts (CPA);
• Department of Information Resources;
• Texas Facilities Commission (TFC);
• Office of the Governor; and
• Department of Public Safety.

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

**Contract Manager:** A person who is: 1) employed by a state agency, 2) has significant contract management duties for the state agency as determined by the agency in consultation with the Texas Comptroller of Public Accounts referenced in Texas Government Code, Section 2155.078, and the Commission’s rule 113.

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

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

**Contractor:** A business entity or individual that has a contract to provide goods or services to the State.

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

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

**Cost Plus Incentives Contract** – A contract in which the contractor is reimbursed at cost, but provides incentives to fulfill contract obligations at less than the maximum amount. Although many types of incentives exist, the contract typically contains both a maximum total contract budget to perform the statement of work and a formula that specifies how cost savings will be distributed. The statement of
work must be specific enough so that both parties will know when all contract goals have been met. This is another example of a performance based contract as it provides the contractor with an incentive to manage the contract effectively while achieving performance expectations at the lowest cost.

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

**Day:** A calendar day, including weekends and holidays.

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

**Emergency:** A purchase made when unforeseen and/or a sudden unexpected occurrence creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

**Enhanced Monitoring:** Increased monitoring may include, but is not limited to, frequency of site visits, provider meetings, and documentation requirements deemed necessary by the agency to assess progress of the contractor toward meeting the identified goals and outcomes established in response to assessments of unsatisfactory performance.

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

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

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

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

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

**Fiscal Year (State of Texas):** A period of 12 consecutive months, beginning September 1 of each year and ending August 31 of the next year.\(^\text{xvii}\)

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

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

**Grant:** An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to carry-out a program in accordance with rules, regulations, and guidance provided by the grantor agency. The term does not include technical assistance that provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance or direct appropriations. Also, the term does not apply include assistance, such as a fellowship or other lump sum award, for which the grantee to carry out a program in accordance with the terms of the grant is not required to account. See Uniform Grant Management Standards.\(^\text{xviii}\)

**Health and Human Services Commission:** The state agency with primary responsibility for ensuring the delivery of state health and human services in a manner that uses an integrated system to determine client eligibility; maximizes the use of federal, state, and local funds; and emphasizes coordination, flexibility, and decision-making at the local level.

**HHSAS:** The Health and Human Services Automated System is the automated financial system for the HHS System.

**Historically Underutilized Business (HUB):** A business as defined by Chapter 2161 of the Texas Government Code and 34 TAC §20.282.\(^\text{xix}\)

**Indirect Cost:** Costs incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect cost allocation is one method of cost allocation.
**Indirect Cost Allocation Plan:** Document prepared by an entity to substantiate its request for the establishment of an indirect cost rate in accordance with 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Approval of the plan indicates authorization for a contractor to recover administrative costs associated with the operation of a program through the application of an indirect cost rate approved by the contractor’s coordinating agency or included in the contractor’s independent annual audit report.

**Lease Purchase:** An installment sale which gives the lessee the right to purchase the equipment or other fixed assets an agreed upon price under certain conditions. Title passes from seller to agency if and at the time the option to purchase is exercised.\(^{xx}\)

**Lifecycle Costing:** A procurement cost analysis technique which considers operating, maintenance, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item’s function is required.\(^{xxi}\)

**Liquidated Damages:** A specified contract provision which entitles the State to demand a set monetary amount determined to be a fair and equitable repayment to the State for the loss of service due to the contractor’s failure to meet the contract requirements.\(^{xxii}\)

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

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

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

**Monitoring plan:** Documents the monitoring activities required for individual contracts and tracks the status and progress of monitoring requirements.
**Onsite Review:** A review of a contractor’s service delivery or business operations that takes place at administrative or service delivery sites and may include observation of service delivery. The scope of the review is at the discretion of the contracting agency.

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

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

**Purchase Order (PO):** A document issued by a customer to a seller, indicating types, quantities, and agreed upon prices for products or services the seller will provide to the customer. HHS agencies also apply this term to a document issued by a HHS agency to a vendor, indicating types, quantities, and agreed to prices for products or services the seller will provide to the agency, and referencing the terms and conditions that govern the purchase.

**Quality Assurance Team (QAT):** An interagency workgroup established to provide on-going oversight to reduce risk of project overruns and failures of major information resources projects that receive appropriations from the Legislature. The QAT is composed of representatives of the LBB, DIR, and CPA with SAO participating as an advisor.

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

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

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

**Risk Assessment:** The ongoing process of identifying and determining the risk that
a contract poses to the State.

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

**SCOR:** The HHS System of Contract Operation and Reporting.

**Single Audit:** An audit which includes both the entity’s financial statements and the federal awards in accordance with 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards which sets forth standards for obtaining consistency and uniformity among federal agencies for the audits of states, local governments and non-profit organizations expending federal funds.

**State Award:** The state financial assistance that recipients receive directly from state awarding agencies.

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

**Subrecipient:** A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. (2 CFR §200.93)

**Transactional Purchase Order:** is a legally enforceable agreement to purchase a good or service, established for a single procurement term not to exceed 12 months (no stated renewals). The point in time purchase (not affiliated with an existing contract) begins and ends with the delivery or completion of the purchased good or service- other than the warranty of the good or service to meet expectation.

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

**Unit Price:** The price for a good or service in accordance with the unit of measure provided in the solicitation\textsuperscript{xxv}, (e.g., price per ton, per labor hour, or per foot).

**Vendor:** A potential provider of goods or services to the State.\textsuperscript{xxvi}

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**REFERENCE**

\textsuperscript{i} HHS Circular C-031 *HHS Ethics Training For Contracting And Procurement Personnel*
TAC, Title 1, Part 15, Chapter 391 Subchapter E. Standards of Conduct for Vendors and HHSC Procurement and Contracting Personnel

State of Texas Procurement and Contract Management Guide, Solicitation Process


State of Texas Procurement and Contract Management Guide, Scope of Work


State of Texas Procurement and Contract Management Guide, Comparison of Competitive Procurement Methods

Texas Government Code, Section 2262.101

Texas Government Code, Section 2262.101(d)


State of Texas Procurement and Contract Management Guide, Quality Assurance Team
