

CONTRACT MANAGEMENT GUIDE AND HANDBOOK



TEXAS

JUVENILE ★ JUSTICE
DEPARTMENT

INTRODUCTION

September 1, 2015

The information contained in this Contract Management Guide and Handbook reflects the procurement policies, procedures, and practices of the Texas Juvenile Justice Department. It outlines the purchasing and contracting processes used in procuring the products and services required to support the Agency's mission and goals. This guide contains the latest requirements of the recently passed legislation known as SB20. If anyone has any questions regarding its contents or would like to discuss in more detail any of the procedures described herein you may contact the Director of Business Operations and Contracts:

Kenneth Ming, CPPB, CTCM, CTPM
Director of Business Operations and Contracts for TJJD
kenneth.i.ming@tjjd.texas.gov
512-490-6261

TABLE OF CONTENTS

What is a Contract?	4	General Counsel	18
Elements of a Contract	4	TJJD Purchase Approval Matrix	19
Verbal Contracts	5	Employment of Former TJJD Employee	19
Contract Documents.....	5	Additional Approvals	20
Critical First Step - Offer	6	DIR Purchases.....	21
Acceptance	6	Execution Authority.....	22
Unauthorized Purchases.....	7	Posting Requirements	23
Consideration	7	Interpretation of Contracts.....	24
Basic Types of Contracts.....	8	Performance of Contracts	24
Laws Governing Contracts.....	9	Legitimate Reasons for Non-Performance	24
Other Governing Rules	9	Remedies for Non-Performance.....	25
Contracting Process Definition	10	Receiving and Paying for Services.....	26
Best Value Standard	10	Procurement File Closeout	27
Conflict of Interest and Ethics	11	Vendor Performance Reporting.....	27
Conflict of Interest Prohibitions	12	Records Retention	27
Statement of Work	13	Appendix A	28
Steps in Contract Process	14	Appendix B	33
Contract Initiation and Administration.....	16	Appendix C	34
Contract Management	17	Appendix D.....	35

WHAT IS A CONTRACT?

Things to consider:

1. A contract is a legally enforceable promise or set of promises.
2. May be written or verbal.
3. Not every promise is legally enforceable.
4. Some verbal promises may be legally enforceable.
5. Written contracts include all documents agreed to by parties and named in contract.
6. **TJJD does not enter into verbal contracts, all contracts must be in writing and signed by the Executive Director or his designee; or a PO issued and signed by a trained purchaser detailing the terms of the purchase agreement.**

ELEMENTS OF A CONTRACT

To qualify as a contract the written agreement must contain:

1. A set of promises based on parties voluntarily agreeing to keep those promises;
2. It must be between parties who have capacity to contract. You cannot contract with minors or individuals who lack the capacity to understand the terms of the contract;
3. The objectives and performance set forth in the agreement must be legal. It cannot require the parties to do some that is against the law.
4. **All contracts are made up of:**
 - a. **Offer**
 - b. **Acceptance**
 - c. **Consideration**

VERBAL CONTRACTS

If a verbal contract can be proven that both parties agreed to enter into it, it is just as legally binding as a written contract.

CAUTION: Be very careful what you tell vendors or potential service providers. You could enter into a contract just by agreeing to do something or by verbally accepting an offer made by someone. When in doubt say: **“I’ll get back with you on that.”**

Consult with Contract’s Department or General Counsel before making any commitment on behalf of the agency.

CONTRACT DOCUMENTS

A contract may consist of several documents:

1. Solicitation, sometimes referred to as a request for proposal (RFP), request for offer (RFO), invitation for bid (IFB), request for qualifications (RFQ) etc. The solicitation maybe formal or informal;
2. Addenda to the solicitation;
3. Proposal or quote submitted by service provider;
4. Negotiated and agreed to changes to original scope;
5. Best and final offer;
6. Any document included in the contract by reference;
7. Signed contract.

Note: **A purchase order** is a contract because it contains the three elements of a contract. With every purchase you have an offer, acceptance, and consideration. The quote provided by the vendor is the offer. The PO issued by the purchaser is the acceptance of the offer. The agreement to pay the vendor for performing a service or delivering a product is the consideration.

CRITICAL FIRST STEP - OFFER

1. TJJJ will solicit an offer, quote or proposal from a potential vendor.
2. Vendor will provide a quote or submit a proposal to make an offer, giving power to TJJJ to bind both parties to a contract by accepting the offer.
3. Simply stated: "The vendor says here is my offer (quote), if you agree to these terms, we have a deal." You say "I accept." A binding contract is formed.
4. **Be careful accepting a vendor's offer (quote).** You may be binding the agency to a contract. Only trained purchasers, Executive Director or designee can accept an offer to bind the agency to a contract.
5. **Always qualify your acceptance** by saying: "Let me check with my procurement department before I accept." or "do not perform any work or ship the item until you receive a purchase order from TJJJ's purchasing office."

ACCEPTANCE

1. At TJJJ a signed contract or purchase order is the written **acceptance** of any offer.
2. At TJJJ the only person that can accept an offer, binding the agency by signing contract, is the Executive Director, unless delegated in writing to another Executive Staff.
3. In addition, a trained purchaser may accept an offer by issuing and signing a purchase order. Prior approval by appropriate management level must be obtained on requisition before purchaser can sign and issue a PO.

UNAUTHORIZED PURCHASES

1. **Be careful.** Unauthorized purchases are to be avoided at all times and are a violation of state procurement rules. An unauthorized purchase may occur in one of two ways:
 - a. If a vendor does work, incurs any expenses, delivers a product, or performs a service prior to a signed PO or signed contract being provided to them it is considered an unauthorized purchase and vendor may not get paid.
 - b. If a TJJJ staff purchases something or incurs any expense prior to a purchase requisition being approved and a valid PO being issued in CAPPS authorizing that reimbursement, that reimbursement may be denied will be considered unauthorized purchase.
2. **Unauthorized purchase letter** - In order for payment to be made to a vendor or reimbursement made to an employee, an unauthorized purchase letter must be signed by the Director of Business Operations and Contracts and supervisor of the person committing the violation, acknowledging a violation occurred within their department.
3. Repeated unauthorized purchase violations may result in disciplinary action.

CONSIDERATION

1. Is the legal value, bargained for, agreed to, and given in exchange for performance or a promise to perform.
2. TJJJ must agree to pay the price that was offered and negotiated (acceptance) to gain the right to enforce promises made by the vendor and bind the parties to a contract.
3. To be considered legal value it must be agreed:
 - a. To do something with no prior legal duty to do;
 - b. Refrain from doing something no legal right to do;
 - c. Legal value may be more than just the price agreed to pay.

BASIC TYPES OF CONTRACTS

- 1. Purchase Order** - Standard terms and conditions are included in every PO. The PO must clearly state what is being offered and accepted. It must clearly state how and for what the vendor will be made.
- 2. Two party contracts** - Most contracts involve two parties, some may involve multiple parties. A written document detailing the actions of the parties is prepared and signed by the parties involved. Each contract may have both standard and specific terms and conditions related to the services being performed or products to be delivered.
- 3. Interagency Agreement (IAC)** - An agreement between two or more state agencies with a written description of services and relevant terms and conditions required by statute.
- 4. Interlocal Agreement (ILC)** - Same as IAC but between a state agency and local governments such as cities and counties.
- 5. Memorandum of Understanding (MOU)** - A simplified agreement outlining what two parties agree to do for one another, generally at no cost to either party.
- 6. Other variations of the above types of contracts may include: Memorandum of Agreement (MOA), Letter of Intent (LOI), Letter of Agreement (LOA).**

LAWS GOVERNING CONTRACTS

1. Federal and State Law
2. Article 2 of the Uniform Commercial Code
3. Common Law
4. Texas Government and Administrative Codes
5. New Legislation SB 20

OTHER GOVERNING RULES

1. State of Texas Procurement Manual and Procedures
2. State of Texas Contract Management Guide
3. Comptroller Contract Advisory Team, CAT
4. Department of Information Resources (DIR) Rules
5. TJJJ Procurement Procedures
6. Purchasing Approval Matrix
7. TJJJ Contract Management Handbook and Guide

CONTRACTING PROCESS DEFINITION

1. The contracting process is a sequence of defined, repeatable activities that begin before contract award and continues through delivery, payment, and closeout;
2. It is the process of identifying needs, analyzing risk, planning, creating scopes of work, soliciting offers, evaluating offers, awarding contracts, administering, and managing performance for agreements to buy goods and/or perform services from another party; and
3. It is the art and science of managing a contractual agreement both from a legal stand point and performance based perspective.

BEST VALUE STANDARD

1. In determining the best value, the purchase price and whether the goods or services meet specifications are the most important considerations. When best value is a consideration other factors should be considered such as:
 - a. Installation costs;
 - b. Life cycle costs;
 - c. Quality and reliability of goods and services;
 - d. Delivery terms;
 - e. Past vendor performance;
 - f. Vendor's financial resources and ability to perform;
 - g. Vendor's experience, capability or responsibility;
 - h. Cost of training associated with a purchase; and
 - i. Other factors relevant to determining the best value in the context of a particular purchase.
2. For a purchase made through competitive bidding, the agency must specify in the request for proposal (RFP) the factors other than price that will be used in determining which proposal offers the best value for the agency.

CONFLICT OF INTEREST AND ETHICS

1. By statute any person involved in the development or approval of a contract that has an actual or potential conflict of interest must disclose it and must be removed from involvement in the contract process.
2. All contract approvers, purchasing and contracts staff must sign a conflict of interest statement certification. (Appendix B)
3. Each approval authority in the workflow approval of a contract, by approving the contract, certifies that he or she:
 - a. Has no interest in, or connection with, the contract;
 - b. Has not accepted or received, and will not accept or receive, from a person or entity to whom the contract has been awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation; and
 - c. Has disclosed any possible conflicts of interest to the Director of Business Operations and Contracts.
4. TJJJ staff that has knowledge of any conflict of interest by any staff involved in the procurement process that has previously not been disclosed must report it to the Director of Business Operations and Contracts.
5. Report suspected fraud, waste, or abuse of state resources to the TJJJ Office of Inspector General at 1-866-477-8354 and to the Texas State Auditor's Office at 1-800-TX-AUDIT.

CONFLICT OF INTEREST PROHIBITIONS

1. A state agency is prohibited from entering into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:
 - a. A member of the agency's governing body;
 - b. The governing official, executive director;
 - c. General Counsel, Chief Procurement Officer, or Procurement Director of the agency; or
 - d. Family member related to an employee or official within the second degree by affinity or consanguinity.
 - e. A state agency employee or official that has a financial interest in a person if the employee or official:
 - i. owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or person could result in a financial benefit to the employee or official.
 - ii. A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

2. Ethical Standards and Policies are located in Appendix C

STATEMENT OF WORK

The statement of work is the most important element of the contract. The SOW:

1. May be referred to as scope or work, description or services;
2. Describes key elements of the contract or purchase. It must describe in detail the written offer, terms under which the offer is accepted and the consideration exchanged for performance of the offer;
3. Describes in detail how each party is to perform and how performance is measured. This involves, including in the contract, clearly defined performance measures and/or deliverables that describe the conditions under which the service provider will be paid;
4. Is used to minimize risk to TJJD, by describing in detail what parties are required to do. Including clearly defined performance measure and deliverables in the contract will minimize risk to TJJD; and
5. Must include:
 - a. Detailed list of services to be performed, actions to be taken by the parties, and/or products to be delivered;
 - b. How performance will be measured. Performance measures set the level of quality required and expected;
 - c. Deliverables that must be met in order to receive payment;
 - d. Dates - deliverables are required;
 - e. Consequences for not performing or meeting deliverables;
 - f. How compensation will be provided for successfully performing;
 - g. Rules for receiving payment.

STEPS IN CONTRACT PROCESS

All contracts and purchase orders must be processed through Contracts and Purchasing Department, who in coordination with the General Counsel's office, will determine the type of contract required. To assist with preparing required documents the following steps must be followed for all contracts:

1. **Consult** with both the Contracts and Legal Departments in the initial planning stages of a contract. This will avoid issues later in the process.
2. **Planning.** - This is a critical first step that often gets overlooked. Prior to the beginning of each fiscal year, decide what departmental contracting needs are. Plan scheduling of resources to have contracts in place to cover agency needs. This may involve scheduling meetings with stake holders, reviewing current contracts, reviewing performance of service providers, meeting with service providers to identify areas of improvement.
3. **Identify need.** Do you have existing contracts that need to be renewed or revised? Do you need new contracts to cover your needs?
4. **Perform risk assessment.** Once you decide on required services, determine the risk level for the agency and how to minimize that risk through contract requirements. The Contract Manager will assist departments in completing a risk analysis form (**Appendix A**). Based on risk level, develop detailed statement of work with written performance measures that minimizes risk.
5. **Identify budget** to pay for services or products. Make sure proper budget codes are used and there is sufficient budget to cover the cost.
6. **Submit requisition** in CAPPS for funding approval. Make sure your requisition passes budget checking, gets approved through the CAPPS requisition workflow and is ready to source to a PO or contract.
7. **Attach all documents** related to the purchase request including proposals, quotes, contract documents or agreements needing signature and any other correspondence related to the purchase.
8. **Manage your requisitions.** Periodically check on the status of your requisitions in CAPPS to make sure requisitions are working their way through workflow approval and pass budget check. If not, correct any budget errors and notify approvers that have not approved the requisition.

STEPS IN CONTRACT PROCESS (CONTINUED)

9. Contract Manager or Purchaser will take lead and will:

- a) Clarify what you are requesting. This may involve requesting additional details, asking for clarification, calling vendors or service providers, consulting with TPASS, looking for items in Texas SmartBuy, finding other state approved sources. Timely communication with purchasing staff is critical for the success of your purchase request;
- b) Select the best vendor in accordance with state purchasing rules;
- c) Obtain quote or verify quote received from requesting department;
- d) Initiate a competitive solicitation process when required;
- e) Negotiate and seek to find the best value; and
- f) Reach agreement with the other party on the terms of the contract. Certain standard legal terms are non-negotiable.

10. Process and dispatch a PO through CAPPs, providing the requestor, accounts payable, and delivery location warehouse a copy of the PO;

11. If a contract is involved requiring signatures, will finalize details of purchase, and route contract documents for approval, in CAPPs workflow;

12. After approval in CAPPs, hard copy contract is routed for signature by Contract Attorney and Executive Director. Once fully signed, copies of the signed contract will be distributed to all parties involved;

13. Under no circumstances take a contract directly to Executive Director or Contract Attorney. Process starts and ends with the Contracts Department;

14. There are three main functional areas of the contract process:

- a) Contract Initiation/Administration
- b) Contract Management
- c) General Counsel

CONTRACT INITIATION AND ADMINISTRATION

1. This function is responsibility of requesting department or end user. Also referred to as Program Administration.
2. **Requesting department is** responsible for contract initiation including:
 - a. Consulting with Contracts and Legal Departments when necessary;
 - b. Identifying needs;
 - c. Planning;
 - d. Preparing risk assessment with assistance of Contract Manager (reference **Appendix A**);
 - e. Developing detailed statement of work, deliverables and performance measures;
 - f. Identifying TJJJ Policies that apply to services being performed;
 - g. Assisting Contracts Department with contract development; and
 - h. Assisting with contract negotiations, when needed.
3. **Requesting department,** after contract has been awarded, will:
 - a. Apply specialized knowledge, skills, and techniques to support program activities;
 - b. Administer and manage daily operations of required services established in contract. The three elements managed are cost, time, and scope;
 - c. Manage performance as required in the contract. May require involvement of Contract Manager should a dispute arise;
 - d. Ensure provider meets required performance objectives defined in the contract;
 - e. Oversee delivery and receipt of services;
 - f. Analyze invoices for contractual compliance;
 - g. Certify services were performed and deliverables met; and
 - h. Approve invoice for payment.

CONTRACT MANAGEMENT

All contracts must be processed by the Contracts Department. Always consult with Contracts Department when a contract is anticipated. The Contracts Department is here to assist.

- 1. Contract Department** handles contract management. **Contract Manager** shall:
 - a. Conduct competitive solicitation processes as required, to select vendors/service providers based on best value standards;
 - b. Checks Comptroller's Vendor Performance Tracking System (VPTS) to identify past performance issues before awarding contract or PO;
 - c. Process all contract documents and amendments including renewals;
 - d. Obtain required documentation;
 - e. Ensure appropriate terms, conditions and clauses are in each contract;
 - f. Negotiate final terms with other party;
 - g. Prepare and finalize contract documents;
 - h. Obtain legal review;
 - i. Obtain reviews and approvals from all stakeholders. Contract approval is accomplished by routing through CAPPs workflow;
 - j. Obtain signatures from all parties and TJJJ's Executive Director. Contract documents are routed for signature in accordance with TJJJ Purchase Approval Matrix (Appendix B);
 - k. Enforce contract terms and manage actions of parties as governed by the terms of the contract;
 - l. Ensure TJJJ receives the services contracted for, at the quality level expected, at the time agreed to and for the price that was negotiated.
2. Ensure contracts are properly awarded in accordance with legal and statutory requirements and that the highest ethical standards are followed at all times;
3. Ensure integrity of TJJJ is maintain in all its business dealings;
4. Meet Certified Texas Contracts Manager (CTCM) standards; and
5. Certify all contracts have been entered into in accordance with the rules, statutes and Contract Management Guidelines established by Comptroller.

GENERAL COUNSEL

The contract attorney's role in developing a contract is coordinated by the Contract Manager.

Contract Attorney will:

1. Provide legal review, guidance, and oversight for all aspects of the agency's contracting framework;
2. Determine contractual statutory authority;
3. Ensure all legal elements of agency contracts are met;
4. Sign agency contracts, "Approved as to form" when required;
5. Assist in resolving contract disputes;
6. Assist with developing cure notices and corrective action letters;
7. Assist with determining when parties have breached the terms of a contract; and
8. Assist in assessing liquidated damages related to breaches of a contract.

TJJD PURCHASE APPROVAL MATRIX

The Purchasing Approval Matrix (**Appendix B**) governs approvals required for all contracts, regardless of cost. The Executive Director is the only authorized agent for TJJD and is required to sign **all** contracts, unless delegated to another Executive staff member.

1. Purchasing Approval Matrix is approved by Board;
2. Found in Procurement Procedures Manual-PCM.03.09;
3. Establishes approval levels required for all purchases;
4. Establishes contracts requiring Board approval;
5. Establishes approvals required for information technology and construction purchases;
and
6. Used to establish approval workflow in CAPPs.

EMPLOYMENT OF FORMER TJJD EMPLOYEE

If an employee or officer of a state agency participates on behalf of the agency in a procurement or contract negotiation with a person or company, they may not accept employment with that person or company for two years after employment with the state agency ceased.

ADDITIONAL APPROVALS

In accordance with SB 20, the following additional approvals are required:

1. The Contract Manager or Procurement Director shall:
 - a. Approve each contract awarded through the competitive sealed proposal process, using the best value standard;
 - b. Ensures best value standards are properly documented; and
 - c. Acknowledge in writing TJD has complied with the agency's and Comptroller's Contract Management Guide.
2. Information contained in the Comptroller's Vendor Performance Tracking System shall be used as a best value evaluation criteria;
3. TPASS may bar vendors who have shown repeated unfavorable performance from participating in state contracting; and
4. For Contracts exceeding \$5 million dollars, the Contract Management Office or Procurement Director shall:
 - a. Verify the solicitation, purchasing method and contractor selection comply with state law and agency policy; and
 - b. Submit to the Board information on any potential issue that may arise in the procurement process.

DIR PURCHASES

The following are purchasing rules for the procurement of information technology related products and services using Department of Information Resources (DIR) contracts:

1. Commodities - Commodities are defined to include hardware, software and services. Thresholds are:
 - a. \$50,000 or less may be awarded directly to DIR vendor;
 - b. \$50,000 to \$150,000 - at least three (3) DIR vendors must be solicited for pricing, if available;
 - c. \$150,000 to \$1 million, at least six (6) DIR vendors must be solicited for pricing, if available; and
 - d. \$1 million or greater - Agencies are required to conduct their own solicitation process and may not use a DIR contract.
2. Additional requirements for deliverables-based information technology services (DBITS), and managed services for information technology, telecommunications, and cloud services contracts greater than \$50,000: submit statements of work (SOW) to the DIR for review:
 - a. prior to submission to vendor(s); and
 - b. for DIR approval and signature prior to final execution.
3. Purchases that go through the Data Center Services program are governed by a separate statutory authority and do not have these restrictions. Purchases that are required to go through the Data Center Services program will still be required to follow the current process for the Data Center program.

EXECUTION AUTHORITY

1. NO ONE, except the Executive Director or their designee, has the authority to bind the agency to a contract or commit agency funds.
2. It is very important to remember when dealing with an outside party you wish to contract with, whether it is a private company or another agency, that NO ONE within the agency, other than the Executive Director or trained purchaser, has the authority to commit agency funds or to accept an offer.
3. If a contract is signed by anyone other than the Executive Director or their designee it may be considered void and unenforceable.
4. Contracts will generally have a statement that says only the authorized representative of each party may sign the contract.
5. Purchasers may sign a purchase order provided a requisition was properly submitted and approved in CAPPS, giving authority to the purchaser to commit the funds.
6. All purchasers must be trained or certified to the level of the dollar amount of the purchase order they are signing.

POSTING REQUIREMENTS

Contracts and purchase orders are to be posted as follows.

1. **Agency public internet website:**
 - a. For contracts and purchase orders exceeding \$15,000, post:
 - i. Statutory authority under which contract was awarded;
 - ii. Solicitations;
 - iii. Responses to solicitations, including “no-bids”; and
 - iv. Signed contract or purchase order.
 - b. Less than \$15,000 - posting related documents is optional.
2. **CAPPS** - Attach documents to contract or purchase order.
3. **Legislative Budget Board** - requires agencies to post contracts and related solicitation documents to the LBB website for:
 - a. Major information systems exceeding \$100,000;
 - b. Construction projects exceeding \$14,000;
 - c. Professional or consulting services exceeding \$14,000;
 - d. Contracts over \$50,000;
 - e. Emergency contracts over \$1 million or other contracts over \$1 million if not competitively procured; and
 - f. Contracts over \$10 million.
4. **Electronic State Business Daily (ESBD)**
 - a. Solicitations over \$25,000;
 - b. Proprietary purchases over \$25,000;
 - c. Purchase awards over \$25,000; and
 - d. Solicitations \$25,000 or less (optional).
5. **Texas Register**
 - a. Consulting services over \$15,000.

INTERPRETATION OF CONTRACTS

Interpreting contract terms and responsibilities is sometimes difficult and requires consulting with the Contracts and Legal Departments. Start with the Contracts Department who will:

1. Determine if General Counsel involvement is required;
2. Determine the meaning and effect of the terms;
3. Determine principle objectives;
4. Apply common sense guidelines;
5. Interpret handwritten provisions in the contract that may prevail over written ones;
6. Determine whether actions of the parties may be used to interpret the intent of the contract terms;
7. Initiate the dispute resolution process if necessary.

Avoid contract disputes with well written statement of work, clearly defined performance measures, payment based on clearly defined deliverables with specific time frames.

PERFORMANCE OF CONTRACTS

1. Strict performance is adhering to the specific contract terms.
2. Substantial performance is:
 - a. Good faith performance;
 - b. Implied covenant of good faith and fair dealing;
 - c. Neither party will prevent other from obtaining benefits they have a right to expect; and
 - d. Prevent abuses of power, encourages ethical behavior.

LEGITIMATE REASONS FOR NON-PERFORMANCE

1. Contractual duty cannot be done by anyone.
2. Illness or death does not excuse duties that can be delegated to someone else.
3. Supervening illegality.
4. Destruction of subject matter of the contract.
5. Unforeseen developments make performance highly impractical or unreasonably expensive.
6. Mutual agreement.

REMEDIES FOR NON-PERFORMANCE

1. Corrective Action

- a. Non-Performance issues must be well documented.
- b. Put provider on notice, send cure notice letter.
- c. Deadline passes, can extend, withhold payment, or claim breach.
- d. Provider may invoke dispute resolution process.

2. Withhold Payment

- a. Non-Performance must be well documented.
- b. Provider must be given opportunity to correct problem.
- c. If problem serious enough to consider non-payment, maybe time to terminate.

3. Restitution

- a. Must return exact property conferred on him; or
- b. Must return a sum of money equal to the benefit.
- c. Liquidated damages.
- d. Recover damages for losses that can be proven.
- e. Liable only for losses foreseeable at time of contract.
- f. Responsible for cost to re-procure services and resulting delays.
- g. Both parties have duty to minimize or avoid damages.

RECEIVING AND PAYING FOR SERVICES

1. Before receiving services and approving an invoice for payment the TJJJ staff receiving the services must:
 - a. **Know the contract** - Read and understand terms of contract.
 - b. **Provide invoice to Claims Department immediately.** 30 day clock starts when invoice is received by any TJJJ employee.
 - c. **Analyze the invoice.** If not correct, get service provider to correct it. Make sure all services billed are listed in the contract.

2. Roles and Responsibilities:
 - a. **Requesting Department Contract Administrator:**
 - i. Ensures invoices properly completed and submitted on time;
 - ii. Must verify services performed are billable; and
 - iii. Receive services in CAPPs certifying services were performed in accordance with the contract terms and statement of work.

 - b. **TJJJ Contracts Department:**
 - i. Interprets contract terms to resolves payment disputes;
 - ii. Confers with legal when necessary; and
 - iii. Communicates non-compliance issue to service provider.

 - c. **TJJJ Claims Department:**
 - i. Reviews invoice for accuracy;
 - ii. Resolves questionable charges;
 - iii. Contacts appropriate TJJJ staff to resolve issues; and
 - iv. Processes payment.

PROCUREMENT FILE CLOSEOUT

The final step in the procurement process is closeout. To close out a contract or purchase file the following must occur:

1. All items have been received and all services provided;
2. All performance measures are completed;
3. All deliverables have been received;
4. All contract disputes and performances issues resolved;
5. Final invoice has been received;
6. Final payment has been made; and
7. Vendor performance reported.

VENDOR PERFORMANCE REPORTING

1. After a contract has been completed or otherwise terminated information about that vendor's performance shall be entered into the Comptroller's Vendor Performance Tracking System (VPTS); and
2. As a part of the closeout process for all purchases over \$25,000, vendor performance information both positive and negative shall be entered into the VPTS.

RECORDS RETENTION

The following is the required retention policy for all purchase order and contract related documentation:

1. For contracts and purchase orders entered into after 9/1/2015, a state agency shall retain in its records each contract and related documents it enters into for a period of seven (7) years after contract expires, terminated, or is completed, after all issue have been resolved. Along with the contract, all solicitation documents shall also be retained.
2. For contracts and purchase orders entered into prior to 9/1/2015, the records retention period is four (4) years.

APPENDIX A

TJJD Risk Assessment Matrix (RAM)

The TJJD Risk Assessment Matrix (RAM) is a tool used by contract and department staff to analyze contract to identify areas of risk (the potential for loss, harm, or damage may occur due to errors or problems associated with contractors' performance). This tool also allows staff to identify specific areas that may need accelerated monitoring.

This tool should be used prior to: 1) awarding contracts from RFP proposals; 2) entering into new contracts with vendors; and 3) renewing existing contracts.

Risk factors are indicators that determine the risk of the contract or project objectives not being met.

The risk factors included in the TJJD RAM include:

- Type of Contract purchase – what type of contract solicitation – competitive/non-competitive;
- Payment Type/Structure – the type of budget included in the contract;
- The dollar amount of the contract;
- Direct Client Contact;
- Essential Agency Function;
- Stability and Experience of Contractor's Key Management Staff;
- Percentage of Services Performed by Subcontractors;
- Compliance History;
- Past Programmatic Performance;
- Audit Outcomes;
- Number of years in business;
- Performance Measures;
- Deliverables; and
- Greater than \$1 million dollars – amount of financial reports required.

Additional risk factors can be added as appropriate for the contract.

APPENDIX A (CONTINUED)

Rate each contractor on the risk elements using the range of Low (score 1-3), Medium (Score 4-7), or High (Score 8-10). The form will add up the scores in the Overall Risk Score field. The range for the Overall Risk Scores are:

Low risk procurement:	0 – 48
Medium risk procurement:	49 - 112
High Risk Procurement:	113 – 160

No objective or mathematical formula can be used to assess the risk imposed by a particular contract; risk is determined subjectively.

The RAM should be completed annually, but risk should be assessed on an on-going basis throughout the contract period. A new RAM should be completed when risk conditions undergo a substantial change (i.e., contractor's management or ownership changes). Contract management and monitoring activities should be adjusted to focus on the riskiest contractors during the entire contract period.

APPENDIX A (CONTINUED)

#	Risk Factor	Risk Level - LOW	Risk Level - MEDIUM	Risk Level - HIGH	Justification/Comments	Risk Level Score
		Score 1-3	Score 4-7	Score 8-10		

Pre-set Risk Factors						
1	Type of Contract Purchase	Interagency, MOU or Interlocal	Contract Less than 25K	Consulting, Emergency, Sole Source, Proprietary, or Construction > \$25K		
2	Payment Type/ Structure	Fixed price or contingency	Rate or Fee for Services	Cost Reimbursement		
3	Total Dollar Amount for FY	Less than \$100K	\$100K to \$1 million	Over \$1 million		
4	Direct Client Contact	No Direct Client Contact	Limited Client Contact - i.e., Doctor office visits	Direct Client Contact; i.e., parole or residential		
5	Essential Agency Function	Contract services are not critical for meeting TJJD's mission	Contract services are moderately essential to TJJD's mission	Contract services are essential to TJJD mission		
6	Stability & Experience of Contractor Key Management Staff	No recent change and significant experience	No recent change, but not significant experience; or recent change but significant experience	Recent change and not significant experience		
7	Percentage of Services Performed by Subcontractors	No Subcontractor involvement	Subcontractors account for 50% or less of contract work performed	Subcontractors account for more than 50% of contract work performed		
8	Compliance History	No issues of non-compliance	Moderate instances of non-compliance/ no history - never contracted with TJJD before	Substantial finding of non-compliance		
9	Past Programmatic Performance	Met or exceeded all output and outcome measures	Met 75% or more of output and outcome measures	Met less than 75% of output and outcome measures		

APPENDIX A (CONTINUED)

#	Risk Factor	Risk Level - LOW	Risk Level - MEDIUM	Risk Level - HIGH	Justification/Comments	Risk Level Score
		Score 1-3	Score 4-7	Score 8-10		

Risk Factors - Financial						
10	Audit Outcomes	No audit required or no issues or finding in audit(s)	Moderate issues or findings in audit(s)	Substantial issues or findings in audit(s)		
11	Number of years in business	More than 5 years	1 year to 5 years	Less than 1 year		

Risk Factors - Contract						
12	Performance Measures	Contract contains multiple defined and measurable performance measures	Contract contains at least one clearly defined or measurable performance measure	No performance measures included in contract		
13	Deliverables	Contract contains multiple deliverables that are clearly defined	Contract contains at least one clearly defined deliverable	No deliverables included in contract		
14	> \$1 million - Financial Reports required?	> \$1 million - substantial financial reports required	> \$1 million - minimal financial reports required	> \$1 million - no financial reports required		

					Overall Risk Score:	0
					Low risk procurement:	0-48
					Medium risk procurement:	49-112
					High risk procurement:	113-160

APPENDIX A (CONTINUED)

Summary of Risk Assessment:
Additional Risks:
Risk Mitigation Plan:

APPENDIX B TEXAS JUVENILE JUSTICE DEPARTMENT PURCHASE APPROVAL MATRIX

- Agency procedures require the application of the Approval Matrix for all Agency purchases.
- Signatures on the requisition form (BSD-100) approves the expenditure of agency funds.
- Any purchase paid with local operating funds must be approved by the facility's business office.

ALL PURCHASE REQUISITIONS (BSD 100)	Requesting Department Head	Superintendent or Principal ① (Field sites only)	Facility Business Coord. (Field sites only)	Requesting Division Director	Austin Office Budget Approval	Grant Budget Analyst	IS&T Approval	Construction Accountant	TJJD Board	Chief Financial Officer	Chief of Staff	Executive Director
All purchases Less than \$5,000	X	X*	X		③	③						
All purchases Equal to \$5,000 or less than \$25,000	X	X	X		③	③						
All purchases Equal to \$25,000 or less than \$100,000	X	X	X	X	X	X				X	X	X
All purchases Equal to \$100,000 or higher	X	X	X	X	X	X				X	X	X
Purchase of Equipment \$150,000 or greater	X	X	X	X	X	X			X	X	X	X
Proprietary/Sole Source Purchases greater than \$5,000.00 ②	X	X	X	X	X	X				X	X	X
Information Technology purchases also require							X④					
Construction related purchases also require								X				

- ① Field purchases will be approved by the Superintendent unless it is for the Education Department, then the Principal and Austin Education office will approve.
***Certain purchases under \$5,000.00 may be exempt from Superintendent.** Individual Superintendents and Principals may establish their own approval thresholds based on the types and dollar amount of purchases under \$5,000.00. Each Business Office will have a written list for those exempt items signed by the Superintendent or Principal.
- ② All Sole source/proprietary purchase requests must have a sole source justification from the vendor. A Proprietary Justification Letter must be signed by the Executive Director or his designee.
- ③ All Austin Office purchases require budget analyst approval.
- ④ IT purchases require IT Department approval. Purchase requests under \$25,000.00, from the Field, may be approved by the Director of IT Field Operations. Certain items are exempt for IT Department approval, a list of those items will be published by the IT Department.

AFTER PURCHASE REQUISITION IS APPROVED:

Once a requisition is approved in accordance with the above matrix, the requisition is then presented to the Purchaser, or Contract Specialist, to select the appropriate procurement method which will result in the creation of a purchase order or a contract. No further approvals are required to issue a Purchase order. Contracts require additional approvals.

Purchase orders are used for low risk purchases of goods and simple services only. **DO NOT USE A PO AS A SUBSTITUTE FOR A CONTRACT.** Check with the Contracts and Procurement Department if you have questions. Below are the approvals required to execute a contract.

CONTRACTS FOR SERVICES All contracts, and contract amendments, require the following additional approvals and executing signatures.	Contracts Administration Manager	Director of Business Operations and Contracts	Legal Review	Senior Director Requesting Department	Construction Department ⑤	Grant Manager ⑤	Chief Technology Officer ⑤	Other Contracting Parties ⑥	TJJD Board ⑦	Chief Financial Officer	Chief of Staff	Executive Director ⑧
	Approval	Approval	Approval	Approval	Approval	Approval	Approval	Approval	Approval	Approval	Approval	Execution Authority
All Contracts and Amendments	X	X	X	X				X		X	X	X
Grant Funded Contracts	X	X	X	X		X		X		X	X	X
Information Services and Technology Contracts	X	X	X				X	X		X	X	X
Construction Contracts less than \$300,000.00	X	X	X		X			X		X	X	X
Construction Contracts exceeding \$300,000.00	X	X	X		X			X	X	X	X	X
Construction Change Orders exceeding \$150,000	X	X			X			X	X	X	X	X
All Architectural or Engineering contracts	X	X	X		X			X	X	X	X	X
Consulting Contracts exceeding \$15,000	X	X	X	X				X	X	X	X	X
All new Residential Services Contracts	X	X	X	X				X	X	X	X	X
All Contracts exceeding \$500,000	X	X	X	X				X	X	X	X	X

- ⑤ If signature approval was provided on the purchase requisition, it is not required on the contract approval routing.
- ⑥ Signatures will be obtained from the other contracting parties prior to the Executive Director executing the contract unless an exception is granted by the Director of Business Operations and Contracts.
- ⑦ TJJD Board approval may be obtained at any point in the approval process however it must be obtained prior to the contract or amendment effective date. TJJD Board may be asked to approve other procurements deemed appropriate for board approval as determined by the Executive Director.
- ⑧ The Executive Director may delegate Execution Authority in accordance with Texas Statutes, as necessary to conduct the business of the Department.

APPENDIX C

CONFLICT OF INTEREST TEXAS GOVERNMENT CODE §2155.003

Under Texas Government Code § 2155.003, a Texas Juvenile Justice Department (TJJD) 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.

Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TJJD or purchasers from other state agencies.

By signing this document, I certify that: 1) I have read and understand the above statement, 2) to the extent they apply to me, I have complied with and will continue to comply with the laws, guidelines, and standards listed above and all other laws of the United States of America and the State of Texas that pertain to government contracting, bidding, and procurement, and 3) I have disclosed any possible conflicts of interest that exist now and will immediately disclose any future possible conflicts of interest to TJJD's Director of Contracts and Procurement.

Employee Signature

Date

Printed Name

cc: Personnel File
Supervisor's File

APPENDIX D

Ethical Standards and Policies

A. General

State officials and employees are responsible for protecting the safety and welfare of the public's monies. All state officials and employees should endeavor to pursue a course of conduct that does not raise suspicion among the public. Therefore, they shall avoid acts which are improper or give the appearance of impropriety. This conduct is particularly important for state purchasing personnel and contract management personnel who are charged with the disposition of state funds.

State purchasing personnel must adhere to the highest level of professionalism in discharging their official duties. The nature of purchasing functions makes it critical that everyone in the purchasing process remain independent and free from the perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the purchasing process. Consequently, the credibility of a purchasing program requires that a clear set of guidelines and rules be established. Such guidelines are designed to prevent actual and potential vendors from influencing state officers or employees in discharging their official duties. Furthermore, these guidelines will help prevent state officials' and employees' independent judgment from being compromised.

Therefore, with these principles in mind and in accordance with state law, the following policies and procedures should be adhered to by all state agency employees, contractors and potential contractors.

B. State Ethics Policy

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

C. Standards of Conduct

A state officer or employee should not:

APPENDIX D (CONTINUED)

1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
2. Accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
3. Accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employees official duties;
4. Make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
5. Intentionally or knowingly solicit, accept or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer or employees official duties in favor of another.
6. A state agency may not use appropriated money to compensate a state employee who violates a standard of conduct.

D. Prohibition of Economic Benefit

In accordance with the Texas Constitution an officer or employee of the state may not, directly or indirectly, profit by or have a pecuniary interest in the preparation, printing, duplication, or sale of a publication or other printed material issued by a department or agency of the executive branch. A person who violates this section shall be dismissed from state employment.

Texas Government Code §572.001(a)

Texas Government Code §572.051

Texas Government Code §2113.014(a)

Texas Constitution, Article XVI, Section 21

Texas Government Code §2052.302