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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 back to contract planning and development to continue the lifecycle.
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1.1 Introduction and Purpose of the Contract Management Handbook
CMH March 2018

The Health and Human Services (HHS) System delivers services to qualified Texans through a vast number of contracts with significant public funds flowing through them. 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 get needed services and the State gets what it pays for.

The State has a longstanding interest in improving procurement and contract management. Legislation led to the creation of the Contract Management Guide and the State of Texas Procurement Manual, maintained by the Comptroller of Public Accounts (CPA), and applicable to all state agencies.

Additionally, the 84th Legislature directed HHSC to develop this Contract Management Handbook (CMH) to be followed by the HHS System.

The CMH was developed by Contract Oversight and Support (COS), a division within Procurement and Contracting Services (PCS). COS regularly updates this handbook, 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. If you have questions or suggestions about the materials or requirements in this handbook and/or to report any typographical or factual errors, please complete a CMH Survey.


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 of the Contract Management Handbook
CMH April 2016

The purpose of this handbook 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.

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 the Exceptions section below.

This handbook provides a baseline for policies and procedures that support:
- Ethical standards of conduct for contracting staff;
- Contracting activities from planning to closeout;
- Contract management requirements and best practices;
- Risk assessment and internal controls;
- Application of contract remedies;
- Escalation and reporting of contract performance issues; and
- Contract termination and lessons learned.

HHS agencies can develop additional, consistent policies and procedures for implementing requirements, including requirements in this handbook, to best meet their organizational structure, program requirements, and business needs. HHS agencies may exceed this handbook's minimum requirements.

1.2.1 Applicability of this Contract Management Handbook
CMH April 2016

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;
- Purchase orders;
- 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.

1.2.2 Exceptions to Requirements in this Handbook
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.

1.2.3 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 program staff, procurement staff, and contract managers during key phases of the contract lifecycle.

<table>
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<th>HHS Agency Roles and Responsibilities</th>
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<tr>
<td><strong>Key Contract Lifecycle Function</strong></td>
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<tr>
<td><strong>Planning and Development</strong>: Identify contracting needs, objectives, strategies, timelines, deliverables, performance measures, and contract management needs.</td>
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<td><strong>Procurement</strong>: Follow procurement statutes and rules and fairly select the most qualified contractors.</td>
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<td><strong>Contract Execution</strong>: Develop contracts that provide best value, and that contain clear measures, terms, and conditions needed to hold contractors accountable for performance.</td>
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<tr>
<td><strong>Contract Management</strong>: Conduct risk assessments, develop monitoring plans, effectively monitor outcomes to enforce contract requirements and terms, file maintenance, record keeping, and payment approval.</td>
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1.2.4 Procurement and Contracting Services (PCS)
CMH April 2017

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. PCS stands ready to assist divisions and programs with every phase of contracting: from solicitation to contract closeout. See the HHS Procurement Manual for more details.

PCS conducts or assists with the following activities:
- Developing procurement and contract management/monitoring policies, procedures, forms and systems;
- Assisting with procurement related activities;
- Maintaining procurement files;
- Maintaining the master list of the Delegation of Signature and Threshold Limits for Contracts;
- Facilitating routing and approval of contracts and amendments;
- Overseeing selected HHS System contracts;
- Providing technical assistance and training to HHS staff;
- Providing support for grant management and grant applications;
- Providing Historically Underutilized Business (HUB) support;
- Providing routine and ad hoc reporting, from contracting systems, to internal and external stakeholders;
- Reporting contracts to the Legislative Budget Board (LBB) Contracts Database;
- Reporting vendor performance to the Comptroller of Public Accounts;
- Providing continuing education training for certified procurement and contract management staff; and
- Supporting contracting work groups and special initiatives.

Contract Termination and Closeout: Conclude the contract, complete the contract management file, and report on the contractor's performance.

Contract Manager in consultation with program staff, contractor, procurement staff, and if needed, System Contracting, and other subject matter experts.
1.2.5 Responsible, Accountable, Consulted, and Informed (RACI) Matrix
CMH April 2016

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.

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<th>Phase</th>
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<th>A</th>
<th>C</th>
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<tr>
<td>Planning</td>
<td>Program manager</td>
<td>Program executive</td>
<td>• Contract manager</td>
<td>• System Contracting *</td>
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<td></td>
<td></td>
<td></td>
<td>• Contract Administration</td>
<td>• Information Technology*</td>
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<td>• Procurement staff</td>
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<td>• Information Technology</td>
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<td>Contract</td>
<td>Contract manager</td>
<td>Program executive</td>
<td>• Program manager</td>
<td>• HHS Ethics Office*</td>
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<td>Development</td>
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<td>• Contract Administration</td>
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<td>• Information Technology</td>
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1.3 Ethics and Standards of Conduct
CMH April 2016

All HHS System 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. 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.

1.3.1 HHS Ethics Office
CMH April 2016

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 the contract.

Ethics questions may be submitted to: Ethics_in_Action@hhsc.state.tx.us
1.3.2 State Employee Conflicts of Interest
CMH September 2017

POLICY

HHS prohibits all HHS staff from soliciting, accepting, or agreeing to accept anything, regardless of value, from any actual or potential vendor. State law prohibits state employees from accepting a benefit from a person the employee knows, or should know, if subject to the employee’s agency’s regulation, inspection, or investigation.ii For purposes of this state law, all HHS contractors and potential contractors are subject to HHS’ regulation, inspection, and investigation.

The solicitation or acceptance of a benefit from a person or entity that a state employee knows is interested in, or may become interested in, a contract, purchase, or payment, is also prohibited.

As required by state law, state employees are prohibited 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 entityiii.

HHS agencies may have stricter conflict of interest policies and procedures that contract managers must abide by.


All HHS System employees are expected to be familiar with and abide by these rules of conduct.

1.3.3 Ethics for Agency Staff Involved in Contracting
CMH April 2017

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\(^1\), 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.

### 1.3.4 Nondisclosure and Conflict of Interest Certification
CMH September 2017

In addition to the sections above, HHS employees and 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.

---

\(^1\) In Texas, a government employee's immediate family is that employee's:

1. Parents
2. Children
3. Grandparents
4. Grandchildren
5. Brothers and Sisters
6. Great Grandparents
7. Great Grandchildren
8. Aunts and Uncles
9. Nieces and Nephews
10. Spouse
11. Parents-in-Law
Interest Certification (Form HHS-PCS 122):
 o by the 5\textsuperscript{th} day after the date of being assigned to manage any contract; and
 o 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 is retained in the employee's personnel file. To request a report of staff who have completed Form HHS-PCS.122, submit a 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:

- Employee updates and submits a revised Form HHS-PCS.122 to management.
- Management reviews the revised form to determine if a contract re-assignment is necessary or an escalation to the HHS Ethics office is merited.
- The resulting actions are documented on the Form HHS-PCS.122 in the Supervisor/Designee Review section.

1.3.5 Ethics Training Requirements for Contracting and Procurement Staff
CMH April 2017

All Contracting Staff must complete the HHS Ethics Training for Contracting and Procurement Personnel computer-based training (HHS Ethics CBT) on an annual basis. The Ethics CBT is available online via System Training Solutions, which is accessed via the HHS Portal. In addition to Contracting Staff, the following HHS employees must also take the annual HHS Ethics CBT:

- Employees with procurement and contract approval authority, including executive management, financial and legal staff; and
- Employees with discretion to select services or providers for eligible Texans (e.g., caseworkers).

New employees with contract or procurement responsibilities must complete the HHS Ethics CBT within 30 days of their employment start date and annually 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 the HHS Ethics CBT. If staff are required to complete the HHS Ethics CBT, it must be completed within 30 days of their date of transfer and annually thereafter. As an alternative, transferring staff may provide documentation of completion of the HHS Ethics CBT within the previous 11 months.
After completion, it becomes a part of the HR employee file. HHS Training tracks completion of training requirements and provides a system generated reminder of required training prior to expiration.

**1.3.6 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. Contracting Staff have an obligation to remain vigilant for signs of potential violations of ethics rules, policies, and standards of conduct. **Contracting Staff must use one or more of the following options for reporting and investigating known, alleged, or suspected fraud or other illegal activities in the HHS System.**

- **Reporting to Immediate Supervisor:** An 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 HHS Ethics Office provides guidance to HHS employees in their official position as an agency representative. Further details can be found by visiting: [http://hhscx.hhsc.texas.gov/ethics-office](http://hhscx.hhsc.texas.gov/ethics-office) or submitting a question via email to Ethics_in_Action@hhsc.state.tx.us

- **Reporting to the Inspector General or State Auditor's Office:** An HHS employee may report fraudulent or other illegal activities anonymously, or if reporting to the supervisor would be unproductive, to: The Inspector General’s Fraud, Waste, and Abuse Hotline by calling 1-800-436-6184 or by submitting the form located at: [https://oig.hhsc.state.tx.us/WafRep/](https://oig.hhsc.state.tx.us/WafRep/). Anonymous reports can also be submitted to the State Auditor’s Office by calling the Fraud, Waste, and Abuse Hotline at 1-800-TX-AUDIT or by completing the form located at: [https://sao.fraud.texas.gov/ReportFraud/](https://sao.fraud.texas.gov/ReportFraud/)
1.3.7 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 internal contract management 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.⁵

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.

1.3.8 Contractor Conflict of Interest
CMH April 2016

State law prohibits agencies from entering into employment, professional services, or consulting services contracts with former or retired employees before the first anniversary of the last date on which the individual was employed by the agency.⁶

HHS agencies may have stricter conflict of interest policies and procedures that
contracting staff must abide by. HHS agency contract terms and conditions must contain provisions related to organizational conflicts of interest, restrictions on recruitment of state employees, and kick-backs.

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.

1.3.9 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 contactors. 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:
  - planning or development of a procurement solicitation; or
  - 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.
1.4 Vendor Interaction
CMH March 2018

POLICY

The HHS System provides over 200 programs to Texas’ most vulnerable citizens. To remain responsive to the needs of individuals and to conserve state funds, HHS must stay ahead of the curve in innovation and technology. Strategic planning is needed to not only provide services today, but to map out how those services will be provided ten years from today.

Industry research contributes to strategic planning as it informs development of the contracts HHS needs to meet the demands of HHS, today and in the future. Such research ensures HHS spends its limited funding in a strategic manner to ensure viable, sustainable programs.

Industry research requires interaction with the vendor community to understand what vendors are able to provide and to ensure vendors understand the needs of the state. 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.

1.4.1 HHS Innovation, Technology and Efficiency Committee
CMH March 2018

To evaluate market trends, HHS created the HHS Innovation, Technology and Efficiency Committee (HITEC). The HITEC is comprised of leadership from the Offices of the Chief Deputy Executive Commissioner, the Chief Operating Officer, the Chief Policy Officer, HHS Deputy Executive Commissioners, and the Department of State Health Services. Standing members of the HITEC may delegate attendance to meetings to employees with the expertise and authority needed to properly evaluate the subject matter to be addressed by the vendor.

Should a vendor request to meet with HHS staff, the vendor must submit a request to COS at PCS_COS@hhsc.state.tx.us to include the purpose of the meeting and presentation materials. PCS will review the request and, if approved, schedule a meeting of the HITECH to provide the vendor timely, relevant access to HHS decision makers.

HHS may identify subjects on which vendor presentations are desired.
1.4.2 Guidelines for HITECH Meetings
CMH March 2018

In order to assure appropriate communications and efficient use of time, vendors scheduling time with the HITEC will agree to the following guidelines:

1. HHS will not discuss active solicitations or procurement projects
2. HHS will not provide specifications for future contracts
3. Vendors will only provide information that may be made public.
4. Vendors will acknowledge meeting minutes and written materials will be posted on the HHS Web Site
5. If a vendor desires to present information about a subject for which a solicitation is being drafted or is already posted, the meeting will be postponed until after that contracting process is complete.

Each HHS employee attending a HITEC meeting on behalf of DSHS or HHSC agrees to comply with the following requirements:

1. All vendors will be treated equally and impartially.
2. Only public information will be shared with vendors.
3. No HHS employee may make any commitments to any vendor.

Following a meeting of the HITEC, PCS will post the meeting minutes and written materials on the HHS Purchasing and Contracting Extranet.

1.4.3 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 at:

1.5 Legal System Contracting Consultation
CMH April 2017

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.

System Contracting has a centralized e-mail inbox, SystemContracting@hhsc.state.tx.us, to improve efficiency, create transparency and assist the division in complying with procurement and contracting requirements.
2.0 Section: Planning and Development

2.1 Procurement and Contract Planning Process
CMH April 2016

POLICY

Identifying and defining a need begins the contract lifecycle and provides the basis for the contract. See the HHS Procurement Manual for more details.

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;
- 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.
2.2 Procurement Lead Times
CMH March 2018

POLICY

The PCS purchaser, in coordination with the contract manager, and HHS agency program staff, will develop a timeline for each major procurement. The timeline should include all key milestones for completing the procurement within required deadlines. When establishing the timeline, consider all factors that may impact timing including:

- Procurement method: Procurement requests are reviewed by PCS to determine the most appropriate procurement method.
- HHS agency budget approval: Budget must verify the availability of funds at the planning stage and prior to contract execution.
- If grant funded, 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 HHS Connection website.
- Delegation from the CPA: 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) prior to making the purchase.
- Review of draft Statement of Work by the Texas Department of Information Resources (DIR), if applicable.
- 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.

- **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.

- **Electronic State Business Daily (ESBD)**: PCS must submit notice of any procurement valued over $25,000 on the ESBD websitevii. Sole source or proprietary purchases over $25,000 must be posted for 14 days. A 30 day solicitation period is typical for most RFPs. 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.

- **Quality Assurance Team (QAT)**: In accordance with the Texas General Appropriations Act, Article IX, Section 9.02, enacted by the 85th Legislature (2017),
  - HHS must notify QAT when the agency advertises a request for proposal, request for offers, or other similar process common to participation in the competitive bidding processes of a major information resources project.
  - HHS must obtain prior written approval from QAT before executing a contract for development of a major information technology project with a value expected to exceed $10 million. To obtain approval, HHS must provide QAT a copy of the final version of the contract, including all appendices and attachments, signed by the vendor, but not HHS.
  - HHS must notify QAT (as well as the Governor, Lieutenant Governor, Speaker of the House, Senate Finance Committee, and House Appropriations Committee) prior to amending a contract for development of a major information resources project.
project, when (1) the expected total value of the contract subsequent to the amendment exceeds the total value of the initial contract awarded by 10 percent or more; or (2) the expected total value of an element in the contract subsequent to the amendment exceeds the total value of the same element in the initial contract awarded by 10 percent or more. To obtain approval, HHS must provide QAT a copy of the final version of the amendment, including all appendices and attachments, signed by the vendor, but not HHS.

- Staff should work with PCS to ensure all requirements are met prior to amending a contract for development of a major information resources project when the expected total value of the contract subsequent to the amendment exceeds the total value of the initial contract awarded by 10 percent or more, and email PCS External reporting at PCS_ExternalReporting@hhsc.state.tx.us so that PCS can notify the Legislative Budget Board (LBB).
  - HHS must notify QAT within 10 business days from award of a contract for a major information resources project that is equal to or greater than $10 million.
  - If HHS cancels a contract for development of a major information resources project, which if amended would be subject to QAT notice or approval, and issues a solicitation for identical or similar goods and/or services for development of the same project, then the contract being procured will not be valid unless HHS (1) provides QAT a copy of the final version of the contract, including all appendices and attachments, signed by the vendor, but not HHS, and (2) obtains prior written approval of the contract from QAT.

- Contract execution: The timeframe will differ significantly between a purchase order and a contract. Additionally, contracts of $1,000,000 or more require contract routing to the Executive Commissioner, Chief Deputy Executive Commissioner, Chief Operating Officer or HHSC Chief of Staff for execution.
2.3 Statement of Work and Scope of Work
CMH April 2016

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 what the agency is purchasing and what the contractor is required to provide in order to satisfactorily perform the work.

It is important that the statement of work:

- Be clearly defined;
- 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.\(^{viii}\)

A statement of work can be performance based, a design specification, or a mixture of both.\(^{ix}\)

- 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.

Resources
The following references provide guidance on preparing the statement of work:

- Preparing the Solicitation, Chapter 3, State of Texas Contract Management Guide
- Specifications, Section 2.17, State of Texas Procurement Manual

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.
- **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.
- **Applicable 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.
• 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.

2.3.1 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.

2.4 Contract Performance Standards and Key Measures
CMH April 2016

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. Performance standards will vary based on the contract and additional standards may be necessary.

### Characteristics of Good Key Measures

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<thead>
<tr>
<th>Measure</th>
<th>Description</th>
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<tbody>
<tr>
<td>Simple</td>
<td>Can our stakeholders understand it?</td>
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<tr>
<td>Relevant</td>
<td>Does it matter to key stakeholders?</td>
</tr>
<tr>
<td>Stable</td>
<td>Is it usable during business cycles over time?</td>
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<tr>
<td>Timely</td>
<td>Is it taken when and where results appear?</td>
</tr>
<tr>
<td>Accurate</td>
<td>Does it consistently measure what it purports to?</td>
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<tr>
<td>Used</td>
<td>Does it change what the agency is doing?</td>
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<tr>
<td>Informative</td>
<td>Does it tell us about we are doing, or should be doing?</td>
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<tr>
<td>Specific</td>
<td>Does it allow for, or factor out, other measures?</td>
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<tr>
<td>Unique</td>
<td>Is it measuring something already measured?</td>
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<tr>
<td>Cost-effective</td>
<td>Is measuring worth it, and how good is good enough?</td>
</tr>
<tr>
<td>Non-disruptive</td>
<td>Does it create ethical, legal or other types of conflicts?</td>
</tr>
<tr>
<td>Types of Performance Measures</td>
<td>Examples</td>
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<td>-------------------------------</td>
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</table>
| **Outcome and Effectiveness:** Measureable indicator of the agency's effectiveness in serving its customers and in reaching the mission, goals, and objectives. | • Percentage of provider enrollment applications processed in 30 days  
• Percentage of licensed providers inspected annually.  
• Percentage of providers with no violations. |
| **Output:** Measureable indicator of the number or volume of services an agency produces. Used to assess workload and the agency's efforts to address those demands. | • Number of substance abuse beneficiaries in the program.  
• Number of inspections conducted.  
• Number of provider applications processed. |
| **Efficiency:** Measureable 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. | • Average cost per case.  
• Average cost per inspection.  
• Average time for complaint resolution. |
| **Explanatory/Input:** Indicator of factors, agency resources, or requests received that can impact an agency's performance. | • Percentage of medical school graduates entering a primary care residency.  
• Number of business facilities registered.  
• Number of cases received. |

### 2.5 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.

2.6 Cost-Benefit Analysis and Cost Estimates
CMH April 2016

POLICY

Cost-benefit analysis is the evaluation of planned actions to determine what net value they will have for an agency. When an HHS agency plans to procure goods and services over $25,000, the agency should conduct a cost-benefit analysis to justify the procurement and contracting decision. The cost-benefit analysis is behind every business decision because HHS should not spend funds unless benefits derived from the expenditure are expected to exceed the costs. For HHS agencies, the benefits may be financial or non-tangible, such as services provided to individuals. Contract Management should consult with their agency leadership to determine when a cost benefit analysis is necessary.

When applicable, a cost benefit analysis must be completed in consultation with contracting leadership and finance staff.

HHS agencies, in consultation with contracting leadership and finance staff, estimate costs and, when applicable, develop a cost-benefit analysis. Even if limited by budget constraints, an estimated cost will provide an idea of the range of services that the agency can include in the statement of work. The cost estimate planning process should be documented and included in the contract management file. Funding considerations for cost estimates may include the following.

In-house cost considerations:
- Adequate resources for the management and monitoring of the contract;
- Number of full-time equivalents required to perform the work for each fiscal year;
- Cost of goods and supplies;
- Professional fees and services, travel, rent and indirect expenses; and
- Method of finance.

Outsourcing costs:
- Estimated number of years for the contract;
- Estimated contractor costs (e.g., salaries, fringe, equipment, etc.); and
- Method of finance.
HHS staff must consult with finance to determine if a project is likely to cross state fiscal years or into another biennium.

2.7 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

2.8 Determination of Contract Monetary Value
CMH April 2016

POLICY

HHS agency program staff, in consultation with the contract manager and procurement staff, must base its determination of the proposed length of and compensation during the original term of the contract on:

- Best practices;
- State fiscal standards;
- Applicable law, procedure, and regulations.
Staff must not artificially split (or parcel) any of these factors in order to avoid the dollar thresholds during the original term of the contract or to circumvent any additional required review submissions, such as to the Contract Advisory Team (CAT).

The payment method and source of funds should not be considered in determining whether the estimated total value will exceed dollar thresholds. HHS agency and procurement staff must make a good faith determination as to the estimated total value at the time of planning. PCS procurement staff must be notified before any changes in the estimated amount that would impact or trigger a required review such as CAT review.

2.9 Development of Contracts of $5 Million or More
CMH September 2017

POLICY

The Contract Advisory Team (CAT)\(^{x}\) 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.\(^{x\text{i}}\)

By statute, state agencies must comply with CAT recommendations or provide a written explanation for not complying with the recommendation.\(^{x\text{ii}}\)

PROCEDURE

- PCS is the point of contact for the CAT review process and will work with the HHS agency to consult with CAT using the automated Contract Advisory Team-Review and Delegation (CAT-RAD) application form.
- The CAT will review the solicitation documents within 30 days of receipt.
- If PCS does not receive a response from the CAT within 30 days of initial receipt of the solicitation documents, PCS and the HHS agency may proceed with the issuance of its solicitation.
- PCS will work with the HHS agency to provide CAT a written explanation of any specific recommendation that is not applicable to the contract under review.
3.0 Section: Procurement
CMH September 2017

POLICY

PCS conducts procurement activities for the HHS System resulting in a purchase order of any amount or a contract with stated value greater than $0. See the HHS Procurement Manual for more details on the procurement process.

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 (CAPPS) 9.2 Financials.

CAPPS 9.2 Financials establishes one consolidated database and improves and streamlines business processes related to requisitions, purchases, solicitations, and contract creation. Actions related to contract establishment and amendments for all contracts, to include Memorandums of Understanding, are initiated in CAPPS 9.2 Financials.

3.1 Contracts Processed Within the Program Area
CMH March 2018

POLICY

All HHS contracts, to include Memorandums of Understanding, are initiated in CAPPS 9.2 Financials (CAPPS). However, when the applicable template is not collaborated and routed through CAPPS, or a revenue generating contract, the contract is processed through execution within the program area.

3.1.1 Contracts Not Collaborated in CAPPS
CMH March 2018

Although entry of a requisition into CAPPS initiates all HHS agreements, not all agreements are collaborated and routed through CAPPS. After a requisition is entered, 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. 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 approval and execution.

Following 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 9.2 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 entered into SCOR, complete any additional data entry in SCOR and, if applicable, ancillary systems, and upload the contract into the SCOR Contract 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.

Contracts, to include Memorandums of Understanding and Memorandums of Agreement, with a value greater than $0 are composed and routed through CAPPS 9.2 Financials.

### 3.1.2 Revenue-Generating Contracts

CMH September 2017

**POLICY**

Revenue-generating contracts are binding agreements between a HHS System agency and another party that defines the terms under which revenue will be received. HHS System agencies that have active revenue-generating contracts are responsible for entering information and uploading applicable documents into the SCOR Revenue module. 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 to SCOR within 30 days of execution. If any changes to the agreement occur, the program area ensures the information is updated in SCOR.
3.2 Historically Underutilized Business (HUB) Determination
CMH April 2017

POLICY

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. Under Texas Government Code §2161.252, when issuing a new solicitation for a contract with an estimated value of $100,000 or more (for the life of the contract), state agencies must determine whether or not 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.
3.3 Solicitation Conference  
CMH April 2016

POLICY

A solicitation conference is a meeting facilitated by PCS in collaboration with the contract manager and HHS program staff, which is designed to help potential bidders/respondents understand the requirements of a solicitation. These meetings can also be called pre-bid, proposal, or vendor conferences.

HHS agencies may opt to conduct a solicitation conference by working with the PCS purchaser to include notification of the solicitation conference in the procurement document. The PCS purchaser will conduct the conference in coordination with the HHS agency program and contract manager.

Benefits to conducting the solicitation conferences may include:
- Allowing potential respondents to address specific questions or concerns;
- Providing for on-site visits by contractors before submitting responses;
- Providing information, schematics, plans, reports, or other data that is not easily accessible from the ESBD;
- Providing an overview of the HSP requirement; and
- Facilitating subcontracting relationships that may develop through the conference.

Typically, potential contractors are not required to attend the solicitation conference. However, conferences should be mandatory if an on-site visit is required to have a full understanding of the procurement, or if the solicitation is so complex that attendance is critical for respondents to fully understand it. Before including a mandatory solicitation conference in the procurement, the HHS agency should consult with PCS and System Contracting because this requirement may limit competition.

The PCS purchaser will work with HHS agency program staff and the contract manager to answer any questions submitted at the conference and to post the written answers on the ESBD.
3.4 Reported Vendor Performance

CMH March 2018

By statute, the Comptroller of Public Accounts (CPA) must track and evaluate vendor performance based on information reported by state agencies. State agencies must consider performance information and contractor ratings contained in the Vendor Performance Tracking System (VPTS) when determining whether or not to award a contract to a particular legal entity.

After receipt of a response to a Request for Proposals, PCS must ensure the purchaser or program area obtains performance information and contractor ratings contained in the VPTS after receipt of a response to a Request for Proposals and before entering the evaluation phase of the procurement.

To obtain performance information and contractor ratings contained in the VPTS, Go to:
https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do

- Acceptable performance grades are A, B or C.
- Low performance grades are D or F.

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 submitting the legal entity’s proposal to the Evaluation Team.
3.5 Proposal Evaluation
CMH September 2017

POLICY

HHS agency program staff and the contract manager will work with the PCS purchaser to develop the evaluation criteria and the evaluation tool and to identify and train the evaluation team.

Evaluation Criteria

All RFPs must contain evaluation criteria. 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. It is important that the RFP is clear about the evaluation criteria that will be used and the priority of the evaluation criteria.

In an RFP, the criteria can range in detail from best value factors ranked in order of importance (i.e., broad criteria that will need to be further defined before evaluation) to the inclusion of the weighted evaluation tool (i.e., very detailed evaluation criteria with corresponding weights that will be used as written to evaluate proposals).

The contract manager, in consultation with HHS agency program staff, must ensure that the evaluation criteria relates to the requirements in the statement of work.

Evaluation Team

At a minimum, an RFP evaluation team should consist of three to five agency stakeholders representing 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-voting member.

Evaluation team members may have input into the solicitation document especially the evaluation criteria and assigned weights. The evaluation team members should:

- Fully understand the requirements of the solicitation;
- Be able to critically read and evaluate responses and to document their judgments concisely and clearly in accordance with their evaluation; and
- Must agree to adhere to the proposed timeline required to evaluate proposals.
For complex contracts, a three-tiered evaluation team approach is recommended, and consists of:

- **Initial screening team** to check proposals for compliance with mandatory submission requirements;
- **Business/Technical solution team** to evaluate the business proposal/technical solutions based on the criteria in the RFP; and
- **Financial/Cost team** to evaluate the vendor’s cost proposal for completeness, competitiveness, reasonableness, and compliance with RFP requirements

**Evaluation Tool**

As best practice, the evaluation tool should be completed before publishing the solicitation document. Agencies will often see that additions or revisions are needed to the solicitation document once they start developing the scoring matrix. Those changes are more easily made prior to posting the final document.

If time does not permit the evaluation tool to be completed before publishing the solicitation, the tool must be completed before reviewing the solicitation responses.

Evaluation tool questions should be cross-referenced to their corresponding RFP numbered sections.

While cost is not taken into consideration before qualifications and substance of the proposal, when evaluation consultant contracts, the evaluation team may review the applicants cost proposal to understand how much resources the consultant proposes to allocate to parts of the proposal.

**Evaluation Training**

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. Additionally, the PCS purchaser will ensure the team members receive evaluation training on their roles and responsibilities, evaluation criteria and scoring methodology, and the evaluation process.
3.6 Contract Negotiations
CMH April 2016

POLICY

Contract negotiation during the procurement phase involves communicating with a potential contractor to reach agreement on the terms of the final contract. The purpose of the 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.

For a request for proposal with more than one potential contractor, negotiations may be used to further evaluate offers and to select one or more for contract award.

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.

Resources
State of Texas Contract Management Guide, Chapter 5, Evaluation and Award

PROCEDURES

- The HHS agency will work with PCS to negotiate with any potential contractors.
- PCS will facilitate the negotiation and manage the technical and financial evaluation outcomes of the negotiation to ensure selection of a best value potential contractor.
- For request for proposals (RFP), PCS may limit the field of competition for negotiations to offers that received the highest or most satisfactory evaluations.
- PCS retains all negotiation documents as part of the procurement file, which is subject to public disclosure.
- All negotiated changes must be included in writing in the final contract.

Negotiation Team: PCS will coordinate the evaluation and negotiation process with the HHS agency program, System Contracting and others with needed expertise on the team, such as information technology staff. The
contract manager must ensure that the team is adequately staffed with needed expertise.

**Negotiation Process:** 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.

**Best and Final Offer:** After discussions with potential contractors, HHS agencies may work with PCS to request a best and final offer (BAFO). 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.
4.0 Section: Contract Formation
CMH April 2016

POLICY

Before a contractor provides goods or services, an authorized representative of the contractor and the HHS signature authority must execute a written contract. PCS and the contract manager will work with appropriate staff, including System Contracting, to develop the contract and include all required contract documents and the appropriate contract terms and conditions.

A contract can be documented in different formats, including a four-corner contract or purchase order.

- The term four-corner contract is used to describe a single document that includes all of the terms and conditions within the four-corners of a single document.
- Purchase orders (PO) are also contracts but instead of containing all of the terms and conditions in a single document, the PO incorporates the terms and conditions, statement of work, and other relevant documents by reference.

4.1 Contract Documents
CMH April 2016

System Contracting is the division responsible for the development HHS contract documents. A written contract must include or incorporate by reference the following documents, if applicable:

- The appropriate version of the contract terms and conditions;
- The solicitation document;
- The contractor’s response;
- Any negotiated changes;
- The required budget documents; and
- Any required forms.

The required forms will vary by HHS agency in accordance with internal processes, procedures, policy, and the type of contract.
4.2 Contract Terms and Conditions
CMH April 2017

System Contracting is also responsible for the development of uniform or standard contract terms and conditions that are applicable to their specific contracted services. These terms and conditions address areas such as:
- Governing laws and regulations;
- Procedures for amendments and other contract modifications;
- Terms and conditions of payment; and,
- Data Use Agreement requirements.

The contract manager must ensure the appropriate terms and conditions are used, in consultation with the HHS agency program, PCS, and System Contracting. For legal assignments or general guidance, e-mail the System Contracting inbox at SystemContracting@hhsc.state.tx.us.

4.3 Minimum Contract Requirements
CMH April 2016

At a minimum, a contract must contain the following terms and conditions:
- Begin and end date;
- Description of the goods and services to be provided;
- Payment and invoicing information;
- Renewal periods available to the HHS agency;
- Any service level standards or agreements;
- Points of contacts and notice provisions;
- The process to change or amend the contract;
- A clause that the contract is subject to cancellation by the HHS agency;
- Termination provisions; and
- A clause that states continuation is contingent on the availability of state or federal funding.

4.4 Coordination and Preparation of Contracts
CMH April 2016

The contract manager is responsible for the coordination and preparation of the appropriate contract agreement.

Activities include:
- Coordination with System Contracting to ensure mandatory terms and conditions are incorporated into the contract;
- Determining whether the contractor will access confidential
information, and ensure the Data Use Agreement or approved language has been incorporated into the contract; and
- Coordination with PCS to ensure necessary procurement documents including: responses, negotiations, statement of work, performance measures, and any other pertinent incorporation by reference documents are included into the contract.

4.5 Required Screening for Potential Contractors
CMH March 2018

POLICY

HHS agencies must demonstrate due diligence to ensure potential contractors are qualified to do business with the State of Texas.

Each HHS agency will develop policies and procedures for screening potential contractors by completing required checks that include specific instructions for escalating business decisions to agency leadership, or as needed, obtaining legal consultation when the results of a check identify any issues.

Contract managers must maintain documentation to support the outcome of the required checks and applicable escalation communication in the contract management file.

Before contract execution, the HHS program area must screen potential contractors to include:
- **Legal Status** - Go to: https://direct.sos.state.tx.us/acct/acct-login.asp. Search “Business Organizations.” 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. Governmental agencies are exempt from this check. 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 https://www.sos.state.tx.us/corp/foreign_outofstate.shtml.
- **Texas Identification Number (TIN)** - Go to: https://direct.sos.state.tx.us/acct/acct-login.asp. Search “Business Organizations”. 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.

- **Vendor Hold** - Go to: [https://comptroller.texas.gov/bluezone/bzweb52C2/Outside/TxCPA_launch_x.htm](https://comptroller.texas.gov/bluezone/bzweb52C2/Outside/TxCPA_launch_x.htm).

- **Franchise Tax Account Status** - Go to: [https://mycpa.cpa.state.tx.us/coa/](https://mycpa.cpa.state.tx.us/coa/) 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: [https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php](https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php) 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: [https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do](https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do) 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: [https://exclusions.oig.hhs.gov/](https://exclusions.oig.hhs.gov/) 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: [https://oig.hhsc.state.tx.us/oigportal/EXCLUSIONS.aspx](https://oig.hhsc.state.tx.us/oigportal/EXCLUSIONS.aspx) 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: [https://comptroller.texas.gov/purchasing/publications/divestment.php](https://comptroller.texas.gov/purchasing/publications/divestment.php) to verify the legal entity does not boycott the state of Israel nor conduct business with the governments of Sudan or Iran or any foreign terrorist organization. A contract cannot be awarded to a legal entity doing business with Iran, Sudan, or a foreign terrorist organization.

- **Vendor Performance Tracking System (VPTS)** - Go to: [https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do](https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do) 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: [https://emr.dads.state.tx.us/DadsEMRWeb/emrRegistrySearch.jsp](https://emr.dads.state.tx.us/DadsEMRWeb/emrRegistrySearch.jsp)

- **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 contractor’s standing, contract staff must consult program management to determine the appropriate action contract staff should take.

**4.6 Reviewing the Contract for Accuracy**

CMH April 2016

The contract manager, in consultation with HHS program staff, and System Contracting, review the draft contract for content and accuracy to include:

- **Contractor name**: The contractor name on the contract should be the complete legal name of the entity and should match on all of the required contract forms;
• **Signature authority**: The individual designated to sign the contract on behalf of the contractor and the HHS agency must be authorized to bind the party in contracting decisions;

• **Contract forms**: All required forms must be completed correctly and attached to the contract;

• **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 must be specified and correct.

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

### 4.7 Delegated Signature Authority

CMH March 2018

**POLICY**

As provided by the Texas Government Code, the Executive Commissioner is responsible for all purchasing and contracting throughout HHS. Chapter 531, Texas Government Code, authorizes the executive commissioner to delegate specific powers and duties to facilitate the operations of all HHS agencies. Pursuant to this chapter, the Executive Commissioner delegates authority to the HHS agency commissioner and other staff to sign certain agency contracts and amendments on behalf of the agency. HHS Circular C-046, *Delegation of Signature and Threshold Limits for Contracts*, further defines and clarifies delegation of signature authority and threshold limits for contracts, see [https://hhsconnection.hhs.texas.gov/sites/intranet/files/documents/policy/circulars/c-046.pdf](https://hhsconnection.hhs.texas.gov/sites/intranet/files/documents/policy/circulars/c-046.pdf).

This policy applies to all HHS written agreements that obligate or involve any HHS agency in the acquisition of goods or services, including but not limited to:

- Contracts
  - including when the HHS agency is the performing agency or recipient of funds;
  - memoranda of understanding (MOU);
  - memoranda of agreement (MOA);
  - letters of commitment;
- Grants and Grant Applications;
- Amendments;
- Purchase orders not associated with an existing contract; and
- Binding and non-binding commitments which require the execution of
an agreement, contract or amendment.

Contracts must be routed for signature according to the highest potential value for the projected life (full term) of the contract. When the highest potential value for the full term of the contract equals $1 million or greater (using the value of the contract, amendments and all potential renewals) the contract must be signed by the Executive Commissioner, Chief Deputy Executive Commissioner, Chief Operating Officer, Chief Policy Officer, or HHSC Chief of Staff.

Open enrollment client services contracts with a stated value of $0.00 are signed by the respective agency signature authority for this level. Revenue generating contracts are signed by the respective agency signature authority for contracts utilizing the threshold limits identified in the C-046 for the projected amount of revenue funds to be received.

Signature authority for amendments depends on the function of the amendment. If the amendment is adding money to the contract, then signature authority is based on the total value of the contract, with the amendment value included. If the amendment is not changing or reducing the value of the contract, then the signature authority is based on the value of the amendment only.

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 at: https://hhsconnection.hhs.texas.gov/procurement-contracting/procurement

The SCOR Contract Contacts sub-module displays three sections populated by data entered into CAPPs: Signature Authority, CAPPs Contractor Contact and CAPPs Mailing Address. Signature Authority and CAPPs Contractor Contact will be available for contracts established through CAPPs after 9/5/2017.

It is the responsibility of the contract manager to ensure the contract is signed by the approved signature authority for the contractor, as well as, the HHS System.

4.7.1 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.

**4.8 Electronic Transmission of Signed Contracts**
CMH April 2017

**POLICY**

HHS agencies have adopted the HHS Circular C-038, Guidelines for the Acceptance of Electronically Transmitted and Electronically Signed Contract Records, which allows the acceptance of electronically transmitted signed records, when procedures have been followed that are contained in the Circular. See Circular C-038 at https://hhsconnection.hhs.texas.gov/sites/intranet/files/documents/policy/circulars/c-038.pdf.

HHS can accept records with valid signatures that are transmitted electronically through:

- Fax or email;
- Scanned documents attached to emails; and
- Digital signature software.

For the purposes of this policy, a signed contract record is electronically submitted through the transmittal process of emailing scanned documents or faxing documents, which can include an executed contract and documents that are incorporated by reference or use digital signature software. Interagency contracts between HHS agencies are regarded as low risk and the contract signature authority may type their name and verify the electronic signature by submitting the record by email.

**4.9 Disclosure of Interested Parties**
CMH March 2018

**POLICY**

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

The Texas Ethics Commission (TEC) adopted rules in the Texas Administrative Code (TAC Chapter 46) 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 of $1 million or more with a business entity 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 to increase the contract amount to $1 million or more unless the business entity includes a Certificate of Interested Parties with the signed contract 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 or the contract manager.
- Contract manager acknowledges receipt of the Form 1295 no later than 30 days from the contract begin date. Go to https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. 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 the receipt at HHS, 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 the TEC website: http://www.ethics.state.tx.us/tec/1295-Info.htm

4.10 Data Use Agreements
CMH March 2018

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. 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, such 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 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.

**Monitoring DUA Compliance:**

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. HHS Circular C-049 is at https://hhsconnection.hhs.texas.gov/sites/intranet/files/documents/policy/circulars/c-049.pdf.

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:
<table>
<thead>
<tr>
<th>Category</th>
<th>Monitoring Questions</th>
<th>Response</th>
</tr>
</thead>
</table>
| Policies & Procedures | • Does the contractor have written policies and procedures regarding the protection of confidential information?  
• Do the contractor's policies and procedures include:  
  o Limitations on the use and disclosure of confidential information.  
  o Protocol for responding to a breach?         | Yes  No |
| Training         | • Does the contractor have a training curriculum regarding the protection of confidential information? | Yes  No |
|                  | • Have all workforce authorized to access confidential information taken the training? | Yes  No |
|                  | • Was the training taken in a timely manner by all authorized workforce (within 30 days of hire for new staff, annually for existing workforce)? | Yes  No |
| Sub-contractors  | • Does the contractor have a signed Subcontractor Agreement Form (DUA Attachment 1) for all subcontractors? | Yes  No |
|                  |                                                                                       | Total #of Subcontractors: |
|                  |                                                                                       | If No, # of Subcontractors Without a Signed Form: |
Can the contractor demonstrate that they are in 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)
- Encryption software (FIPS 140-2 recommended, see list here: http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/140val-all.htm)

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

What encryption software (brand/version) does the contractor use?

If non-compliance with the DUA is identified, the contractor must complete the SPI and submit it to their contract manager.

### 4.10.1 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

- **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 available at: [https://hhs.texas.gov/laws-regulations/forms/0-999/form-0402-potential-privacysecurity-incident](https://hhs.texas.gov/laws-regulations/forms/0-999/form-0402-potential-privacysecurity-incident) 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.
4.11 Contract Execution
CMH September 2017

Following signature by the HHS signature authority the contract is fully executed. After execution, the contract is uploaded to the SCOR Contract History sub-module and is viewable within the System of Contract Operation and Reporting (SCOR).
5.0 Section: Contract Management
CMH September 2017

POLICY

HHS agencies enter into contracts as a means of accomplishing their missions, including providing critical services to individuals, supporting agency operations, and administrative support across the System. Effective and efficient contracting requires adherence to contract management standards, and best practices, as well as statutes, regulations, and policies.

The Contract module is the central location of contract management activities within SCOR.

5.1 Contract Management Overview
CMH April 2017

POLICY

HHS is responsible for managing resources effectively, efficiently, and in a manner that is aligned with state strategic goals and societal needs. The HHS System is committed to maintaining a business-like system of contracting to manage state contracts using best practices to provide quality services at a reasonable cost.

While not HHS-specific, the Contract Management Guide administered by the Texas Comptroller of Public Accounts gives an overall structure for understanding general governmental contracting in Texas. Contract managers should refer to the guide for basic contracting principles expected of state agencies and their staff, including assistance on ensuring the best quality combined with the best value for the taxpayer.

A contract manager must:
- Coordinate with System Contracting to make effective contract decisions and promote accountability;
- Promote the use of best practices throughout the contract lifecycle;
- Behave ethically at all times and exercise informed and professional judgment throughout the contract lifecycle;
- Be vigilant for any potential conflicts of interest that may arise, and report any concerns;
- Communicate and coordinate with all stakeholders involved with the contract;
- Have thorough knowledge of assigned contracts and of the program purposes they are intended to achieve; and
Comply with statutes, rules, and policies related to HHS programs and contracts.

5.2 System of Contract Operation and Reporting (SCOR)
CMH March 2018

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.


HHS staff request access to SCOR through the HHS Portal at [https://hhsportal.hhs.state.tx.us](https://hhsportal.hhs.state.tx.us). 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 Security Roles Table.

The SCOR Contract Manager Guide at [https://hhsconnection.hhs.texas.gov/sites/intranet/files/documents/purchasing-contracting/training/scor-contract-manager-guide.pdf](https://hhsconnection.hhs.texas.gov/sites/intranet/files/documents/purchasing-contracting/training/scor-contract-manager-guide.pdf) 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.

Access to HCATS will continue to be available to allow HHS staff to review historical contract information.
5.3 Contract Management Responsibilities
CMH September 2017

POLICY

Contract management is an essential function that involves:

- Ensuring all applicable state and federal rules and regulations, HHS and agency policy, and the terms and conditions of the contract are adhered to;
- 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;
- Coordinating a well-defined statement of work with input from stakeholders, when involved in procuring new contracts;
- Establishing specific, time-bound, performance measures and requirements to ensure contractor accountability, when involved in procuring new contracts;
- Staying informed and involved throughout all stages of the lifecycle to ensure successful contract outcomes;
- 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;
- Monitoring contractor performance and entering results in SCOR;
- Reviewing and recording deliverables status into the SCOR Deliverables sub-module; and
- Elevating to management, Legal and PCS-Contract Oversight and Support whenever there is a deficiency with the contractor's performance, in a timely manner.

The contract manager is involved throughout each stage of the contract lifecycle and serves as the single point of contact for purposes of contract management and monitoring. The contract lifecycle offers a framework in which to plan for contract management requirements, timelines, and contingencies.
### Considerations and Tasks Throughout the Lifecycle:

<table>
<thead>
<tr>
<th>Contract and Procurement Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Federal or legislative mandates, requirements and timelines</td>
</tr>
<tr>
<td>- Documented need and completed needs assessment</td>
</tr>
<tr>
<td>- Designate contract manager</td>
</tr>
<tr>
<td>- Define contract objective</td>
</tr>
<tr>
<td>- Identify those who need to be involved from planning to execution</td>
</tr>
<tr>
<td>- Identify level of approval needed</td>
</tr>
<tr>
<td>- Collaborate with stakeholders</td>
</tr>
<tr>
<td>- Identify potential constraints for contracting</td>
</tr>
<tr>
<td>- Identify potential risks based on type of service and dollar amount</td>
</tr>
<tr>
<td>- Complete cost-benefit analysis</td>
</tr>
<tr>
<td>- Subrecipient or Contractor determination</td>
</tr>
<tr>
<td>- Develop statement of work</td>
</tr>
<tr>
<td>- Develop performance measures</td>
</tr>
<tr>
<td>- Consider best value factors</td>
</tr>
<tr>
<td>- Determine monetary value of contract based on budget approval</td>
</tr>
<tr>
<td>- Coordinate with HHS-PCS to develop timeline and ensure procurement requirements are met</td>
</tr>
<tr>
<td>- Prepare solicitation document</td>
</tr>
<tr>
<td>- Consider benefits of conducting a solicitation conference and determine if one is needed</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Procurement</th>
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</thead>
<tbody>
<tr>
<td>- Develop evaluation criteria, consulting PCS purchaser as needed</td>
</tr>
<tr>
<td>- Create and finalize evaluation tool prior to posting of solicitation</td>
</tr>
<tr>
<td>- Conduct solicitation conferences, if applicable</td>
</tr>
<tr>
<td>- Coordinate with PCS purchaser to finalize solicitation document</td>
</tr>
<tr>
<td>- HUB Determination</td>
</tr>
<tr>
<td>- Identify subject matter experts who will participate in the evaluation, ensuring conflict of interest and non-disclosure statements are complete</td>
</tr>
<tr>
<td>- Evaluate responses to solicitation</td>
</tr>
</tbody>
</table>
| **Contract Formation** | • Determine contract award  
• Ensure required checks are completed  
• Conduct contract negotiations  
• Review required documents ensuring completion  
• Finalize contract award  
• Coordinate appropriate signature based on identified signature authority |
| **Contract Management** | • Conduct post award meeting, if applicable  
• 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 SCOR Contract Documents sub-module.  
• Maintain official contract record including accurate and timely SCOR data entry and document uploads  
• Review and approve billing and track budget trends  
• Assess risk  
• Coordinate and communicate with necessary contractor and agency staff on an ongoing basis  
• Administer contract changes  
• Track and review deliverables, performance measures and outcomes  
• Conduct contract monitoring activities  
• Impose contract sanctions to address non-compliance issues as per contract  
• Report contract sanctions to COS  
• Monthly HUB reporting monitoring, when applicable  
• Provide technical assistance as needed |
| **Contract Termination and Closeout** | • Provide official notification to the contractor of the decision to terminate the contract to include the basis for the decision to terminate the contract  
• Determine any settlements and negotiate as needed for contract closeout  
• Resolve any outstanding issues  
• Notify COS of termination action  
• Complete closeout or termination in the SCOR Close Out sub-module  
• Submit PCS 147, Vendor Performance Tracking Form to HHSPCSCVendorPerformanceemailbox |
5.4 Contract Management Tips and Best Practices

CMH September 2017

Contract management best practices are techniques that may be used to improve the contracting process:

<table>
<thead>
<tr>
<th>Contract Management Best Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Be Timely and Proactive</strong></td>
</tr>
<tr>
<td>- Assign a contract manager early in the procurement process to actively participate throughout the contract lifecycle.</td>
</tr>
<tr>
<td>- Update SCOR when contract manager is designated.</td>
</tr>
<tr>
<td>- Designate a lead contact, as back up.</td>
</tr>
<tr>
<td>- Meet internal and external deadlines and submit reports and other information as required.</td>
</tr>
<tr>
<td>- Make mutually agreeable arrangements ahead of due dates if a deadline cannot be met.</td>
</tr>
<tr>
<td><strong>Communicate Effectively</strong></td>
</tr>
<tr>
<td>- Keep open, consistent, and clear communication with those involved in the contract, including program staff, management, and contracting partners.</td>
</tr>
<tr>
<td>- Work to ensure common understanding of key terminology, both internally and externally.</td>
</tr>
<tr>
<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>- Document contract performance issues timely.</td>
</tr>
<tr>
<td>- Identify and communicate with appropriate internal and external stakeholders, including those with authority to act on behalf of the contractor.</td>
</tr>
<tr>
<td>- Communicate and consult with HHS agencies on contractor performance issues that may impact the entire HHS System.</td>
</tr>
<tr>
<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>- Adhere to HHS policies that delineate levels of approval authority, including those with signature authority.</td>
</tr>
<tr>
<td><strong>Know the Contract</strong></td>
</tr>
<tr>
<td>- Understand the terms and conditions of the contract to ensure successful contract outcomes.</td>
</tr>
</tbody>
</table>
### Understand the Impact of Decisions

- Use all available information, data, and reports when analyzing a potential course of action.
- Continually assess contractor risk, and take into consideration how potential decisions and actions can decrease, or increase, contract risks.
- Seek input on key decisions from subject matter experts to reduce the risk of unintended consequences, foster mutual cooperation, and promote effective contract management.

### 5.5 Contract Manager Designation

**CMH March 2018**

**POLICY**

HHS is legally required to ensure that appropriate personnel is assigned to each contract to perform effective contract management. 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 manages any contract in excess of $1,000,000.00.

Contracts which may not require management by a CTCM include:

- transactional purchase orders,
- enrollment contracts (Texas Administrative Code 391.183),

HHS management staff has the discretion to assign a CTCM to any contract.
5.6 Certified Texas Contract Manager Training and Certification Requirements

CMH March 2018

POLICY

The HHS Agency or Division must designate which staff positions require a Certified Texas Contract Manager (CTCM). In accordance with Section 2262.001 of the Government Code, it is the policy of HHS that employees obtain and maintain certification through the CTCM process administered by the Texas Comptroller of Public Accounts (CPA) when 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 a contract in excess of $1,000,000.00.

Contract management activities may include the following:

- Assists in the development of contracts by identifying needs, analyzing resources, drafting the statement of work, and negotiating contract requirements or terms;
- Evaluates or oversees contractor performance through monitoring activities (i.e. conducting desk reviews or onsite visits, reviewing deliverables, monitor expenditure data, completes risk assessments and performance evaluations and status reports);
- Serve as the primary liaison for disseminating information, instructions, and technical assistance to the contractor on a routine basis;
- Identifies performance deficiencies in contracts and recommends or implements appropriate remedies (i.e. corrective action plan, sanctions, and liquidated damages);
- Identifies and resolves disputes with the contractor timely and escalates unresolved or significant issues according to policy;
- Verifies accuracy of invoices and authorizes payments consistent with the contract terms and policy;
- Manages and documents (amends) any changes to the contract according to the contract terms and policy; negotiates contract renewals and amendments; or
- Provides technical guidance or training to Agency staff and contractors regarding contract administration policies, and procedures.

In some cases, staff performing some contract management functions may not be required to be a CTCM, such as:

- When contract management responsibilities are reported to a position
with a CTCM; or
  • When contract management responsibilities are shared with a CTCM; and the CTCM serves as the single point of contact or the primary contract manager.

For example, a trust fund monitor reviews financial documentation associated with the contract and reports findings to the designated CTCM. The trust fund monitor is not required to be a CTCM.

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

Staff must obtain and maintain the contract management certification by complying with the following requirements:
  • Completion of the required CTCM training administered by the CPA;
  • Completion of the certification exam with a score of 80 or higher;
  • Completion of the application process for certification;
  • Maintaining continuing education hours, per requirements established by the CPA; and
  • Maintaining certification through the established schedule for renewal.

5.6.1 Certified Texas Contract Manager Continuing Education Requirements
CMH March 2018

Effective January 2018, the Comptroller of Public Accounts (CPA) revised the requirements for Certified Texas Contract Managers (CTCMs) to require certification renewal every three (3) years. Certified individuals are required to complete twelve (12) hours of continuing education hours (CEHs) sponsored by the CPA State Procurement Division (SPD) beginning from the issue date or last renewal date of the certification.

Certified individuals renewing a current five (5) year certification may renew under the previous requirement of eighty (80) continuing education hours provided the training meets the previous policy and time line for renewals. CTCMs renewing a five (5) year certification may opt to renew under the twelve (12) hour SPD-sponsored continuing education requirement. 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.

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 additional information see, [https://comptroller.texas.gov/purchasing/docs/training/certification-renewal-how-does-it-work.pdf](https://comptroller.texas.gov/purchasing/docs/training/certification-renewal-how-does-it-work.pdf)

### 5.6.2 HHS System Requirement for Contract Manager Continuing Education
CMH March 2018

The HHS System requires employees assigned to perform contract management duties to complete continuing education related to contracting. This is applicable to individuals who have a CTCM or are designated as a contract manager.

Employees performing contract management tasks must complete eighteen (18) Continuing Education Hours related to HHS contract management. This requirement must be completed every three (3) years by attending training sponsored by HHS Contract Oversight and Support (COS). The CEH requirement of HHS is in addition to CTCM CEHs requirements for certification and renewal. To receive notice of contract management training opportunities, subscribe to the GovDelivery Topic: “HHSC Internal Online Contract Training and Continuing Education Hours” at [https://public.govdelivery.com/accounts/TXHHSC/subscriber/new?topic_id=TXHHSC_550](https://public.govdelivery.com/accounts/TXHHSC/subscriber/new?topic_id=TXHHSC_550)

HHS System contracting areas may develop training opportunities which can be used toward the required eighteen (18) CEHs related to HHS contract management. Training materials must be submitted to [PCS_COS@hhsc.state.tx.us](mailto:PCS_COS@hhsc.state.tx.us) and approved by COS for HHS contract management CEH credit. HHS System contracting areas should allow COS up to 30 days to review the training materials and provide a response to the request. All training events require sign-in sheets, presentation materials, and records of CEH certificates issued to be maintained according to the appropriate record retention schedule.
5.6.3 Webinar 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 at https://comptroller.texas.gov/purchasing/training/continuing-education/ 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).

5.7 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.
5.7.1 Training
CMH September 2017

Contract managers and agency staff may provide training to contractors in order 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.

5.7.2 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.

However, 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
5.8 Review for Amendment 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.

5.8.1 Contract Amendments
CMH March 2018

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. Agencies must have routing and review processes in place to ensure appropriate changes are approved by applicable staff, including System Contracting.

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:

Documents sub-module:

- The name of the contractor,
- The contract number,
- Date of technical assistance; and
- Summary of technical assistance provided.
The HUB Program Office determines additional HUB subcontracting

- The service description or the statement of work;
- Performance measures;
- Dollar amount;
- Geographic service area;
- Contract period that is outside of the contract period stated in the contract; or
- An extension to the contract within the contract period stated in the contract (renewal).

The request must include:
- An effective date; and
- A detailed description of the change.

Further considerations include:
- A proposed amendment that adds a CPA class or item codes must be reviewed by PCS to ensure that the change is permissible; and
- Any amendment that changes the statement of work or equals $1 million or greater must be reviewed and approved by PCS, 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, the contract manager, in coordination with System Contracting, processes the amendment through execution then completes and submits a CAPPS Data Entry Request- Amendment form with a copy of the executed amendment’s signature page to PCS Contract Administration to request entry of the amendment in CAPPS.

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.

5.8.2 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 Doing Business with HHS page at: https://hhs.texas.gov/doing-business-hhs/historically-underutilized-business-opportunities-program

5.9 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 COS through 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.

5.9.1 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 Public Information Act.

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.
5.9.2 Contract Records Retention
CMH April 2017

In accordance with the Texas Government Code 441.1855, all contract 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 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.

5.9.3 Absent Contract Records Requirements
CMH March 2018

POLICY

Definition

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, and Related Issues

Questions regarding privacy, confidential information, or related issues should be directed to the HHS Privacy Office at Privacy@hhsc.state.tx.us.
5.10 Federal Grant Administration and Management
CMH April 2016

POLICY

The purpose of this policy is to ensure grants are managed properly and that Federal and State dollars are spent in accordance with applicable laws and regulations.

A grant is a financial award provided by the state or federal government to an eligible grantee (subrecipient) to carry out a program in accordance with applicable federal or state rules and regulations. Grant agreements may result in contracts for services and goods. Grant contract elements should mirror conventional contract elements and include any grant-specific provisions.

5.10.1 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-subrecipient 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 of guidance;
- 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.

5.10.2 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. The UGMS mirrors the federal requirements with some exceptions. The Comptroller of Public Accounts develops and maintains UGMS.

POLICY

It is the policy of HHS that the HHSC federal funds manager review and approve all federal funding plans for HHS services in Texas. 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.

Federal grants awarded to subrecipients 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 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.
5.11 Determination of Subrecipient, Recipient, or Contractor Relationship
CMH March 2018

POLICY

The determination of a subrecipient, recipient, or contractor relationship is applicable to projects or purchases that utilize state or federal funding. The determination must be made during the procurement planning phase or when the related federal or state guidelines change. 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 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 at the requisition phase and helps 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 PCS 438 form is uploaded into the SCOR Contract module, Documents sub-module.

<table>
<thead>
<tr>
<th>Relationship Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contractor</strong></td>
</tr>
<tr>
<td>Normally operates in a competitive environment</td>
</tr>
<tr>
<td>Provides similar goods and services to many different purchasers</td>
</tr>
<tr>
<td>Provides goods and services that are ancillary to the operation of the</td>
</tr>
<tr>
<td>Provides goods and services within the normal business operations</td>
</tr>
<tr>
<td>Is not subject to federal or state program compliance requirements</td>
</tr>
<tr>
<td><strong>Definitions</strong></td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td><strong>Federal: Definitions from the Uniform Grant Guidance (UGG)</strong></td>
</tr>
<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). (2 CFR §200.22)</td>
</tr>
<tr>
<td><strong>Contractor:</strong> An entity that receives a contract as defined in §200.22 Contract. (2 CFR §200.23)</td>
</tr>
<tr>
<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</td>
</tr>
</tbody>
</table>
(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.

(b) 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.

(c) 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).

(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement. (2 CFR §200.38)

### 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)

### Grantee:
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. (UGMS, § III. State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A, .3)

### Subrecipient:
A non-federal entity that receives a sub award 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)

### 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”.

(UGMS, § III. State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A, .3)
### 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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</thead>
<tbody>
<tr>
<td>Federal Award</td>
<td>State Award</td>
<td>State Award</td>
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<tr>
<td>TO</td>
<td>(general revenue funds)</td>
<td>(general revenue funds and federal funds)</td>
</tr>
<tr>
<td>Recipient</td>
<td>TO</td>
<td>TO</td>
</tr>
<tr>
<td>(HHS Agency)</td>
<td>Form: PCS 438</td>
<td>Recipient</td>
</tr>
<tr>
<td>TO</td>
<td>TO EITHER</td>
<td>(HHS Agency)</td>
</tr>
<tr>
<td>Form: PCS 438</td>
<td>Recipient OR Contractor</td>
<td>TO</td>
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<tr>
<td>TO EITHER</td>
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<td>Form: PCS 438</td>
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<tr>
<td>Subrecipient</td>
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<td>TO EITHER</td>
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<tr>
<td>OR</td>
<td></td>
<td>Subrecipient</td>
</tr>
<tr>
<td>Contractor</td>
<td></td>
<td>OR</td>
</tr>
</tbody>
</table>

If both federal and state funds are used, the determination will always follow Federal Award (UGG) guidance:
Reference: UGG (principals)

Reference: UGMS (principals)

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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 to the designated mailbox: COSVendorSubRecipient@hhsc.state.tx.us.

The packet contents include:
- the PCS 438,
- statement of work, and
- grant application.
4. After COS designates the final determination and returns to 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 re-consideration 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.

**5.12 Subrecipient Management**

CMH April 2016

**POLICY**

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

HHS agencies oversee subrecipients 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 subrecipient. Programmatic monitoring may include monitoring performance measures and reporting requirements.

In overseeing grant performance, program staff and contract managers must ensure subrecipients achieve goals and complete deliverables. By closely monitoring performance throughout the grant period, potential problems can be addressed to keep subrecipients 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 subrecipients. Higher risk contracts and subrecipients may require more frequent and intensive monitoring and technical assistance to ensure overall success.
- Monitoring results are shared with subrecipients 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.

5.12.1 Single Audit Requirement
CMH September 2017

Grant fund recipients and subrecipients required to complete a single audit must obtain an independent audit including a single audit report and submit a copy of their audit reports to the PCS Single Audit Unit (SAU). The single audit is uploaded to SCOR Contractor module, Single Audit sub-module.

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 subrecipient takes appropriate and timely action on all single audit non-compliant issues.

• Grant fund recipients and subrecipients 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 recipient or subrecipient not meeting the $750,000 threshold will not be required to undergo a single audit, but must abide by UGG on cost principles and administration.

As established in HHS Circular C-041, Guidelines for HHS Agencies on Requiring Subrecipient Contractors, at https://hhsconnection.hhs.texas.gov/sites/intranet/files/documents/policy/circulars/c-041.pdf, recipient and subrecipient contractors 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.
5.12.2 Single Audit Desk Reviews
CMH March 2018

PROCEDURE:

- The Single Audit Unit (SAU) reviews the single audit via a desk review and 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.

5.12.3 Federal Funding Accountability and Transparency Act (FFATA) Reporting
CMH April 2017

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).

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.

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 at https://hhsconnection.hhs.texas.gov/procurement-and-contracting/pcs-forms?page=1.

5.12.4 Certification Regarding Lobbying
CMH September 2017

The Certification Regarding Lobbying form is required for contracts, grants, loans, and cooperative agreements that utilize federal funds. The Certification Regarding Lobbying is required once during the life of the contract. If any federal lobbying reporting becomes necessary, a Disclosure Regarding Lobbying Form (SF-LLL) should be provided by the contractor. Any forms received should be uploaded into the SCOR Documents sub-module or maintained within a contract management file. For additional information, the Certification Regarding Lobbying form is available for review under the title “Grants.gov Lobbying Form”.

5.12.5 Grant Closeout
CMH April 2016

The grant closeout period must be no less than 45 days and no later than 90 days after grant expiration or termination. The recipient or subrecipient must submit all financial, performance, and other reports required in the grant. Final reports and invoicing requirements are subject to grant record retention and access requirements.

For closeout guidance, see: Contract Closeout, Section 7.2.
5.13 Contract Management
CMH September 2017

POLICY

Contract managers must conduct contract management activities to verify the contractor is performing effectively and efficiently in accordance with contract terms and conditions. Contract management 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 management 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.

5.14 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 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.

For an example of a risk assessment instrument, see HHS-RCD-16 5.15
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.

5.15.1 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.

5.15.2 Contract Monitoring Activities
CMH September 2017

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:

- 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. Reviewing documents such as invoices, files, system reports, audit files and system data, 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 documents such as invoices, files, system reports, audit files, financial records, system data, 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.
The scope of monitoring may be categorized into particular types or may include elements of multiple types.

<table>
<thead>
<tr>
<th>Monitoring Type</th>
<th>Description</th>
<th>Possible Actions</th>
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</table>
| 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.  
(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.) | • 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 requirements;  
• 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 |
| 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. This activity assesses the degree to which the identified need is being met and the quality of the service being provided. | • 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 |
5.15.3 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.
**5.15.4 Contractor Screening**  
**CMH March 2018**

Contractor screening is completed prior to contract renewal and in conjunction with a scheduled contract monitoring event to verify the legal entity's business information and status.

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: [https://direct.sos.state.tx.us/acct/acct-login.asp](https://direct.sos.state.tx.us/acct/acct-login.asp). Search “Business Organizations.” 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 Secretary of State (SOS) or at the local county clerk offices where an office exists or services are rendered. If all of the entity’s assumed names are not on file with the SOS, request the entity to make available copies of all assumed names certificates required to be filed by law with the state and county at the time of the contract monitoring entrance conference. Governmental agencies are exempt from this check. 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 [https://www.sos.state.tx.us/corp/foreign_outofstate.shtml](https://www.sos.state.tx.us/corp/foreign_outofstate.shtml).

- **Texas Identification Number (TIN)** - Go to: [https://direct.sos.state.tx.us/acct/acct-login.asp](https://direct.sos.state.tx.us/acct/acct-login.asp). Search “Business Organizations.” Enter the 11 digit TIN as the Tax ID to verify the legal entity’s Tax ID is the TIN established by the Comptroller for receipt of payment.

- **Vendor Hold** - Go to: [https://comptroller.texas.gov/bluezone/bzweb52C2/Outside/TxCPA_lau nch_x.htm](https://comptroller.texas.gov/bluezone/bzweb52C2/Outside/TxCPA_lau nch_x.htm).

- **Franchise Tax Account Status** - Go to: [https://mycpa.cpa.state.tx.us/coa/](https://mycpa.cpa.state.tx.us/coa/) 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, the issue must be resolved to continue the contract. Governmental agencies are exempt from this check.

- **Texas Debarred Vendor List** - Go to:
https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php to verify the legal entity is not listed as debarred from doing business with the state.

- **System for Award Management (SAM) Federal Exclusion** - Go to: https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do 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.

- **OIG List of Excluded Individuals and Entities- Federal Exclusions** - Go to: https://exclusions.oig.hhs.gov/ 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.

- **HHSC-IG List of Excluded Individuals and Entities- State Exclusions** - Go to: https://oig.hhsc.state.tx.us/oigportal/EXCLUSIONS.aspx 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.

- **Texas Legislative Prohibitions** - Go to: https://comptroller.texas.gov/purchasing/publications/divestment.php to verify the legal entity does not boycott the state of Israel nor conduct business with the governments of Sudan or Iran or any foreign terrorist organization.

- **Vendor Performance Tracking System (VPTS)** - Go to: https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do 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 extending the 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: [https://emr.dads.state.tx.us/DadsEMRWeb/emrRegistrySearch.jsp](https://emr.dads.state.tx.us/DadsEMRWeb/emrRegistrySearch.jsp)
- **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 contractor, contract staff must consult program management to determine the appropriate action contract staff should take.

### 5.15.5 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, conclusions, and recommendations 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;
- Conclusions and recommendations, including findings, results, any dispute and resolutions;
- 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 final report is uploaded to the SCOR Documents sub-module unless prohibited from view by state or federal rules or regulations, such as WIC Grocer contracts.

**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.
<table>
<thead>
<tr>
<th>Nature of the Finding</th>
<th>Possible Action Response</th>
<th>Other Optional Steps</th>
</tr>
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</table>
| **Minor Concern**    | Communication with contractor to clarify problem, increase contractor awareness of possible risks, and offer information and assistance. | • Informal conversation with contractor  
• Letter to contractor  
• Follow-up monitoring to verify compliance  
• Corrective action plan |
| **Systemic Issue**   | Formal correction to address and resolve the problem and prevent any future risk.      | • Escalate to program management and COS  
• Enhance monitoring activities (increase scope or frequency)  
• Require a Corrective Action Plan  
• Formal notice to contractor warning of possible sanctions if the problem is not corrected  
• Implement contract remedies or liquidated damages as specified in the contract |
| **High Risk**        | Contract Remedies to resolve the problem and/or eliminate negative impact.            | • Escalate to program management and COS  
• Impose additional reporting requirements  
• Reduce the services or dollars associated with the contract  
• Collection of improper payments/disallowances  
• Suspension of referrals or services  
• Modification of contract provisions  
• Suspension of payments until the problem is resolved  
• Impose liquidated damages as specified in the contract  
• Deny contract renewal  
• Reduce the contract period or terminate prior to the contract end date  
• Report the contractor to VPTS for unsatisfactory performance, to the appropriate licensing organization, to the IG, or to law enforcement |
5.16 Enhanced Monitoring
CMH March 2018

POLICY

HHS agencies are required to establish enhanced monitoring protocols for contracts with a value of $10 million or more, regardless of the contract begin date. Enhanced monitoring is applicable to $0 contract agreements with expenditures that reach the $10 million threshold in actual expenditures.

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.

As defined by the State of Texas Contract Management Guide, enhanced monitoring is an increased level of monitoring, beyond the regular monitoring typically used.

Contracts requiring enhanced monitoring must have an assigned contract manager with a CTCM certification.

Enhanced contract monitoring activities are negotiated between the contract manager, HHS program contacts associated with the contract, if applicable, and the contractor. Enhanced monitoring activities may include, but are not limited to:

- training and technical assistance;
- 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.

HHS System program areas that have existing comprehensive monitoring plans in place based on state, federal, or programmatic requirements should utilize the procedures and activities already established.

Enhanced Monitoring and Existing Contracts:

- Contracts that reach the $10 million threshold require the contract manager to notify the contractor in writing that enhanced monitoring protocols have been activated for the remaining contract period unless this provision was contained within the Terms and Conditions.
**Enhanced Monitoring Reporting and Compliance:**
- COS is responsible for reporting any serious issue or risk identified with respect to contracts requiring enhanced monitoring to HHS Executive staff.
- Information pertaining to enhanced monitoring activities is reported to COS using the COS Mailbox at **PCS_COS@hhsc.state.tx.us**; enter in the subject line “Enhanced Monitoring”.

**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.

**5.17 Internal Controls**
CMH April 2016

**POLICY**

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 cover all aspects of an entity's operations that include programmatic, financial, and overall compliance with laws and regulations.

**5.17.1 Components of Internal Controls**
CMH April 2016

Depending on the size of an entity, contractors may implement internal control components differently; and effective controls can be less formal or less structured. Effective internal controls must 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.

### 5.17.2 Assessing Levels of Internal Controls

CMH April 2016

Contract managers should use professional skepticism and reasonable assurance in their assessment of internal controls. Proper internal controls will provide assurance that the terms and conditions of the contract can be fulfilled and that the entity is accurately and reliably reporting required information.

Professional skepticism is an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of information that is presented. The principle of reasonable assurance is a key to understanding adequate internal controls.

To further assist with meeting reasonable assurance, contract managers should assess 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 guide lines 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; the use of pre-numbered, consecutive documents; and the timely preparation of documents.

- **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.

- **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. Internal auditors may also verify that the supervisor performed the check of the cash drawer.

### 5.17.3 Evaluating Impact to Level of Risk

CMH April 2016

The contract manager and program staff should evaluate what controls exist to reduce identified risks. Controls are activities or processes that help ensure actions are taken to reduce risks. There are many control activities that may counter risks that threaten an organization's success, which can be grouped into four categories:

- **Directive control activities** are designed to guide an organization toward its desired outcome. Most directive control activities take the form of laws, regulations, guidelines, policies, and written procedures.
- **Preventive control activities** are designed to deter the occurrence of an undesirable event. The development of these controls involves predicting potential problems before they occur and implementing ways to avoid them.
- **Detective control activities** are designed to identify undesirable events that do occur, and alert management about what has happened. This enables management to take corrective action promptly.
- **Corrective control activities** are processes that keep the focus on undesirable conditions until they are corrected. They may also help in setting up procedures to prevent recurrence of the undesirable condition.

In order to identify and establish effective controls, the contract manager must continually assess and monitor control implementation, determine if gaps exist in the control structure and modify controls as needed. Examples of contract controls include:

- User acceptance testing of technology;
- Accepting or rejecting deliverables according to formal, documented processes;
- Developing preventive action plans;
- Recommending defect repairs for processes that allow poor performance;
- Comparing actual performance with required performance;
5.17.4 Recognizing Financial Controls, Risks, and Issues
CMH April 2016

Effective internal control over financial management and reporting provides reasonable assurance that misstatements, losses, or noncompliance with applicable laws and regulations, material in relation to financial reports, would be prevented or detected.

Objectives of Internal Control over Financial Management and Reporting

Reliability of financial management and reporting means that an entity can reasonably make the following assertions:
- Reported transactions actually occurred during the reporting period and all assets and liabilities exist as of the reporting date (existence and occurrence);
- Assets, liabilities, and transactions that should be reported have been included and no unauthorized transactions or balances are included (completeness);
- Assets are legally owned by the agency and all liabilities are legal obligations of the agency (rights and obligations);
- Assets and liabilities have been properly valued and, where applicable, all costs have been properly allocated (valuation);
- Financial reports are presented in the proper form and any required disclosures are present (presentation and disclosure);
- Transactions are in compliance with applicable laws and regulations (compliance);
- Assets have been safeguarded against fraud and abuse; and
- Documentation for internal control, transactions, and other significant events are readily available for examination.

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.
5.18 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.
6.0 Required Reporting

6.1 Vendor Performance Reporting
CMH March 2018

POLICY

By statute, the CPA must track and evaluate vendor performance based on information reported by state agencies. 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 4.5, Screening Requirements for Potential Contractors.

PCS is responsible for reviewing and submitting vendor performance information to the CPA Vendor Performance Tracking System (VPTS) on behalf of the HHS System. VPTS reporting is required at contract closeout or termination for all state agency contracts that have incurred expenditures with a total value of $25,000 or more, that do not result from an open enrollment. However, when there are critical performance issues, VPTS reporting is required for all state agency contracts, including those that are less than $25,000 or resulting from an open enrollment.

Exemptions from VPTS reporting include:
- Open enrollment contracts (exemption applies to reporting at close-out only);
- Inter-agency contracts;
- Inter-local 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.

Grant funded procurements determined to be a contractor by the respective agency are required to comply with vendor performance reporting.

HHS agencies must establish and document a process for submitting vendor performance reports to PCS Contract Oversight and Support (COS) (through the HHSPCSCVendorPerformanceMailbox) 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.
VPTS reports must:
- 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 C, D or F); and
- Be submitted with any necessary documentation to the VPTS Mailbox at [PCS_VPTS@hhsc.state.tx.us](mailto: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 uploads the VPTS report to the SCOR Contractor module.

For more information about vendor performance reporting see: [CPA VPTS web page](http://hhscx.hhsc.texas.gov/sites/extranet/files/docs/pcs/PCS-147.pdf).

### 6.2 Contract Reporting
CMH April 2017

The following reports and notifications related to state contracting are required by the Legislature, Legislative Budget Board (LBB), Statewide Procurement and Support Services (SPSS) rules, or other statutory authority. For additional information regarding a requirement, staff should refer to the appropriate representative.

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<tr>
<th>Contract Reporting Requirements Table</th>
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<td><strong>Type</strong></td>
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<td>Information Resources Projects</td>
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<tr>
<td>General Appropriations Act (GAA)</td>
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<td>Texas Historical Commission (THC)</td>
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<td>Texas Historical Commission (THC)</td>
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<td>Construction</td>
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<td>Electronic State Business Daily (ESBD)</td>
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<td>Electronic State Business Daily (ESBD)</td>
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<tr>
<td>Historically Underutilized Business Report</td>
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<td>Medical / Health Services</td>
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* Responsible Party: May vary by agency until roles and responsibilities are better defined through consolidation.
**Quality Assurance Team: State Auditor, Legislative Budget Board, and Department of Information Resources
*** Contract Advisory Team at TPASS as per Government Code § 2262.102


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](http://www.lbb.state.tx.us/).
7.0 Section: Contract Termination, Closeout, and Settlement

7.1 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.

7.1.1 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.

**7.1.2 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.

See: Contractor Performance Issues and Contract Remedies, Section 7.4

7.1.3 Termination Notices
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.

7.1.4 Notice 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.
7.1.5 Notice 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 notice of the contractor's rights of recourse, if any;
- A statement of all contract provisions that the contractor failed to meet;
- Any related materials demonstrating contractor failures;
- Contract citations that allow the termination; and
- A description of the closeout procedure.

7.2 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 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.

Detailed documentation of contract closeout is critical. Many funding sources for HHS contracts require complete and accurate documentation to be retained according to record retention requirements. Each HHS agency will develop policies and procedures to document the contract closeout process, which include:

- Completion of all administrative actions;
- A status is assigned to each deliverable 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;
- Auditing 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;
• Vendor performance (VPTS reporting); and
• Contract document closure and retention.

The contract manager should initiate closeout activities when there is a reasonable certainty the terms and conditions of the contact 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 close-out status in SCOR.

### 7.3 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 contract 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.

### 7.3.1 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.

7.4 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. The contract manager is also responsible for keeping the contractor and COS (as appropriate) informed of noncompliance issues.

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
• **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.

• **Excusable non-performance:** 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 provides 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:

- A verbal conversation alerting the contractor to the problem followed by written documentation of the conversation;
- Written correspondence alerting the contractor to the problem;
- 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:

- Assessment of damages;
- Withholding of payment;
- Bonds, corporate parent guarantees, or letters of credit;
- Free or discounted hardware, or programming credits;
- Stop work orders, contract suspension, or termination;
- Debarment from program.

**If applicable, the contract manager must complete and submit a recommendation to impose a contract remedy to COS**

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 a committee process for determining the appropriate contract remedy. Contract managers within MCS and AES, as applicable, complete and submit a recommendation to impose a contract remedy to the Adverse Action Review Committee by e-mailing COS at PCS_COS@hhsc.state.tx.us.

**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 requirements.

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](#).
8.0 Section: Glossary

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.

Assignment: the act of transferring from a contracted party to another party all or part of one's property, interest, rights or obligations from the original contract.

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 in which the Texas Legislature appropriates funds. Example: September 1, 2015 through August 31, 2017xv.

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

CAPPs: Centralized Accounting and Payroll/Personnel System

Class and Item: The classification system from the NIGP Commodity Book
that identifies items and services. (State of Texas Contract Management Guide, Glossary of Purchasing Terms)

**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
- One member from a small state agency per §2262.102 Government Code xvi.

**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 the HCATS contract record, 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 of Texas. Used interchangeably with the term “vendor”.

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**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:** An increased level of monitoring, beyond the regular monitoring normally used. 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 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 xviii.
**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 assistance, including cooperative agreements, in the form of money, equipment, supplies, or other resources paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with the terms of the grant award and all applicable state and federal laws, rules, and regulations xix.

**Health and Human Services Agency:** A state agency identified in Section 531.001 Government Code.

**Health and Human Services Commission:** The umbrella agency that oversees all health and human service agencies and establishes rules for purchasing by those agencies as established by Government Code Section 531.0055.

**HHSAS:** The Health and Human Services Automated System is the automated financial system for the HHS System that is used to manage requisitions, purchase orders, receiving, asset information, payables, budget and GL.

**HHSAS Requisition:** Purchase request entered into HHSAS that uses an electronic workflow process to approve the amount and budget to encumber the funds and route the request to PCS for purchase order processing and issuance.

**HHSC Contract Administration and Tracking System (HCATS):** A web-based tracking system that offers one centralized storehouse of contract information for tracking, processing, and reporting purposes.

**Historically Underutilized Business (HUB):** A business in which the owner has a proportionate interest and demonstrates active participation in the control, operation, and management of the business and is a member of a recognized economically disadvantaged group such as Black Americans, Hispanic Americans, women, Asian Pacific Americans, Native Americans, and veterans as defined by 38 U.S.C. Section 101(2) who have suffered at least a 20 percent service-connected disability as defined by 38 U.S.C. Section 101(16) as defined by Government Code Chapter 2161.001.

**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 of Equipment:** A contract granting use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the contractor\textsuperscript{xx}.

**Lease Purchase:** An installment sale which gives the lessee the right to purchase the equipment at an agreed upon price under certain conditions. Title passes from seller to purchaser if and at the time the option to purchase is exercised\textsuperscript{xxi}.

**Lifecycle Costing:** A procurement 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\textsuperscript{xxii}.

**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 vendor's failure to meet the contract requirements\textsuperscript{xxiii}.

**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 xxiv.

**Purchase Order (PO):** A purchase contract issued by the HHS System 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 xxv.

**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
The term recipient does not include subrecipients. (2 CFR §200.86) or receives a state award directly from a state awarding agency to carry out a state program. (UGMS §200.87.00)

**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.

**Scope of Work:** See statement of work.

**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. (UGMS §200.90.02)

**Statement of Work (SOW):** The detailed description of what the agency is purchasing and what the contractor is required to provide in order to satisfactorily perform the work.\(^{xxvi}\)

**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 expends federal awards received from a pass-through entity to carry out 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.xxvii.

**System:** The consolidated organization made up of the Texas Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS).

**Transactional Purchase Order:** As referenced in the Procurement and Contracting Services Handbook of Operating Procedures, OP350, a Transactional Purchase Order is a one-time procurement over $5,000.

**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 solicitationxxviii, (e.g., price per ton, per labor hour, or per foot).

**Vendor:** A business entity or individual that has a contract to provide goods or services to the State of Texas. Used interchangeably with the term “contractor”.

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**REFERENCE**

i Texas Administrative Code (TAC), Title 1, Part 15, Chapter 391 Subchapter E. Standards of Conduct for Vendors and HHSC Procurement and Contracting Staff.

ii Texas Penal Code, Section 36.08

iii Texas Government Code, Section, 572.069

iv HHS Circular C-031 *HHS Ethics Training For Contracting And Procurement Personnel*

v TAC, Title 1, Part 15, Chapter 391 Subchapter E. Standards of Conduct for Vendors and HHSC Procurement and Contracting Staff

vi Section 2252.901, Texas Government Code.

vii Texas Government Code, Section 2155.083

viii State of Texas Contract Management Guide, Ch. 3 –Preparing the Statement of Work

ix State of Texas Contract Management Guide, Ch. 3 – Specification Types

x Texas Government Code, Section 2262.101

xi Texas Government Code, Section 2262.101(a)

xii Texas Government Code, Section 2262.101(d)

xiii Texas Government Code, Section 2262.055

xiv Texas Government Code, Section 2262.055
xvi  Texas Government Code, Section 2262.102
xvii See State of Texas Procurement Manual, Glossary of Purchasing Terms
xviii See State of Texas Procurement Manual, Glossary of Purchasing Terms
xix  See State of Texas Contract Management Guide, Definitions
xx  See State of Texas Procurement Manual, Glossary of Purchasing Terms
xxi  See State of Texas Procurement Manual, Glossary of Purchasing Terms
xxii See State of Texas Procurement Manual, Glossary of Purchasing Terms
xxiii See State of Texas Contract Management Guide, Definitions
xxv  See State of Texas Procurement Manual, Glossary of Purchasing Terms
xxvi State of Texas Contract Management Guide, Ch. 3 - Preparing the Statement of Work
xxvii State of Texas Contract Management Guide, Definitions
xxviii See State of Texas Procurement Manual, Glossary of Purchasing Terms