

# VENDOR GUIDE



## How to Do Business with the State of Texas

**Comptroller of Public Accounts  
Texas Procurement and Support Services  
1711 San Jacinto Blvd.  
Austin, Texas 78701**

<http://www.window.state.tx.us/procurement/>

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## 1. GENERAL INFORMATION

This guide is intended to acquaint vendors with the State of Texas' procurement processes and encourage all vendors to become suppliers to the state. The guide provides a current source of information for prospective vendors regarding the many selling opportunities existing in the State of Texas. The Texas Comptroller of Public Accounts (CPA) – Texas Procurement and Support Services (TPASS) division has developed the purchasing policies and procedures, in accordance with state statutes, and most of the information included is also applicable to other state agencies. Procurement is a major activity for the state and the system is designed to ensure fair and equitable treatment of all individuals that participate in the procurement process. Vendors are an important element in this process and vendor participation is crucial to the success of existing and new programs.

Vendors should periodically visit the TPASS Web site at <http://www.window.state.tx.us/procurement/> to review the Vendor Guide for any updated information. From the above link, select "Purchasing Publications", and then select "Vendor Guide".

### **Texas Comptroller of Public Accounts (CPA) Texas Procurement and Support Services (TPASS) Division**

The CPA Texas Procurement and Support Services (TPASS) division purchases supplies, materials, services, and equipment for the State of Texas. In most cases, economy of scale or volume purchasing by CPA assists the state agencies in securing cost savings for the taxpayers. CPA has delegated levels of purchasing authority to many agencies. Where volume purchasing is desirable and reduced costs and efforts are significant, CPA develops and implements statewide term contracts. To insure compliance with state statutes, CPA normally processes solicitation requirements associated with large dollar purchases.

The primary functions of TPASS include purchasing management, thoughtful policy implementation, adequate training and monitoring of purchases in accordance with state statutes. To be effective, the TPASS strives to reduce the cost of government, inspire public confidence in government, improve the quality and timeliness of services rendered by state agencies, provide a meaningful partnership with the business community and promote honesty and integrity throughout government operations. The centralized purchasing process becomes much more than a technical or clerical exercise. It is a managerial function that crosses agency lines, with a primary mandate to conserve public funds.

The information enclosed is provided as a general guideline to help vendors understand their part of the procurement process utilized by the state. Nothing contained herein shall be construed to amend or override any statute, rule, regulation, policy or procedure of the State of Texas, or the provision of any

document used in any competitive procurement. CPA reserves the right to modify this guide without prior notice and without issuance of such modification to all holders of the manual.

## **Authority of CPA – Texas Procurement and Support Services (TPASS) Division**

The Texas Procurement and Support Services (TPASS) division of the Texas Comptroller of Public Accounts (CPA) is the unit of state government charged with the responsibility for the establishing of contracts, leases, purchase orders or other agreements for the procurement of commodities (supplies, materials and equipment) and services for other agencies of the state, and for overseeing statewide contracts. State agencies and departments are required to purchase through TPASS, with some exceptions, unless the total dollar amount of the procurement is within the agencies delegated purchasing authority. Agencies that are specifically exempt by statute or CPA Rule are not required to purchase through TPASS.

## **Purchases by Local Subdivisions**

Local political subdivisions, including counties, municipalities, school boards, and more, are authorized by state law to purchase their supplies, materials, and equipment through TPASS if they so desire as members of the State of Texas Cooperative Purchasing Program. Purchases pursuant to this authorization may take the form of statewide term and TXMAS contracts or open market purchases for school buses. A CO-OP member may request the assistance of TPASS to competitively bid items using the open market purchase process. These requests are considered by TPASS on a case-by-case basis.

## **CPA Statewide Procurement Program**

[Procurement Operations and Procurement Support](#) (POPS) performs daily operations of CPA's Texas Procurement and Support Services division office including the following:

- Processes open market requisitions on behalf of over 221 state agencies and over 1800 CO-OP members.
- Administers over 200 statewide term contracts and procurement schedules representing several thousand line items.
- Provide information and customer service related to statewide purchasing processes as well as, the [Vendor Performance Tracking System](#), the [Centralized Master Bidders List](#), and the [State of Texas CO-OP](#).
- Reviews proposed service contract specifications and determine delegated authority to Request for Proposal packages or solicitations submitted by state agencies.

- Conduct outreach to vendors, state agencies, and local governments at state trade shows and conferences; and
- Manage the statewide purchasing system and the [Electronic State Business Daily](#) and provide user support for these systems.

### **Historically Underutilized Business (HUB) Program**

In accordance with Texas Government Code, Chapter 2161, CPA is responsible for administering the [Historically Underutilized Business \(HUB\) Program](#) for the State of Texas. This includes marketing the HUB Program, certifying minority and woman-owned businesses as HUBs, facilitating the use of HUBs in state procurement, and providing information on the state's procurement process to minority and woman-owned businesses.

A "Historically Underutilized Business" is an entity with its principal place of business in Texas, and is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American and/or American woman who reside in Texas and have a proportionate interest and demonstrate active participation in the control, operations and management of the entity's affairs.

### **Competitive Bidding Requirement**

The Texas Government Code stipulates that agencies purchase or contract for goods or services through competitive bidding whenever possible.

### **Negotiation**

Negotiation of contracts is permitted for:

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

### **Mandatory Source Procurement (Set Aside Programs)**

State Statutes and the CPA Rules require state agencies to purchase certain approved products and services from mandatory sources. The sources are Texas Industries for the Blind and Handicapped (TIBH) and the Texas Correctional Industries (TCI). The goods and services offered by these mandatory sources must meet the procuring agency's specified requirements, including quality and urgency of need. The procurement of such products and

services from these two entities is not subject to the competitive solicitation requirements of the Texas Government Code and the CPA Rules.

### **Delegated Authority**

The authority to purchase is delegated to state agencies by the CPA as allowed by state statutes and CPA Rules. Agencies are delegated the authority to purchase commodities up to \$25,000 and services up to \$100,000. Also delegated to state agencies are:

- Direct publication purchases;
- Perishables (food-related) purchases;
- Distributor purchases;
- Fuel, oil and grease purchases; and
- Emergency purchases.

Procurement requirements for goods and services in excess of a non-exempt agency's delegated purchasing authority are forwarded to TPASS for processing. With limited exceptions, the rules for competitive procurement apply.

### **Commodity Purchases**

A commodity purchase is a procurement of supplies, materials or equipment and does not include the purchase of real property or services. CPA has delegated to non-exempt state agencies the authority to purchase commodities with an estimated dollar amount that does not exceed \$25,000.

Commodity purchases that are not covered by the delegated purchasing authority are:

- Any item required by statute to be purchased from a particular source. (Commodity items and services currently available through the Texas Council for Purchasing from People with Disabilities and the Texas Correctional Industries)
- Any item on a CPA statewide term contract, unless the item fails to meet the specified needs of the agency, including budgetary considerations, or the quantity purchased is less than the minimum quantity specified under the term contract including price and delivery schedule; or
- Any item designated by CPA as a scheduled purchase.

### **Purchases of Services**

All purchases of services over \$100,000 per year are not delegated and are to be prepared in the appropriate manner for a CPA Open Market requisition with complete specifications and submitted to CPA for review. CPA may choose to



process the requisition and issue the order accordingly, or, if there is no competitive advantage, CPA may delegate the purchase back to the agency.

## **Texas Statutes**

The Texas statutes that govern purchasing activity are found in the Texas Government Code, Title 10 - General Government. The Texas Government Code rules on purchasing may be found on the Texas Legislative Council's Web site at <http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>.

Chapter 403 - Comptroller of Public Accounts

Chapter 2155 – Purchasing: General Rules and Procedures

Chapter 2156 – Purchasing Methods

Chapter 2157 – Purchasing: Purchase of Automated Information Systems

Chapter 2158 – Purchasing: Miscellaneous Provisions for Purchase of Certain Goods and Services

Chapter 2161 – Historically Underutilized Businesses

The CPA Rules can be found on the Secretary of State's Web site at <http://info.sos.state.tx.us/> at the Texas Administrative Code, Title 34, Part 1. The TPASS Rules can be accessed at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=34&pt=1&ch=20](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=34&pt=1&ch=20), Texas Administrative Code, Title 34, Part 1, Chapter 20.

## **Ethics Statement**

The ethics provisions of 1 Tex Admin Code §111.4 apply to employees, vendors and potential vendors acting under delegated authority. In consultation with CPA, the Ethics Commission is required, under Section 1.07 of House Bill 3560 of the 80<sup>th</sup> Legislature, to adopt new rules to implement the specific ethics provisions of that legislation as they relate to TPASS. Likewise under Section 3.10 of House Bill 3560, the Ethics Commission is required to adopt new rules to implement the specific ethics provisions of that legislation as they relate to the Texas Facilities Commission.

More specifically, a CPA employee may not have an interest in or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of CPA or purchasers of other state agencies.

## 2. CENTRALIZED MASTER BIDDERS LIST (CMBL) REGISTRATION

### Vendor Responsibility

Vendors should not list their business as a provider of goods and/or services by the class and item code if the actual product or service cannot be provided per Government Code [§2155.267](#). Vendor selection of appropriate Highway Districts and NIGP class and items ensures receipt of bid opportunities for products and/or services issued by the ordering entities. Vendor creditability and accountability as a responsible vendor may be damaged by false representation, which agencies report to CPA via the Vendor Performance Tracking System.

The Vendor Performance Tracking System is designed to meet CPA's statutory requirement to track vendor performance per Government Code [§2155.074](#) and [§2155.077](#). The Vendor Performance Tracking System provides a mechanism to state agencies to report exceptional, satisfactory and unsatisfactory performance. Finalized performance reports are available as public information as a part of the vendor's CMBL profile.

CPA is responsible for the management of the Centralized Master Bidders List (CMBL), which must be used by state agencies (and may be used by CO-OP members) to develop a mailing list for vendors to receive bid opportunities based on the products or services they can provide to the State of Texas. Manufacturers, suppliers, and other vendors wishing to furnish materials, equipment, supplies, and services to the state should register on the CMBL to receive bidding opportunities. Therefore, the first step to begin doing business with the state is to become a registered supplier on the state's CMBL.

A vendor may sign up electronically to become a registered vendor on the CMBL by going to the CPA Web site at: <http://www.window.state.tx.us/procurement/prog/cmb/>. There is an annual registration fee of \$70 that all vendors pay to register and remain on the CMBL. This fee may be paid by a credit/debit card or electronic check processing. Vendors with multiple locations require separate CMBL registrations. Once the CMBL site has been accessed, scroll down and click on "NIGP Commodity Book" in order to select the commodity code(s) that best describe the kinds of goods and/or services the vendor would like to supply to the state. (See page #7 NIGP) Once the appropriate code(s) have been identified, go back to the above link and click on "New Vendor CMBL Registration" and follow the instructions provided. Vendors should also select highway districts identifying the areas that the products or services they select may be provided. (See page #9 – Highway Districts)

Vendors also have the option of completing the registration online or printing and completing the hard copy application and submitting the form or application with

a check (US Dollars) payable to CPA at the referenced address on the documents.

Once a vendor has registered, it is important to remember to keep the name, address, telephone number, etc., current as the vendor profile information changes and to change/revise as necessary the commodity codes that have been chosen. Online registration and profile updates are reflected within thirty (30) minutes on the CPA Web site.

If a vendor is awarded a contract, and it becomes necessary to change the vendor's contact information on the contract, the vendor must notify the purchaser listed on the contract in writing to ensure the information is changed on the term contract and also update their CMBL profile online. Vendors may also register offline by downloading a hard-copy CMBL application in PDF format. Mail the completed application with the \$70.00 (U.S.) registration fee payable to the Comptroller of Public Accounts at:

**Comptroller of Public Accounts**  
**PO Box 13186**  
**Austin, TX 78711**

Vendors should allow up to 30 working days for the hard copy application to be processed. Vendors will receive an activation notice by US mail that includes the vendor's User Identification Number and Password which should be used for future profile updates and registration renewals.

### **NIGP Codes**

The NIGP Commodity and Services Coding System was developed by the National Institute of Governmental Purchasing (NIGP) to bring consistency to automated purchasing. Each item purchased by the State of Texas is assigned an NIGP Class-Item code. To see a list of class and item codes used by the state of Texas, please go to: <http://www.window.state.tx.us/procurement/tools/comm-book/>.

Note: By clicking on the class code with the general description closest to the commodity or service which can be provided, items will appear which are designated for that class. You may also scroll to the bottom of the page and click on the link "The Whole Commodity Book". You may use the word search function by typing Ctrl F for the work search box to appear which will take you through the commodity book with the word entered. The NIGP Commodity Book is copyrighted and should not be printed.

The commodity or service class drives the electronic bid list. Therefore, vendors should select class codes closest to the actual product or service which can be provided. Procurement opportunities are mailed according to the class (3 digit) and item (2 digit) codes selected and will contain required specifications. If you

need help identifying which class and item codes are applicable to your company, contact the CMBL Help Desk at (512) 463-3459.

If a vendor finds that their company is not receiving bids for a particular good or service, the vendor may not be enrolled in the distinct commodity class or may have an incorrect address on file. Vendors may bid on a commodity class or service other than the classes designated on their on-line registration; however, vendors are responsible for requesting the solicitations from the respective agency purchasers or downloading from the Electronic State Business Daily (ESBD).

### **CMBL Help Desk**

If you have any problem with the CMBL registration process, please contact the CMBL Help Desk at 512-463-3459. For more information concerning the CMBL, including frequently asked questions and answers, go to the CPA Web site at <http://www.window.state.tx.us/procurement/prog/cmb/faq/>.

### **Marketing to State Agencies**

Even though vendor information appears on the CMBL, it is beneficial to continue marketing efforts with the various state agencies that would use the specified products or services. To get started, go to <http://esbd.cpa.state.tx.us/agaddress/addresslist.cfm> for the State Agency List to find the name and phone number of the purchasing agent at the agencies you would like to target. Another target area for marketing efforts is the list of CPA Cooperative Purchasing Program members. This list is comprised of local governmental entities and non-profit agencies that have registered and are qualified to use CPA contracts. The CO-OP Members List may be accessed at <http://www.window.state.tx.us/procurement/prog/coop/coopmemb/>.

Although a vendor may be awarded a contract by being the lowest responsible bidder, marketing is a key ingredient to becoming a successful vendor with the state. Merely registering on the CMBL registration bid list will not ensure automatic awards. Vendors are encouraged to build a business rapport with the state procurement officers and product end users as well as target sales to the state as any other customer. The most successful vendors understand the purchasing process, know their product, work diligently to market their product to the state, and exercise a high degree of business ethics and responsibility in responding to the requirements of their contract with the state.

Non-state agencies and the Texas Department of Transportation (as authorized by Statute) have developed and maintain their own vendor databases. Vendors doing business with these agencies, universities, etc., will need to continue working with these agencies to stay on their bid lists since they may not use the CMBL.

Additionally, anyone may search the Electronic State Business Daily (<http://esbd.cpa.state.tx.us/>) for posted procurement opportunities at any time. Please note that the postings on the ESBD are mandatory for bid opportunities \$25,000 or more. (Please see page 19 for more information on the ESBD).

## **Texas Highway Districts**

The State of Texas is divided into 25 highway districts, which include designated counties. Vendors should select the highway districts based on the areas for the products or services they can actually provide and have selected by commodity class and number that can be made available or delivered.

### **Texas is divided into 25 geographic districts as follows:**

#### District 01

Delta, Fannin, Franklin, Grayson, Hopkins, Hunt, Lamar, Rains, Red River

#### District 02

Erath, Hood, Jack, Johnson, Palo Pinto, Parker, Somervell, Tarrant, Wise

#### District 03

Archer, Baylor, Clay, Cooke, Montague, Throckmorton, Wichita, Wilbarger, Young

#### District 04

Armstrong, Carson, Dallam, Deaf Smith, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman

#### District 05

Bailey, Castro, Cochran, Crosby, Dawson, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Parmer, Swisher, Terry, Yoakum

#### District 06

Andrews, Crane, Ector, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler

#### District 07

Coke, Concho, Crockett, Edwards, Glasscock, Irion, Kimble, Menard, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Tom Green

#### District 08

Borden, Callahan, Fisher, Haskell, Howard, Jones, Kent, Mitchell, Nolan, Scurry, Shackelford, Stonewall, Taylor

#### District 09

Bell, Bosque, Coryell, Falls, Hamilton, Hill, Limestone, McLennan

District 10

Anderson, Cherokee, Gregg, Henderson, Rusk, Smith, Van Zandt, Wood

District 11

Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity

District 12

Brazoria, Fort Bend, Galveston, Harris, Montgomery, Waller

District 13

Austin, Calhoun, Colorado, De Witt, Fayette, Gonzales, Jackson, Lavaca, Matagorda, Victoria, Wharton

District 14

Bastrop, Blanco, Burnet, Caldwell, Gillespie, Hays, Lee, Llano, Mason, Travis, Williamson

District 15

Atacosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, Uvalde, Wilson

District 16

Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Neuces, Refugio, San Patricio

District 17

Brazos, Burleson, Freestone, Grimes, Leon, Madison, Milam, Robertson, Walker, Washington

District 18

Collin, Dallas, Denton, Ellis, Kaufman, Navarro, Rockwall

District 19

Bowe, Camp, Cass, Harrison, Marion, Morris, Panola, Titus, Upshur

District 20

Chambers, Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Tyler

District 21

Brooks, Cameron, Hidalgo, Jim Hogg, Kenedy, Starr, Willacy, Zapata

District 22

Dimmit, Duval, Kinney, La Salle, Maverick, Val Verde, Webb, Zavala

District 23

Brown, Coleman, Comanche, Eastland, Lampasas, McCulloch, Mills, San Saba, Stephens

District 24

Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio

District 25

Briscoe, Childress, Collingsworth, Cottle, Dickens, Donley, Foard, Hall, Hardeman, King, Knox, Motley, Wheeler.

### **3. METHODS OF PROCUREMENT**

#### **Invitation for Bids (IFB)**

The IFB is a formal solicitation of sealed bids that must be used for expenditures exceeding \$25,000. The IFB is also the main procurement instrument used to solicit State of Texas term contracts and open market purchases. Sealed bids designate a specific time and due date, are publicly opened and, upon request, the bidder's names and prices may be read at the time and place designated in the IFB. After the bids are evaluated, a Notice of Award or a Purchase Order is issued to the lowest cost responsible bidder meeting all specifications, contract terms and conditions. It should be noted that the contract award will not always be made to the bidder with the lowest price if the state determines that the low price bidder cannot clearly perform the contract requirements or a best value determination results in an award to a bidder other than the low bidder.

#### **Request for Qualification (RFQ)**

A solicitation document requesting submittal of qualifications or specialized expertise in response to the scope of professional and consulting services as related to section 2.20 of the CPA Procurement Manual.

#### **Request for Proposal (RFP)**

An RFP is a formal and competitive method of procurement whereby vendors are requested to submit proposals for the supply of goods and services in a format which allows for the consideration of factors in addition to the price in the evaluation and award process. This method of solicitation is used when it is determined by CPA that the use of competitive sealed bidding is not practical or is not advantageous to the state and when the project does not lend itself to the creation of a clear and concise Statement of Work. The objective of the RFP solicitation is to determine a vendor who can offer the best possible solution at the most reasonable price.

The RFP describes in general terms the background and needs of the state. However, unlike the informal or formal bidding process in which the state prescribes both the specifications and solution to its own needs and vendors replicate the state's specifications and solution in the bids that they submit, the

RFP process contemplates that vendors will propose their own comprehensive and innovative solutions to the state's needs described in the RFP. Therefore, the RFP process is used for highly technical equipment, complex services or when contracting with group purchasing organizations. The RFP defines requirements, asks suppliers for proposed solutions, defines criteria for evaluation, and outlines terms and conditions.

Proposals are opened on the scheduled day and time and only the names of the proposers are revealed to those present. Pricing is not revealed at this time. Recommendations for award are made by a multi-functional selection committee who determine which proposal is in the best interest of the state based on the evaluation criteria defined in the RFP. This process results in a contract with monitoring and reporting.

### **Statewide Term Contracts**

Statewide term contracts are developed to consolidate the needs of several agencies, to standardize, to combine usage for lower prices and to facilitate the purchase process of items of common demand. A term contract is awarded and created when the statewide procurement manager or his/her designee signs a notice of award. The solicitation document will contain, whenever possible, non-binding estimates of total usage by the user agencies. The successful bidder will be issued a Notice of Award by the statewide procurement manager or designee. Contracts are usually in effect for an initial 12 month period and may have additional 12 month renewal options, which may be exercised if determined to be in the best interest of the state. The shipment of supplies, materials or equipment is authorized by the issuance of purchase orders by user agencies as releases against the contract. All non-exempt state agencies are required to purchase from statewide contracts unless the contract item fails to meet specified requirements or the quantity to be purchased is below a minimum quantity threshold. Members of CPA Co-op can procure from these contracts at their option.

### **Open Market Purchases**

Open Market solicitations are used for uncommon items needed by state agencies and are usually a one time purchase. Bidders should not expect additional orders unless the award results in blanket or standing open market purchase orders (repetitive need orders). The requirements for competitive solicitations apply to these purchases and upon award to the lowest responsive bidder, a Notice of Award or Purchase Order will be issued by the statewide procurement manager or designee. Agencies are authorized to make delegated purchases for commodities under \$25,000 and for services estimated to cost no more than \$100,000 per year per contract. Purchases that exceed these designated amounts are forwarded to the CPA for open market solicitations.



## **Emergency Purchases**

An emergency condition is a situation which occurs as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. All procurements conducted as emergencies should be made as competitive as possible under the circumstances and emergency purchases of goods or services should not exceed the scope or duration of the emergency.

Emergency purchases over \$25,000.00 must be posted in the Electronic State Business Daily (ESBD); however, the minimum posting requirements do not apply. Posting of the award notice satisfies this requirement.

The requirement of the Emergency purchases over \$25,000 does not apply in an emergency requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state based on Texas Government Code [§2155.083](#) State Business Daily: Notice Regarding Procurements Exceeding \$25,000, section h.

## **Reverse Auctions**

The CPA uses the reverse auction procedure as a method of purchasing goods and services. Reverse auctions are conducted on the internet at a specific time for a specified period of time and make exclusive use of the advantages of real-time communications and the responsiveness features of electronic commerce. The statutory authority for the reverse auction purchasing method is Texas Government Code, [§2155.062](#)(a)(4) and (d).

On-line reverse auction events are better suited for the competitive purchase of clearly defined products and services with monetary values in excess of \$50,000. Generally, reverse auction events for procurement requirements with a lower overall dollar value do not generate the competitive interest or savings to justify the use of this purchasing method. Proprietary products, services, or solicitations that allow negotiation prior to award are not appropriate candidates for reverse auctions.

In consideration of its statewide procurement role, reverse auctions undertaken by CPA will be restricted as a rule to IFBs for the open market requirements of supported agencies. However, some CPA statewide term contracts and scheduled purchases may also be considered as candidates for the reverse auction purchasing method.

For more information concerning reverse auction procedures, see term contracts at [http://www2.cpa.state.tx.us/cat\\_page/cat\\_961\\_a2\\_0308.html](http://www2.cpa.state.tx.us/cat_page/cat_961_a2_0308.html).

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

The concept and philosophy associated with the Texas Multiple Award Schedule (TXMAS) contract program is that it capitalizes on the benefits of volume buying, preferred customer pricing, and previously awarded competitive contracts of the federal government and governmental entities of other states. State level contract administration is minimized by the fact that material issues which affect the contract such as economic price adjustments, price audits, contract modifications and contract renewals are performed by the federal or state entity that awarded the basic contract.

There is no formal connection between a TXMAS contract and GSA. Care should be taken to discourage any perception by the user or supplier that a formal relationship exists. The TXMAS contract is an official relationship between the State of Texas and the holder of a GSA contract.

TXMAS Contractors are responsible for developing their product catalogs and certified price lists. There is no format specified for catalogs or price lists other than they must be informative, user friendly and professional in presentation. A distinctive TXMAS logo is available which can be forwarded to the contractor in an electronic format to identify the catalog and price list as a TXMAS program contract requirement. Contractor points of contact for customer service and distributors are found on the contractor's "landing page" which normally links to other TXMAS contract information. Once the catalog is ready for web posting, the contractor supplied URL (dedicated solely for accessing the contractor's TXMAS catalog and certified price list) is electronically forwarded to the supporting TXMAS IS Support Unit at [TXMAS@cpa.state.tx.us](mailto:TXMAS@cpa.state.tx.us).

Vendors with a current GSA Federal Supply Service Contract can access <http://portal.cpa.state.tx.us/txmas/regoffer.asp> to fill out a Request for Offer Packet Form.

For information on the TXMAS program, please send an email to [txmas@cpa.state.tx.us](mailto:txmas@cpa.state.tx.us) or call 512-463-3421 or 512-463-8839.

## **4. PROCUREMENT CYCLE**

The procurement cycle begins by defining the end user's need for a commodity or service and typically ends with the disposal process. The procurement cycle consists of the following:

- Need Defined
- Procurement Method Selected

- Solicitation
- Receipt of Bids
- Evaluation & Awards
- Inspection & Acceptance
- Contract Administration
- Payment
- Disposal of Property

### **Need is Defined**

When a state government end user recognizes the need for a commodity or service, they communicate that need to the purchasing staff (designated purchaser). The most common document used to identify the need is a purchase requisition. The requisition should include the specifications of the commodity or service that an end user seeks to procure.

### **Specifications**

A specification is a detailed description of a product or service that a user seeks to procure, and consequently, a description of what a bidder must offer to be considered for an award. Specifications are the primary means of communication between an agency and a vendor.

Specifications control the following procurement aspects:

- Functional need being addressed,
- The quality of the product,
- The amount of competition,
- Suitability of the product or service for the job,
- The method of evaluation used in making an award and in determining the bid with the best value for the purchase.

### **Best Value Criteria**

According to Texas Government Code, Chapter [2155.074](#), the definition for best value includes, but is not limited to:

- Installation costs,
- Life cycle costs,
- Quality and reliability of the goods and services,
- Delivery terms,

- Indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility and the vendor's ability to provide reliable maintenance agreements and support,
- Cost of any employee training associated with a purchase,
- Effect of a purchase on agency productivity, and
- Other factors relevant to determining the best value for the state in the context of a particular purchase.

Note: A bidder or contract participant may provide free technical assistance to an agency in developing specifications. However, a state agency may not accept a bid or award a contract to a vendor who received compensation from the state to participate in the preparation of the specifications or Statement of Work on which the bid or contract is based. Care must be taken in the development and acceptance of specifications to insure allowance for full and open competition and non-restrictive participation.

### **Procurement Method Selected**

The next step to the Procurement Cycle is selecting the procurement method to be used. The purchasing agent identifies the appropriate procurement method based on specifications, including delivery requirements and estimated costs. The purchasing agent first seeks availability of the requested commodity or service from TIBH, TDCJ, Term Contract or TXMAS. The answer to the above will identify the purchase as a non-delegated or delegated purchase.

### **Solicitation Process**

It is the policy of the state to provide every vendor an equal opportunity to submit responses on state procurement solicitations. The method of solicitation depends on the estimated value of the solicitation, the particular products or services to be purchased and what methods are most advantageous to the state.

In accordance with Texas Government Code (GC), Title 10, Subtitle D, [§2155.261](#) state agencies are required to solicit bids from vendors listed on the Centralized Master Bidder's List (CMBL). Texas Government Code, Title 10, Subtitle D, [§2155.268](#) (c) also allows a state agency to supplement the CMBL with a list of CPA certified Historically Underutilized Businesses (HUBs) if it determines that the supplementation will increase the number of HUBs that submit bids. Under the provisions of GC [§2155.269](#) and TAC Rule [§20.34\(h\)](#), agencies may supplement specific solicitations with non-CMBL bidders if the added bidders will increase competition. Through a written request, prospective bidders may request specific bid invitations from the state agency at any time

prior to the bid opening. A copy of the bid invitation may be handed or mailed to the requester.

### **Solicitation Documents**

Request for Quotes (RFQ), Invitation for Bids (IFB), Request for Proposals (RFP) are used by the state to solicit responses from suppliers to sell goods or services and should not be construed as an order by the state to make any purchase. A Request for Information (RFI) is used to obtain information from the vendor community that may or may not be used to develop a solicitation document at a later date. To be responsive, vendors should always review instructions, the terms and conditions of the solicitation document and include all information and signatures as required. The bid or proposal must be returned to the address listed in the solicitation document by the time and date indicated for the bid opening or proposal deadline.

Occasionally, the state may utilize the assistance of a consultant in the development of a solicitation document. These consultants are obtained either through a standing consultant contract or through a competitive bid process. The consultants who participate in this process will be required to prepare and submit a nondisclosure statement regarding this procurement. Any consultant who assists in the development of a solicitation document will be prohibited from submitting a bid/proposal in response to that solicitation or from otherwise performing work on any contract directly resulting from that particular solicitation document, unless the state expressly waives this restriction in writing. Vendors who respond to RFIs may respond to any solicitations resulting from the RFI.

### **Electronic State Business Daily (ESBD)**

Each state agency seeking to make a procurement and contract award that will exceed \$25,000 in value, without regard to the source of funds the agency will use for the procurement, must post the procurement contract opportunity on the ESBD.

Notices for procurement contract opportunities must be posted for the latest of 21 calendar days after the date the notice is first posted; the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; or, the date the state agency decides not to make the procurement. If the state agency decides not to make the procurement, the agency must amend the posting to indicate the effective date of the cancellation within two business days of canceling the procurement.

If the state agency posts the entire bid or proposal solicitation package for a procurement and contract opportunity, postings must remain on the ESBD until the latest of 14 calendar days after the bid date or solicitation package is first posted; the date the state agency will no longer accept bids, proposals, or other

applicable expressions of interest for the procurement; or, the date the state agency decides not to make the procurement. If the state agency decides not to make the procurement, the agency must amend the posting to indicate the effective date of the cancellation within two business days of canceling the procurement.

A contract or procurement award is void if made by a state agency in violation of the applicable minimum required posting time.

State agencies may also use the ESBD to report information relating to the business activity of the state which they consider to be of interest to the public.

The ESBD can be accessed at <http://esbd.cpa.state.tx.us/>.

### **Bidder Affirmations**

For any solicitation document, CPA requires prospective respondents to affirm their compliance with particular state laws, federal laws or CPA rules. Bidder affirmations become part of any solicitation and are binding terms and conditions of any resulting contract or purchase order. Any misrepresentation or false statement that is deemed material by the state, is a breach of contract, which shall void or make voidable any solicitation or resulting contract. Such bidders may be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, in addition to being barred from participating in future contracting opportunities with the State of Texas.

**REQUIRED AFFIRMATIONS:** The following affirmations are standard terms and conditions required in all solicitations:

- The bidder has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
- Pursuant to Texas Government Code, Title 10, Subtitle D, §2155.004(a), the bidder has not received compensation for participation in the preparation of specifications for this solicitation.
- Pursuant to Texas Government Code, Title 10, Subtitle D, §2155.004(b), the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq. neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

- If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, §231.006(d), regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided with submission of the bid documents.
- Bidder agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support, which is owed to the State of Texas.
- Bidder agrees to comply with Texas Government Code, Title 10, Subtitle D, §2155.4441, relating to use of service contracts for products produced in the State of Texas.
- Bidder certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, §669.003 of the Government Code, relating to contracting with executive head of a state agency. If §669.003 applies, bidder will complete the following information in order for the bid to be evaluated:

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Position with Bidder: \_\_\_\_\_

Date of Employment with Bidder: \_\_\_\_\_

- By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter A, §111.2 (10).

## Required Clauses

The following clauses are standard terms and conditions required in all solicitations.

- Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter.
- The Contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.
- Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").

- Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.
- Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. (This clause is required only if a purchase or service transcends a biennium).

**Audit Requirements:**

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, to include providing all records requested. Contractor will insure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract awards.

**Technology Access Clause:**

Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to CPA that the technology offered to CPA or any other state agency or political subdivision for purchase under this Contract is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- a) Providing equivalent access for effective use by both visual and no visual means;
- b) Presenting information, including prompts used for interactive communications, in formats intended for both visual and no visual use;
- c) Being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;

For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Federal Americans with Disabilities Act or similar federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard



alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

This requirement applies to all contracts made by state agencies that involve the purchase of an automated information system, with out regard to: (i) the source of funds used to make the purchase; (ii) whether the purchase is made under delegated purchasing authority; or (iii) whether the purchase is made under the authority of the Texas Government Code, Title 10, Subtitle D, or other law.

- d) This section does not apply to the purchase of a wireless communications device to be used by peace officers, firefighters, and other emergency response personnel to respond to a public safety emergency.

### **Bid Preparation Expense**

Any expense relating to the submission of a response is the sole responsibility of the bidder. The state will not reimburse bidders for any cost related to bid preparation and/or submission.

### **Faxed Bids and Addendums**

Faxed bids are not generally appropriate for sealed bids and proposals. A faxed response does not guarantee the integrity and confidentiality of the sealed bid or proposal process. The state offers facsimile (Fax) service only as a convenience and is not responsible for bids received late, illegible, incomplete or otherwise non-responsive because of electronic failure of the equipment or operator error. Faxed addenda are usually acceptable provided both your original bid and addendum have been received and time-stamped before the published bid opening date and time. For small, informal bids, faxes may be acceptable, depending on the agency's procedures.

### **Addendums**

Should an addition or correction become necessary after a solicitation is issued, an addendum relating the necessary information will be mailed to all bidders on record with the procuring entity as having received a copy of the initial bid solicitation. Bidders are required to acknowledge the addendum by returning it with the bid or by physically noting the change or addition on the bid. The addendum is also posted on the ESD and remains on-line until the date and time designated for response receipt.

## **Withdrawal of Bids**

A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of opening. If a bidder withdraws a bid, all bid documents shall remain the property of the state, unless return is requested in writing.

## **Cash Discount for Prompt Payment**

If a cash discount for prompt payment is offered, it must be shown in the space provided on the bid form. Cash discounts for less than 30 days or less than 1% will be accepted, but will not be considered in determining awards. On indefinite quantity term contracts, cash discounts will be accepted but will not be considered in determining award.

## **Price Escalation**

Bid prices which are subject to unlimited escalation will not be considered. A bidder may offer a predetermined maximum limit of escalation; therefore, the bid will be evaluated on the basis of the full amount of the escalation.

## **New Products**

Unless specifically called for in the solicitation, all products for purchase must be new, never previously used, and contain the original packaging. No remanufactured, demonstrator, irregular, or otherwise used product will be considered for purchase unless otherwise specified in the solicitation. The manufacturer's standard warranty will apply unless otherwise specified in the solicitation.

## **Brand Names**

When brand names are specified, bids on alternate brands will be considered if they otherwise meet specification requirements. Any catalog number and/or brand name used in an IFB is descriptive only (not restrictive) and is used to indicate type and quality desired. If bidding other than the referenced example, the bidder must show the manufacturer, brand or trade name, model number, and provide a full description of the product offered. Submission of illustrations and brochures containing specifications is encouraged to adequately describe the product being offered.

## **Samples**

If samples are requested in the solicitation, they must be submitted or the bid will be rejected. Do not submit samples unless requested in the bidding solicitation. Agencies will require samples only when essential to the assessment of product

quality during bid evaluation. Samples for non-winning bids shall be returned to a bidder whenever practicable, at the bidder's expense. Otherwise, samples will be disposed of in the same manner as surplus or salvage property. Each sample should be marked with the bidder's name, address, bid opening date and contract number. Do not attach samples to the bid pages.

## **Taxes**

Vendors are responsible for including all applicable taxes in the bid price. State agencies are exempt from all state and local sales as well as use taxes.

## **Bid Bonds**

A bid bond may be required. A bid bond is a deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. When a bid bond is required, the amount will be stated in the solicitation as a set amount or as a percentage of the total bid amount. Bid bonds must accompany the bid. A bid bond, cashier's check, or certified check is acceptable made payable to the office or the official designated in the solicitation. Checks are returned to the bidders after the award is made.

## **Performance Bonds**

A performance bond may be required. A performance bond is a deposit, pledge, or contract of guaranty supplied by a successful bidder which protects the state against loss due to the bidder's failure to pay material suppliers and subcontractors. When required, the amount of the performance bond will be stated in the solicitation as "equal to" or as a "percentage of the contract sum". The successful bidder will be notified by letter to secure a performance bond according to the solicitation requirements. The bond must be received within the time specified by the date of notification. If the bond is not received within this time period, the purchasing agent reserves the right to award to the next acceptable low bidder, or to reject all bids and rebid, whichever is in the interest of the State of Texas.

## **Receipt of Bids**

### **Late Bids**

A bid received after the date and time established by the bid invitation is a late bid and will not be considered under any circumstances. The official clock is in the CPA mailroom or Bid Services. All bids must be in the possession of Bid Services as well as having a date and time stamp not later than the posted bid opening. Late bids will be returned unopened to the vendor.

## **Unsigned Bids**

Bids will be checked for signature prior to tabulation. Bids without a signature will be disqualified as technically non-responsive and NOT considered valid for tabulation. Any unsigned bids will be notated on the tabulation sheet as "UNSIGNED" in red ink and attached to the file. These bids will be reflected as "unsigned" in the comment area of the tabulation sheet. They will be kept with the main file and not returned to the bidder.

## **Bid Openings**

In Texas, the terms "bid opening" and "closing date" are used synonymously. The date, time and physical location of bid opening shall be stated clearly on the IFB. All bid openings shall be open to the public. The requirement for public opening of bids is a statement of openness to reduce the possibilities of collusion and favoritism as well as to foster public confidence in the ordering entity. Bid opening dates may be changed and bid openings rescheduled if bidders are properly notified in advance by a formal solicitation addendum of the new opening date. If a bid opening is canceled, all bids which were being held for opening will be returned to the bidders. All bid tabulation files shall be available for public inspection. Bid tabulations may be reviewed by any interested person during regular working hours at each agency's office. Agencies are not required to give bid tabulation information by telephone.

The bids, all documents, and other pertinent information about the evaluation of bids and bidders, will be withheld until after contract award.

Bid Services may read the bids in any order: alphabetical sequence, in order of date of receipt, or by lot. The opening will normally consist of announcing information to include the bid requisition number; the name of each bidder; the price or amount bid for each item number (if applicable); and, the model number (if different from specified model). Bid Services staff will not discuss whether a product or model meets bid specifications. Bidders will be advised to submit any concerns in writing to the appropriate purchaser. As a general rule, bids will be tabulated when opened, but there are times when this is not practical. Some transactions cover hundreds of separate items and the time required for recording at the bid opening would be prohibitive.

Most CPA term contracts include a large number of items and a high number of bidders; therefore, upon request, CPA may read only the names and addresses of bidders at a public opening if requested.

## **Receipt of Proposals**

The date, time and place for receiving the proposals is indicated on the RFP cover. The proposal will only be considered if it is received before the date/time and place scheduled for receipt.

## **Proposal Openings**

The procuring agency should allow realistic time frames for this process. The proposal opening date is assigned based on the complexity of the RFP. As a general rule, the procuring agency should consider a 30 day solicitation as standard. If a site visit or a pre-proposal conference is required, additional time should be allowed. These considerations are also weighed against the urgency of the service or the requirement of the RFP.

Agency staff will read ONLY the names of the companies who have submitted a response to the RFP, if requested by an interested party. No further information is revealed at that time as contents of offers must remain confidential until date of contract.

## **Evaluation and Awards**

An award is made to the bidder submitting the lowest and best bid conforming to the identified best value identified in the state's specifications. Complying with the specified time limit for submission of written data, samples, or models, on or before bid opening time, is essential to the acceptability of a bid. Additional criteria may be reviewed in determination of "best value" awards. All awards shall be made to the bidder complying with the best value criteria used in the bid and conforming to the advertised product or service specifications. All factors used in determining "best value" purchases must be advertised in the solicitation.

Informal bids or quotes for expenditures expected to be less than \$25,000 designate a closing date for the submission of bids. There is no formal bid opening required. After bids are evaluated, a Notice of Award and/or a purchase order will be issued to the lowest responsible bidder who meets all specifications of the bid or the bidder who offers the state the best value.

After IFBs are opened and tabulated, the state purchaser evaluates the bids for compliance with the terms, conditions, and specifications contained in the solicitation. The state reserves the right to award items separately, grouped or on an all-or-none basis; or to reject any or all bids and waive any informalities or technicality which does not have a material impact on the specification or statement of work.

After proposals are opened, they are evaluated by a committee. Each member scores proposals independently and the committee meets to arrive at a consensus scoring.

Awards are made on Requests for Proposal (RFP) to the offeror whose proposal conforms to the RFP and will be the most advantageous to the state, considering price and other evaluation factors set forth in the RFP.

Award(s) are made on competitive sealed bids (IFB) to the lowest responsive and responsible bidder(s) whose bid meets the requirements and criteria set forth in the solicitation.

The state reserves the right to make an award on the basis of low line item bid, low total of line items, or in any combination that will serve the best interests of the state. The state also reserves the right to reject any and all bid items in the sole discretion of the state, waive minor technicalities, and/or make an award in the best interest of the state.

The following are options when considering an award:

**Award:**

A bidder is selected which meets all the specifications of the bid with the lowest price.

**No Award:**

A No Award is based on (1) no bidders respond to bid request; (2) no bidders met the specifications of the bid; or (3) agency decides it does not wish to make an award due to (a) budgetary constraints or (b) change in agency requirements.

**Re-Award:**

An award may be made to the next lowest bidder meeting the specifications if the original vendor cannot meet the conditions of the purchase order, or if permission is granted to cancel the purchase order.

**Responsive Bidder**

A responsive bidder is a person who has submitted a bid which conforms in all substantive respects to the Invitation for Bids including the specifications set forth in the IFB. Some of the responsive indicators are specifications, signing the bid, bonding requirements, delivery time, license requirements, product testing and/or samples.

## **Responsible Bidder**

A responsible bidder is a person who has the capability, integrity, and reliability in all respects to perform the contract requirements which will assure good faith performance. Some of the responsible indicators are the ability to perform, available inventory, staff and technical support, equipment, complaints on file, financial capabilities, and prior contract performance.

## **Mistakes in Bids**

A bid price may not be altered or amended after bids are opened except to correct mathematical errors in extension.

No increase in price will be considered after a bid is opened. A bidder may reduce its price provided it is the lowest and best bidder and is otherwise entitled to the award.

A bid containing a self-evident error may be withdrawn by the bidder prior to an award.

Bid prices are considered firm for acceptance 30 days from the bid opening date for open market purchases, and 60 days for term contracts, unless otherwise specified in the invitation for bids.

The state will not be bound by any communication with bidders other than the IFB, General Instructions – Terms and Conditions, any written addendums issued by the CPA and/or ordering entity, CPA Rules, and state law.

## **Tie Bids**

A tie bid exists where two or more responsive bids from responsible bidders are identical in price and meet all requirements and criteria set forth in the solicitation.

## **Tie Bid Preferences**

The following preferences listed below are used in breaking tie bids in accordance with current statutes. Priority is given in the sequence they are listed below. To claim a preference, a bidder must mark the appropriate box on the bidding document Invitation for Bids (IFB). If the appropriate box is not marked and the preference is not claimed, a preference will not be granted unless other documents included in the bid indicate a right to the preference.

- Supplies, materials or equipment produced in TX or offered by TX bidder or TX bidder that is owned by a service-disabled veteran;
- Agricultural products produced or grown in Texas;
- Agricultural products and services offered by Texas bidders;

- USA produced supplies, materials or equipment;
- Products of persons with mental or physical disabilities;
- Products made of recycled, remanufactured or environmentally sensitive materials, including recycled steel;
- Energy efficient products;
- Rubberized asphalt paving material;
- Recycled motor oil and lubricants;
- Products produced at facilities located on formally contaminated property;
- Products and services from economically depressed or blighted areas;
- Vendors that meet or exceed air quality standards.
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value

## **Reciprocity**

Texas statute requires that bids from bidders who reside in states that grant resident bidder preference(s) for that state's purchases will be evaluated in the same manner when bidding against a Texas bidder. In other words, the State of Texas reciprocates and grants Texas bidders the same preferences granted by other states to their resident bidders. A web site that lists the preferences given by all fifty (50) states can be viewed at:

[http://www.window.state.tx.us/procurement/pub/manual/Resident Bidder Preference List\\_02-09-07.pdf](http://www.window.state.tx.us/procurement/pub/manual/Resident_Bidder_Preference_List_02-09-07.pdf).

The methodology for evaluating bids received from bidders residing in a state that has resident preference law(s) is to reciprocate by adding an equal residency penalty for evaluation purposes only. The award is made at the original bid price(s).

### **Example:**

Another state gives its in-state bidders a 10% preference on agricultural products. In effect, this would penalize a Texas bidder 10% when bidding agricultural products in that state. Consequently, Texas would add the same 10% residency penalty to any of that state's bidders when bidding agricultural products in Texas.

## **Rejection of Bids/Cancellation of Solicitation**

Solicitations may be cancelled in whole or in part when the purchaser or the head of a purchasing department determines in writing that such action is in the state's best interest.



## **Inspection and Acceptance**

The CPA has established and maintains a program of testing and inspecting purchases made by CPA at the request of state agencies to insure that materials, supplies, services, and equipment meet specifications. Responsibility for the inspection and testing program has been assigned to the Vendor Relations Program of the Texas Procurement and Support Services division.

Delivery does not constitute acceptance. Agencies will inspect all shipments received against orders and report any discrepancies to the vendor and CPA (if the order was issued by CPA). If unlisted shortages are discovered, the vendor and CPA (if order was issued by CPA) will be notified immediately. Shipments are checked immediately upon arrival and such shortage reports are made within 15 days; therefore, the vendor can be held responsible for shortages. Items that do not meet specifications will be rejected. A vendor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately

Periodic, random and /or unannounced inspection of goods and services purchased by the state are made by the CPA. Authorized CPA personnel may require access to a vendor's place of business for the purpose of inspecting contracted merchandise. Tests may be performed on samples obtained at CPA's request or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may be, at the state's option, returned to the vendor at vendor's risk and expense or disposed of in accordance with CPA Rules or applicable statutes. The vendor may request that goods be held at vendor's risk for a reasonable amount of time for later disposition at the vendor's expense. Latent defects may result in revocation of acceptance of any product.

In addition to random inspections, the Vendor Relations Program may conduct follow-up inspections of purchases which failed initial agency inspections to verify if specifications are met. The Vendor Relations Program will coordinate with the agency purchaser as required to carry out these duties.

## **Contract Administration**

### **Receipt of Purchase Order or Notice of Award – Authority to Ship**

Successful bidders/offerors will receive either a notice of award or a purchase order from the state agency. The purchase order or notice of award will include the terms, conditions and specifications to which the vendor must comply in

fulfilling its obligations to the state as well as any vendor exceptions accepted by the state.

The receipt of a purchase order for a one time open market purchase authorizes shipment in accordance with its terms. However, the receipt of a notice of award establishing a term contract does not authorize any shipment. Shipment against term contracts is authorized by the receipt of a purchase order. The purchase order number, or contract number, must be shown on all bills of lading, packing slips, back orders, invoices and other transactional documents. Some agencies may request the vendor to ship against term contract prior to the issuance of a purchase order. Any shipments made pursuant to such a request and before the receipt of a purchase order are made at the vendor's sole risk and must be followed by a confirmation purchase order for the exact items ordered.

Blanket open market purchase orders are established on an as-needed basis for a product or service for which the procuring agency has a repetitive need. No quantities are guaranteed. This type of order allows the agency to avoid large inventories and the expense of issuing frequent purchase orders. For these orders, the vendor does not ship products or perform services until the procuring agency authorizes the vendor in writing.

### **Back Orders**

If it is necessary for a vendor to back order any item, the vendor should notify the agency immediately and advise as to the expected shipment or delivery date. Items on back order can create late delivery dates and it is extremely important to notify the ordering agency once a need for a back order exists. Prompt communication with the agency shows intent to provide good customer service and possibly prevents negative reports through the Vendor Performance Tracking System. Continued necessity to back order may also be deemed a breach of contract.

### **Substitutions**

Substitution is the shipment of an item that does not conform strictly to the purchase order specifications, including any brand and/or model number specified. Any substitution must be approved in writing by the purchaser who issued the original contract or purchase order prior to delivery. Proposed substitutions must meet and/or exceed the original advertised specifications, be of equal quality and type, and be offered at the same or lower price. The state's refusal to accept a substitution does not relieve the vendor of its obligation to provide the item(s) called for in the contract.

### **Loss or Damage in Transit/Freight**

For all purchase orders or contracts designated "F.O.B. Destination", delivery of goods by a common carrier does not constitute delivery to the state or any user

agency, and the risk of loss will remain with the vendor until actual delivery to the user agency. Any claim for loss or damage incurred during the delivery shall be made by the vendor directly to the carrier. The user agency will note all damage incurred in transit on the freight bill and will notify the vendor who is expected to make immediate replacement of the damaged merchandise. If damage is to a small quantity only and the user agency will not be inconvenienced because of the shortage, the vendor may, with the written consent of the agency, deduct the amount of damage or loss from their invoice to the agency in lieu of replacement.

### **Delivery Time**

The successful bidder/offeror should maintain or have available an inventory sufficient to make delivery within the time stated, or take necessary measures to ensure that delivery will be made in accordance with the contract. Failure to deliver in accordance with the contract may result in the vendor being declared in default.

### **Cancellation of Contract Orders**

Orders are cancelled in writing by the ordering entity or by the CPA. Orders may be cancelled without the consent of the vendor for failure to meet contractual obligations. If cancellation is requested by an ordering entity for some other reason, through no fault of the vendor, the vendor's permission to cancel is required. All correspondence from the vendor pertaining to the cancellation of an order is to be addressed to the ordering entity with a copy to CPA.

If the return or cancellation is required through no fault of the vendor, the vendor may request a reasonable restocking charge or cancellation fee. As a guideline, CPA considers restocking charges of 15% or less (plus freight) of the original cost of the materials as reasonable.

### **Authorized Relief from Performance (Force Majeure)**

The state will grant relief, as necessary, from performance of a contract if vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the vendor. The burden of proof for the need of such relief rests with the vendor. To obtain release based on Force Majeure, the vendor must provide the procuring agency with sufficient documentation to show that suitable merchandise or service is unobtainable from any source.

### **Cancellation of Contract**

The procuring agency reserves the exclusive right to cancel a contract either in whole or in part for convenience without damage or liability to vendor. Abandonment of a contract by a vendor for any reason without notification and

approval of the procuring agency subjects the vendor to damages and all legal remedies available to the state.

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

A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state. If any merchandise delivered under a contract has been used or consumed by an agency and on testing is found not to comply with specifications, no payment may be approved by CPA for such merchandise until the amount of actual damages incurred has been determined. A vendor who fails to pay damages assessed by the state may not be awarded additional contracts until such damages have been paid or the matter has been otherwise resolved. The CPA shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations for orders issued by CPA.

If a vendor is in default on an order, the state reserves the right to purchase the item in default and charge the increase in price, if any, and the cost of handling to the vendor. Failure to pay a damage assessment is cause for contract cancellation and/or suspension or removal from the state's CMBL.

### **Vendor Performance Program**

The CPA administers a vendor performance program for use by all ordering agencies pursuant to the Texas Government Code. The Vendor Performance Tracking System relies heavily on the ordering agency's participation in gathering information on vendor performance. Ordering agencies must report vendor performance on purchases over \$25,000 made through delegated authority granted by or from contracts administered by the CPA. Ordering agencies are encouraged to report vendor performance for purchases under \$25,000. Agencies are also encouraged to report exceptional vendor performance.

Ordering agencies report vendor performance by submitting a Vendor Performance Form (VPF) through the automated CPA Vendor Performance Tracking System. When an ordering agency submits a VPF to CPA, a copy of the VPF must be e-mailed, postal mailed or faxed to the vendor for review. The vendor has 14 days from the date the form was submitted to comment on or provide any convincing evidence to refute the information provided by the ordering entity before the report is finalized and included in the Vendor Performance Tracking System. Vendor responses should be sent to:

**Vendor Performance Tracking Program**  
**Texas Procurement and Support Services**  
**P.O. Box 13186**  
**Austin, Texas 78711**  
**Fax: 512-936-0041**  
**E-mail: [vendor.performance@cpa.state.tx.us](mailto:vendor.performance@cpa.state.tx.us)**

The CPA Vendor Performance Tracking System facilitates the requirement to track vendor performance and also provides a means for the reporting of both exceptional and unsatisfactory performance. The tracking system provides the state procurement community with a comprehensive tool for evaluating vendor performance and reduces the risk often associated with the contract award process.

Through the use of data obtained through Vendor Performance Forms (VPFs), the Vendor Performance Tracking System:

- Identifies vendors that have exceptional performance.
- Aids purchasers statewide in making a best value determination based on vendor past performance.
- Protects the state from vendors with unethical business practices.
- Identifies vendors that have repeated delivery and performance issues.
- Provides performance scores in four measurable categories for CMBL vendors.
- Tracks vendor performance for delegated and exempt purchases.

Vendor's performance scores from 0 to 100% are divided into four categories:

- Commodity delivery
- Service delivery
- Commodity performance
- Service performance

For CPA purchases (term contracts, open market bids, and scheduled purchases), the scoring system begins to actively tally scores for each applicable category after ten purchase orders have been issued.

Each purchase order that is issued to a vendor without a complaint provides a positive score of 100%. Each negative VPF counts as a 0 in the corresponding category. The scores are averaged against the total number of purchase orders in each category.

**Example:** Ten purchase orders have been issued to a vendor and one VPF with an unsatisfactory commodity delivery has been issued. The vendor's commodity score would be 90% (100+100+100+100+100+100+100+100+100+0 ÷ 10 or 900 ÷ 10). The vendor's commodity performance score would be 100 because there are no negative reports against that category.

Scores are calculated from the previous two-year period. Scores over two years old are dropped from the calculation formula.

Delegated and exempt purchases are not scored because the total number of purchase orders issued can not be accurately reported to average the score.

However, the system tracks the number of unsatisfactory performance evaluations and the exceptional performance evaluations for these vendors.

Vendors are encouraged to periodically check their performance scores by searching the vendor's information found on the Centralized Master Bidders List at <http://www2.cpa.state.tx.us/cmbl/cmblhub.html>. Because CPA can not track contracts awarded via an agency's delegated or exempt purchasing authority, it is in the vendor's best interest to encourage agency reporting on these types of purchases. A simple statement on a vendor's invoice, such as "Because Company X highly values customer satisfaction, please take the time to submit a Vendor Performance Form via the CPA's Vendor Performance Tracking System, accessible on the CPA Web Applications Portal - <https://portal.cpa.state.tx.us/>," will often encourage agencies to file satisfactory or exceptional reports.

## **Debarment**

The CPA may debar a vendor for a period that is commensurate with the seriousness of the vendor's action and the damage to the state's interest. A vendor's name may be removed from the CPA's Centralized Master Bidders List for the same period.

At a minimum, the number and severity of a vendor's performance problems in relation with volume of goods or services provided, the effectiveness of corrective actions taken by the vendor, and the age and relevance of past performance information at the time it is used shall be considered.

When in the best interest of the state, a business entity or a successor-in-interest may be debarred for any of the following:

1. A history of unsatisfactory performance of a contract, or a history of failure to perform contracted services.
2. Stating an unwillingness to honor a binding bid.
3. Knowingly and intentionally supplying false information in order to appear responsive to a solicitation, to obtain a contract, or to qualify for a bid preference.
4. Knowingly and intentionally conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of a state agency who exercises any official responsibility for an acquisition.
5. Conviction of any felony charge of fraud, bribery, collusion, conspiracy, federal or state antitrust laws, or other criminal offense in connection with the bidding upon, award of, or performance of any contract for goods and services with any state agency.
6. Violation of state ethic laws.
7. Failure to comply with terms and conditions of existing contracts.
8. Notice of debarment activities from other governmental entities.
9. Any cause indicating that the individual or firm is not a responsible vendor.

In addition, a proposed debarment may include all known successors-in-interest of a business entity. Each proposed decision to debar a vendor and/or successors-in-interest shall be made on a case-by-case basis after consideration of relevant facts and circumstances. A proposal to debar a vendor shall be delivered in writing to the vendor's address of record. The proposal will state the reason(s) of the debarment action.

Vendors subject to a proposed debarment may submit a written appeal to the Director of Procurement within ten (10) business days following notification of the proposed debarred status. Debarment does not relieve the vendor of responsibility for existing contractual obligations with the state.

No person who has a direct interest in the outcome of the appeal may communicate directly or indirectly upon the merits of debarment with any CPA employees without notice and approval of the Director of Procurement.

The CPA and all state agencies shall ensure that debarred vendors do not participate in any further state contracting. Any exclusion from state contracting due to debarment shall extend to all state contracting and subcontracting within the supervision of state agencies.

Pursuant to the CPA rules, the state may consider debarment actions of other government entities as possible indicators of vendor responsibility. Therefore, prior to awarding any contracts, state agencies and qualified local government purchasing entities are reminded to check the list of vendors excluded from doing business at the federal level by utilizing the **Federal Excluded Persons List System (EPLS)** at <http://www.epls.gov>. Additionally, in compliance with Executive Order #13224 - "**Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism,**" state agencies are responsible for ensuring they do not enter into transactions or issue payments to those individuals or organizations identified in the **Office of Foreign Assets Control list of Specially Designated Nationals (SDN) and Blocked Persons**. The list may be found at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>.

## **Payments**

### **Vendor Invoices**

The vendor is required to submit all the necessary data on the invoice to the agency in order to expedite the payment.

(a) To receive payment, vendors must submit an invoice to the state agency receiving the goods or services. The invoice should include, but is not limited to include:

- (1) The vendor's mailing and email (if applicable) address;
- (2) The vendor's telephone number;
- (3) The name and telephone number of a person designated by the vendor to answer questions regarding the invoice;
- (4) The state agency requisition number;
- (5) The state agency's name, agency number, and delivery address;
- (6) The state agency's purchase order number, if applicable;
- (7) The contract number or other reference number, if applicable;
- (8) A valid Texas identification number (TIN) issued by the CPA;
- (9) A description of the goods or services, in sufficient detail to identify the order which relates to the invoice;
- (10) Unit numbers corresponding to the original order' and;
- (11) Other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary.

## **Payments**

Payments for merchandise purchased with state appropriated funds will be made either in the form of a warrant (state check) or electronically (direct deposit) by the CPA. Payments by other ordering entities will be made through the entity's local payment system.

### **Payment by Warrant**

A state warrant is similar to a personal check and has a left sided stub which includes information that can help identify what the payment is for. The stub includes the name of the agency that is making the payment and the telephone number to call for questions about the payment. The agency making the payment might include additional information in the envelope with a warrant.

After a state warrant is created at CPA, the warrant is sent to the agency that owes the vendor. The agency then mails the warrant to the vendor.

### **Payment by Direct Deposit**



Direct deposit transactions are the preferred method by the State of Texas and these transactions are transmitted directly from CPA to the vendor's financial institution.

CPA transmits the payment with the additional information to the vendor's financial institution even if the vendor has not arranged to receive this information from the institution. If the vendor is interested in receiving the payment information transmitted with the payments, the vendor will need to notify the financial institution.

Vendors who are interested in receiving state payments faster through direct deposit need to:

1. Make sure a TIN has been assigned. (The statewide accounting system and certain other state databases use a "Texas Identification Number," called a TIN, to track and process all payments made to a vendor. When a vendor contracts with a state agency, the vendor will need to provide a federal employer's identification number. The agency will determine if a unique 11-digit TIN has already been issued to the vendor. If a TIN has not been assigned, ask the agency to process a request to assign a TIN with direct deposit instructions).
2. Fill out a ["Vendor Direct Deposit Authorization" Form 74-176](#). (Adobe Acrobat Reader or comparable software is needed to open the form.) The state does not charge any fees for processing a direct deposit request.
3. Submit the form to a state agency with which the vendor is conducting business. (If the vendor does business with multiple state agencies, submit the form to only one of the agencies.)
4. Request each agency with which the vendor conducts business to make payments by direct deposit. (Contacting the agencies assists the agencies to process the payment for direct deposit).
5. Include the mail code assigned for direct deposit with the TIN on all invoices.

See <https://fm.xcpa.state.tx.us/fm/payment/vendorinfo.php> to access the Comptroller of Public Accounts Web site for "State of Texas Payment Processing Information for Vendors".

Payment will be made to the vendor within 30 days after receipt of a properly prepared invoice or the receipt of and acceptance of goods ordered, whichever is later. State agencies are required by law to pay properly submitted invoices within 30 days from the date the invoice is received on the premises or the vendor may charge a late payment fee established by law.

If a blanket purchase order extends beyond a state biennial appropriation period, payments for consumable merchandise delivered after the end of the state

biennium are contingent upon the continued availability of appropriations to make such payments.

### **Payments "On Hold"**

State law prohibits the state making payments if the vendor:

- Owes a debt to the state
- Is delinquent in payment of certain taxes
- Is delinquent in repaying certain student loans
- Is delinquent in payment of certain types of child support

In such cases, the state will continue to process and create a payment but will not release it to the vendor until the vendor pays what is owed. Under certain circumstances, the law also authorizes CPA to apply state payments against what is owed.

### **Payment Assignments**

An assignment is the legal transfer of a right or property. An assignment involves two parties; the assignor and the assignee and usually involves the transfer of the right to payment.

Once an awarding agency receives a notice of a financial assignment, it is legally bound to make payment to the assignee. Therefore, vendors are required to submit a request for assignment to the awarding agency. Assignment requests must be on the company's letterhead with the signature of an authorized representative. Also, the awarding agency must receive a letter from the new assignee noting acceptance of the assignment. The awarding agency will then issue an assignment letter acknowledging the assignment. The vendor identification number will remain the same of the original awarded vendor, but the vendor name and payments will be mailed to the assignee. For a sample vendor assignment letter, see [http://www.window.state.tx.us/procurement/tools/proc\\_forms/sample\\_vendassign/letter.doc](http://www.window.state.tx.us/procurement/tools/proc_forms/sample_vendassign/letter.doc).

### **Company Name Change**

A name change can occur when the company is reorganized or wishes to change its name. The original vendor must submit a letter to the awarding agency, on company letterhead, stating the circumstance of the name change and the new company name. The letter must be signed by an authorized representative of the company, reflecting the change and the date it became

effective. The awarding agency will then issue a letter amending the purchase order/contract to change the company name. The awarding agency will also advise the company to contact CPA to set up a new Vendor Identification Number in order to secure payment.

### **Company Buyout of Sale**

A buyout or sale of a vendor occurs when a company is purchased by another company. In order for the vendor of record to have the purchase order/contract amended to effect payment when the order is completed, the original vendor must submit a letter to the awarding agency stating the circumstances of the buyout. If a vendor is already out of business, the original vendor must submit a letter to the awarding agency which indicates the sale of the company to the new vendor. The awarding agency will then issue a letter amending the purchase order/contract to change the company name and advise the new vendor to contact the Comptroller's Office to secure a new Vendor Identification Number in order to secure payment.

### **Vendor Information on Payments**

The CPA's State-to-Vendor Fax Line provides information for non-confidential vendor payments 7 days a week, 24 hours a day by dialing:

English:

- 877-570-0844 Toll Free
- 512-936-3461 In Austin

Spanish:

- 877-570-0830 Toll Free
- 512-936-3462 In Austin

For more information concerning Payment Services available 24 hours a day, including a list of Frequently Asked Questions, please see <http://www.cpa.state.tx.us/fm/payment/>.

For questions about what a payment is for, contact the state agency that made the payment. The only information the Comptroller will have is available on its Payment Info-Line or the Web site.

For assistance, call the Comptroller's office at 512-463-4850 or toll-free 1-800-531-5441. Normal business hours for the Comptroller's office are 8:00 a.m. to 5:00 p.m. CST, Monday through Friday.

## **5. CHECKLIST FOR BIDDERS**

Below is a checklist to use when preparing a responsive bid. The list contains common errors made by bidders when responding to bid invitations. The following should help you prepare and submit IFB documents to the state.

1. Sign the bid! Please remember, when you sign the signature page, you are agreeing to the general conditions, specifications, certifications and other documents of this solicitation. Therefore, bidders should thoroughly read and understand all bid documents in the solicitation.
2. Ensure that all bids are submitted prior to the due date and time indicated in the IFB for the bid opening. If you use an expedited mail service such as Federal Express, UPS Mail Innovations, etc., you still must ensure that the bids arrive prior to the bid opening. Late bids, even one minute late, will not be accepted.
3. Label the bid envelope as instructed in the IFB. The IFB should require the bid envelope to show the solicitation number, opening date and bidder's name or vendor identification number.
4. Indicate brand name, model and number when requested. You may bid more than one brand and model on the same bid provided each brand, model and price are clearly identified so that it is understood what you are bidding. Any alternatives must meet or exceed the minimum specifications outlined in the solicitation.
5. Clearly detail in writing any deviation from or exception taken to the stated specifications.
6. Indicate delivery terms and shipment information on the signature page, or where requested. Bids other than "F.O.B. destination" may be rejected.
7. Indicate the bid price in the proper areas of the IFB for the unit size requested. Prices must be typed or written in ink. Corrections, erasures and clarifications of pricing information must be initialed by the individual signing the bid.
8. Do not add any additional contractual or payment terms and conditions. Terms of the award will be those listed in the IFB, the resulting purchase order, and associated rules and laws.
9. Photocopies of bid documents are discouraged; please provide originals to the state and retain copies for your own records.
10. Bids must be signed by an individual authorized to bind the company.

## **6. CPA COOPERATIVE PURCHASING PROGRAM**

The CPA Cooperative Purchasing Program (CPA CO-OP) is established under the provisions of Local Government Code, §271.081-271.083 and Texas Government Code, Title 10, Subtitle D, §2155.202 and §2175.001(1). The program offers members a unique opportunity to purchase goods and services from CPA state term contracts, TXMAS Contracts, Open Market Contracts, etc. CO-OP members purchasing from these CPA contracts and methods will meet competitive bidding requirements and will benefit from the state's volume purchasing power. A local government, political subdivision, or a Texas non-profit

receiving state funding must become a member of the CPA CO-OP program to purchase via CPA contracts and methods,

To use state term contracts, CPA CO-OP members send a requisition for the items needed to CPA. CPA will generate a purchase order on the CO-OP member's behalf and send copies to both the CO-OP and the vendor. The vendor will then ship the merchandise and invoice the CO-OP directly. When using the TXMAS Program, the CO-OP member issues a purchase order directly to the vendor. For TXMAS purchase orders, a copy of the CO-OP member's TXMAS purchase order should be sent to CPA for reporting requirements.

Eligible entities for CPA CO-OP include:

- Local governments;
- School districts;
- Municipalities;
- Counties;
- Political subdivisions;
- MHMR community centers;
- Qualified nonprofit organizations and more.

To contact the CPA CO-OP Program for program brochures and additional support, please call 512-463-3368, or e-mail [coop@cpa.state.tx.us](mailto:coop@cpa.state.tx.us)

## **7. HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PROGRAM**

The CPA administers the state's Historically Underutilized Business (HUB) Program in accordance with Texas Government Code and CPA Rules. State agencies shall make a good faith effort to utilize HUBs in contracts in the procurement process of construction, goods, services (including professional and consulting), and public utility contracts. These initiatives are designed to eliminate barriers for equal economic opportunities in state purchasing for HUBs. In accordance with CPA's policy of encouraging the use of HUBs by implementing these policies through a Good Faith Effort Program (GFEP) race, ethnic and gender neutral means. The purpose of the GFEP is to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study dated 1996.

All Texas state agencies and institutions of higher learning are required to make a good faith effort to include HUBs in their procurement opportunities when purchasing goods and services.

## **HUB Certification**

A Historically Underutilized Business must be a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51% of the business is owned, operated, and actively controlled and managed by a minority or woman. For additional information call (512) 463-5872 or, if outside of Austin, toll free (888) 863-5881.

The goal of the HUB Program, as described in the Texas Government Code, Title 10, Subtitle D, Chapter 2161, is to insure all HUBs are eligible for HUB certification with the state. A listing in the HUB directory insures each HUB to have maximum opportunities to participate in the state's procurement process of awarding contracts and subcontracts.

The HUB Program's objectives are to:

- Certify eligible applicants who apply for HUB certification to ensure maximum opportunities for state contracts;
- Conduct random compliance reviews of applicants to verify information submitted by a business is accurate; and that the business remains eligible after certification has been granted to ensure utilization by state agencies in meeting their strategic plan goals;
- Develop agreements with other certification entities to increase minority and/or women-owned business availability and utilization in state contracts;
- Report state expenditures and payment information regarding HUB utilization during each fiscal year;
- Develop a Mentor Protégé Program process that enhances relationships between state agencies, prime contractors, and HUB vendors;
- List qualified HUBs in the HUB Directory;
- Develop HUB Subcontracting Plans for all contracts over \$100,000 to ensure equal opportunities for HUBs;
- Provide consulting services to state agencies and HUB Coordinators;
- Provide quarterly updates to key HUB cooperative groups regarding the HUB Program;
- Provide certification packets and information to HUBs regarding the benefits of HUB certification;
- Provide access to information, bid tabulations, and contract opportunities to all HUBs;
- Report annually by September 1st all education and training efforts;
- Assist agencies with good faith effort requirements;

- Identify responsibilities to assist HUB Coordinators with meeting agency HUB goals;
- Implement rules relative to statutory requirements affecting the HUB Program, and
- Provide reasonable accommodations to eligible qualified applicants, who are disabled, in obtaining certification under the HUB Program.

For more information on the State of Texas HUB Program please see <http://www.window.state.tx.us/procurement/prog/hub/>.

## 8. RECYCLED CONTENT PRODUCTS

The Texas Government Code requires all state agencies, institutions of higher education, municipalities, school districts, etc., give preference to recycled, remanufactured, or environmentally sensitive products if the purchases meet applicable specifications as to quantity and quality.

In 1999, the 76th Texas Legislature ([Government Code §2155.448](#)) authorized the CPA in coordination with the Recycling Market Development Board to establish purchasing preferences for certain recycled, remanufactured, or environmentally sensitive commodities or services, which CPA designates as 1<sup>st</sup> Choice items by rule. The 1<sup>st</sup> Choice products essentially become the default items for purchase by state agencies including institutions of higher education. In other words, state agencies shall give these products preference over virgin (non-recycled) counterparts.

Items designated as "first choice" products on September 1, 2000 are:

- Re-refined oils and lubricants.
- Recycled-content toilet paper, toilet seat covers and paper towels; and
- Recycled-content printing, computer and copier paper, and business envelopes.

Items designated as "first choice" products on September 1, 2002 are:

- Recycled-content plastic trash bags.
- Recycled-content plastic-covered binders.
- Recycled-content recycling containers ; and
- Energy Star labeled photocopiers.

Other than 1<sup>st</sup> Choice items, the type of preference to be given by state agencies, with some specific product exceptions, is not defined by law. An agency, therefore, may state the preferences in its specifications when purchasing recycled, remanufactured or environmentally sensitive goods and/or services. The basis of such recycling preference and how bids will be evaluated regarding recycling preference will be defined in each bid opportunity where a preference is established.

## 9. VENDOR ADVISORY COMMITTEE

The Texas Vendor Advocacy Committee was established by the CPA under the provisions of Texas Government Code §2155.081 in a continuing effort to foster fairness, simplicity and accessibility in the state procurement process for all prospective and active vendors.

The committee meets quarterly and represents the vendor community before the CPA, provides information to vendors, and obtains vendor input on state procurement practices. To be eligible for committee appointment, vendors must possess a broad-based knowledge of their business, be able to represent the entire vendor community doing business with Texas, and be a vendor who has conducted business with the state of Texas. Committee members are expected to attend all meetings on a quarterly basis and serve for a four-year term. The public is encouraged to attend all VAC meetings. For more information concerning the Vendor Advocacy Committee, including members and meeting dates, please click on <http://www.window.state.tx.us/procurement/res/VAC/>.

If a vendor would like to be considered for appointment to the Vendor Advisory Committee, please contact the Vendor Performance Tracking Program, CPA at (512) 463-2650 or e-mail at [vendor.performance@cpa.state.tx.us](mailto:vendor.performance@cpa.state.tx.us).

## 10. VENDOR PROTESTS AND APPEALS

Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, §20.384, states that any vendors who have submitted bids, proposals or other expressions of interest for the provision of goods or services pursuant to a contract with Texas Procurement and Support Services of the comptroller's office and is aggrieved in connection with any CPA solicitation, evaluation or award of a contract may formally protest to the director of TPASS.

All protests must be in writing and must be received in the TPASS director's office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Copies of the protest must be mailed or delivered by the protesting party to the using agency and other interested parties.

All protests should be mailed or delivered to:

**TPASS Director  
Comptroller of Public Accounts  
1711 San Jacinto Blvd.  
Austin, Texas 78701**



For detailed information on protest procedures, follow the link to view:  
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rl oc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=34&pt=1&ch=20&rl=384](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rl oc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=384).

## 11. CONTACT INFORMATION

Please feel free to contact CPA program areas with any questions.

<p><b><u>Vendor Performance Program</u></b>          1711 San Jacinto          Austin, Texas 78701          512-463-2650          (Fax) 512-936-0041</p>	<p><b><u>TXMAS Program</u></b>          1711 San Jacinto          Austin, Texas 78701          512-463-3421          (Fax) 512-475-0708</p>
<p><b><u>CMBL Help Desk</u></b>          1711 San Jacinto          Austin, Texas 78701          512-463-3459          (Fax) 512-936-2625</p>	<p><b><u>CPA CO-OP Program</u></b>          1711 San Jacinto          Austin, Texas 78701          512-463-3368          (Fax) 512-936-2667</p>
<p><b><u>Bid Tabulations</u></b>          1711 San Jacinto          Austin, Texas 78701          512-463-7828          (Fax Bids Only) 512-463-1400          (Fax) 512-463-7073</p>	<p><b><u>NIGP Coordinator</u></b>          1711 San Jacinto          Austin, TX 78701          512-463-4509          (Fax) 512-936-2625</p>
<p><b><u>CPA Statewide Procurement Team</u></b>          1711 San Jacinto          Austin, Texas 78701          512-463-3034          (Fax) 512-475-0851</p>	<p><b><u>Historically Underutilized Business (HUB) Certification &amp; Compliance Section</u></b>          1711 San Jacinto          Austin, Texas 78701          512-463-5872          (888) 863-5881 (Toll Free)          (Fax) 512-936-2482</p>

## 12. GLOSSARY

**Award:** The act of accepting a bid, thereby forming a contract between the state and a bidder.

**Bid:** An offer to contract with the state submitted in response to a bid invitation issued by the CPA or an issuing entity.

**Bid Deposit:** A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state.

**Bid Sample:** A sample required to be furnished as part of a bid. The sample is used for evaluating the quality of the product offered.

**Biennium:** The two (2) year period in which the Texas Legislature appropriates funds. The biennium begins on September 1st of odd numbered years.

**Brand Name:** A trade name or product name which identifies a product as having been made by a particular manufacturer.

**Centralized Master Bidders List (CMBL):** A list maintained by the CPA containing the names and addresses of prospective bidders.

**CPA:** The Texas Comptroller of Public Accounts.

**Competitive Sealed Proposals:** The process of advertising a request for proposal (RFP), the evaluation of submitted proposals and awarding of the contract.

**Competitive Sealed Bidding:** The process of advertising an invitation for bids (IFB), conducting a public bid opening and awarding of a purchase order/contract to the lowest responsive, responsible bidder in accordance with state law.

**Consulting Services:** The practice of studying and advising a state agency in a manner not involving the traditional employer/employee relationship (Government Code, §2254.021). A finding of fact by the Governor's Office of Budget and Planning is required for all contracts over \$15,000, except for services specifically exempted (See Major Consulting Services Contract).

**Contract:** A binding agreement between two more persons/entities which is legally enforceable; a business arrangement for the supply of certain goods or services.

**Delegated Commodity Purchases:** State agencies are delegated the authority to make purchases for commodities up to \$25,000, except for commodities on term or scheduled contracts. This includes the authority to purchase items such as fuel, perishable foods, publications and distributor items.

**Disparity Study:** The State of Texas Disparity Study, performed by the National Economic Research Associates, Inc. (NERA).

**Electronic State Business Daily:** The electronic marketplace where State of Texas bid opportunities over \$25,000 are posted.

**Emergency Purchase:** A purchase of goods or services so badly needed that an agency will suffer financial or operational damage unless they are secured immediately.

**Environmentally Sensitive Products:** Products that protect or enhance the environment; or that damage the environment less than traditionally available products.

**Excluded Parties List System (EPLS):** A web-based system that identifies parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits.

**Fiscal Year:** A period of twelve consecutive months, beginning September 1 of each year.

**Good Faith Effort (relating to the HUB Subcontracting Plan (HSP):** Three main components involving (1) soliciting at least three certified HUB vendors for each trade you plan to subcontract that provide applicable services/commodities, (2) providing written notification of the subcontracting opportunities to a minority or woman trade organization or development centers to assist in identifying potential HUB's, and (3) allowing five days for HUB vendors to respond to your solicitation or bid for the services.

**Historically Underutilized Business (HUB):** A corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more socially disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management. Groups include: Black Americans, Hispanic Americans, Women, Asian Pacific Americans, and Native Americans.

**Inspection:** Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition and to verify that it conforms to the applicable specifications.

**Invitation for Bid (IFB):** A written request for submission of a bid; also referred to as a bid invitation.

**Late Bid:** A bid that is received at the place designated in the bid invitation after the time set for bid opening. Late bids are returned unopened to the vendor.

**Letter of Award:** Letter of notification announcing award of the contract to a bidder. It may be used in lieu of issuing a Purchase Order to an awarded vendor.

**Major Consulting Services Contract:** A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000.

**Major Contract:** A contract that has a value of at least 1 million dollars during the original term of the contract, not including any renewal periods.

**Mentor Protégé:** Designed to foster long-term relationships between prime contractors and Historically Underutilized Businesses (HUBs); provide professional guidance and support to the protégé (HUB) in order to facilitate their growth and development and increase HUB contracts and subcontracts with the State of Texas.

**Multiple Award Contracts:** A purchasing procedure by which the CPA establishes one or more levels of quality and performance and makes more than one award at each level.

**Notice of Award:** A letter signed by the statewide procurement manager or his designee which awards and creates a term contract.

**Offer:** A proposal by one party to another which is intended of itself to create legal relations on acceptance by the party to whom it is made.

**Open Market Purchase:** A purchase of goods, usually of a specified quantity, made by buying from any available source in response to an open market requisition through the CPA.

**Payment Bond:** A bond executed in connection with a contract which secures the payment requirements of the respondent.

**Performance Bond:** A bond executed in connection with a contract which protects the state from loss due to the contractor's inability to successfully complete the work.

**Performance Specifications:** A specification setting out performance requirements that have been determined to be necessary for the item involved to perform and last as required.

**Piggy Back Open Market:** Contracts that have been competitively bid in accordance with state of Texas statutes, rules, policies and procedures and have been extended for the use of state agencies and active CPA Co-Op entities.

**Professional Services:** Services directly related to professional practices as defined by the Professional Services Procurement Act (Government Code, §2254.002). These include services within the scope of the practice of: accounting; architecture; optometry; medicine; land surveying; and professional engineering. Services provided by professionals outside the scope of their profession, e.g., management consulting services provided by accounting firms, are not considered professional services.

**Proprietary Purchase:** 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.

**Public Bid Opening:** The opening of bids at the time and place advertised in the bid invitation, in the presence of anyone who wishes to attend. Bids will be read aloud, on request of any person in attendance.

**Reciprocity:** Bids from bidders who reside in states that grant resident bidder preference(s) for that state's purchases will be evaluated in the same manner when bidding against a Texas bidder.

**Recycled Materials:** Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

**Request for Information (RFI):** A general invitation to contractors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.  
**Request for Offer (RFO):** A solicitation for catalog information systems requesting the submittal of an offer in response to the required scope of services, including a cost proposal. Negotiations are allowed between respondents and the issuing agency.

**Request for Proposal (RFP):** A solicitation requesting submittal of a proposal in cost proposal. The RFP process allows for negotiations between respondents and the issuing agency.

**Request for Qualifications (RFQ):** A solicitation document requesting submittal of qualifications or specialized expertise as related to professional and consulting

services in response to the scope of services required. No pricing is solicited with an RFQ. (CPA Procurement Manual – Section 2.20)

**Responsive:** The respondent has complied with all material aspects of the solicitation document, including submission of all required documents.

**Respondent:** An entity submitting a proposal in response to a solicitation. (See Bidder)

**Responsible:** The respondent has the capability to fully perform and deliver in accordance with the contract requirements. The agency may include past performance, financial capabilities and business management as criteria for determining if a bidder or proposer is capable of satisfying the contract requirements.

**Reverse Auction:** A real time bidding procedure that is Internet dependent and which is conducted at a pre-scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids for designated goods or services.

**Service:** The furnishing of labor by a contractor which does not include the delivery of a tangible end product. In some cases, services and goods may be combined such as film processing. In these instances, agencies determine whether labor or goods is the primary factor. In the case of film processing, the labor to process the film is the primary factor, therefore film processing is considered a service.

**Sole Source Purchase:** A purchase used when only one source can provide the necessary commodity or service.

**Solicitation:** A document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications.

**Solicitation Conference:** A meeting chaired by state agency personnel which is designed to help potential bidders/respondents understand the requirements of a solicitation. Also known as a pre-bid or proposal conference.

**Specification:** A description of what the purchaser requires and what a bidder or proposer must offer.

**Specifications:** Concise statements of a set of requirements to be satisfied by a product, material or service, indicating whenever appropriate the procedures to determine whether the requirements are satisfied.

**Term Contract Purchase:** A purchase by an agency under a term contract which establishes a source of supply for particular goods at a given price for a specified period of time.

**Texas Multiple Award Schedule (TXMAS):** A contract that has been previously awarded using a competitive process by the federal government or any other governmental entity in any state; have agreed to the State of Texas General Terms and Conditions, including ruled adopted by CPA; comply with all applicable State and federal procurement requirements and any other applicable federal requirements.

**Vendor:** A supplier of goods or services to the state.