



Teacher Retirement System of Texas Contract Administration Policy

January 2016

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TRS Employee Ethics Policy
TRS Board of Trustees Procurement Policy
TRS Board of Trustees Ethics Policy
Soft Dollar Policy
Investment Policy Statement
Cloud Computing Policy
Fraud, Waste, and Abuse Policy

1 POLICY INTRODUCTION

The Teacher Retirement System of Texas (TRS) Contract Administration Policy (Policy) applies to all procurements of goods and services, unless otherwise stated herein. The key elements of the Policy reflect the essential values of open and competitive contracting, acting with integrity and honesty, pursuing best value, and encouraging continuous improvement and innovation while maintaining transparency, accountability, and fiscal responsibility in our procurement and contracting processes.

Public procurement and contracting can be complex. Requirements are based in many areas including the Texas constitution, statutes, rules, policies, and procedures. Many considerations and exceptions can apply to either prohibit, alter, or allow courses of action. As such, this policy is intended to capture core procurement and contracting elements and it is the intent of this policy that when the core elements of the policy are not followed the reasoning is documented and maintained with the procurement or contract file.

1.1 Purpose, Interpretation, and Updates

1.1.1 Purpose

The purpose of this policy is to establish guidelines which ensure compliance with all applicable laws, rules and fiduciary responsibilities when contracting for goods and services on behalf of TRS and to establish responsibilities for the administration of contracts to which TRS is a party.

Any contract to which TRS or its agent is a party must be authorized by and comply with law, fiduciary responsibilities, applicable TRS policies and directives such as the Board of Trustees Procurement Policy, the Soft Dollar Policy, and, if applicable, budgets adopted by the Board of Trustees.

1.1.2 Interpretation

This policy is designed to address each significant phase of the contracting process, in the order of occurrence. The authority and responsibility of a particular employee to act may differ with respect to each phase, including initiation of the purchasing or contracting process, selection of contractors, execution of contracts, and administration of contracts.

The Procurement and Contracts' procedure manual includes a comprehensive matrix outlining specific authorizations, delegations, noted exceptions, and specifications for various types or categories of contracts and transactions. This matrix is intended to reflect the typical transactions and contracts in which TRS is involved and to provide pre-approved delegations of authority and key contracting specifications and

requirements to assist staff in complying with this policy in an efficient and timely manner.

1.1.3 Policy Updates

TRS' Executive Council will review the Policy and any proposed revisions to the Policy and provide comments. The Executive Director will approve the final version of the Policy. The normal review cycle of the Policy is every five years. During the interim, revisions may be made on an as-needed basis and subject to the same review and approval process. The Procurement and Contracts Team maintains a list of issues received and will prepare draft policy revisions as necessary.

Suggestions for improving clarity, content, or format of this Policy are encouraged. Any comments or suggestions about this Policy should be forwarded to:

TRS Contract Administration Manager
contractadministration@trs.texas.gov

1.1.4 Policy Implementation and Effect

The requirements of this policy are applicable to any new contracts entered into after the adoption of this policy and do not apply retroactively to contracts entered into prior to the adoption of this policy.

1.2 General Policy

1.2.1 Competitive Selection Process for Contractors

Except as provided in other applicable statewide procurement rules, applicable policies or elsewhere in this policy, including the exhibits, or as approved by the Executive Director or the Executive Director's designee as defined herein via one of the exemptions listed in [Section 2.1.4](#) to forego competitive procurement requirements, no contract with TRS involving the purchase or lease of goods and services by TRS may be awarded without a competitive selection process. In the absence of any specific noncompetitive process permitted by law and TRS policy, the Executive Director, or the Executive Director's designee as identified herein may permit and must approve in writing the use of a noncompetitive process for awarding a contract. Nothing in this policy, however, requires the use of competitive bidding where it is prohibited by applicable law. [Texas Government Code Section 2254.003](#) prohibiting a governmental entity from selecting a provider of professional services, such as a certified public accountant, a professional engineer, or a real estate appraiser, on the basis of competitive bids rather than on the basis of demonstrated competence and qualifications and a fair and reasonable price.) Likewise, nothing in

this policy permits the disregard of a competitive selection process where required by applicable law.

1.2.2 General Revenue Funds Expenditure Policy Statement

TRS is a public pension fund created pursuant to [Texas Constitution Article XVI §67](#), [Texas Constitution, Article XVI, Section 67](#) and [Texas Government Code Chapters 821 – 825](#). TRS is also the trustee of statutory health benefit programs TRS administers for the benefit of TRS participants under specific Texas Insurance Code provisions.

Fiduciary principles of prudence generally require that a benefit plan trustee employ competitive procedures when acquiring goods and services for the plan. Thus, it is TRS policy that no contract with TRS involving the acquisition, purchase, or lease of goods and services by TRS may be awarded without a competitive selection process, except when otherwise required by TRS' fiduciary duties, or as provided in other applicable law or policy as approved by the Executive Director or the Executive Director's designee as defined herein based on a written justification. In the absence of any specific noncompetitive process permitted by applicable law or policy, the Executive Director, or the Executive Director's designee as identified herein must approve in writing the use of a non-competitive process for awarding a contract. Nothing in this policy, however, requires the use of competitive bidding where prohibited by law.

Unless otherwise determined by the Board, Executive Director, or the Executive Director's designee as defined herein, TRS policy is to voluntarily follow applicable Texas Comptroller of Public Accounts (CPA) Procurement and Contracting rules and procedures, the CPA Contract Management Guide, Legislative Budget Board reporting, and other applicable contracting requirements as a guideline in purchasing and contracting for goods and services. The decision by the Executive Director or the Executive Director's designee as defined herein based on a written justification to follow alternative procedures may include compliance with TRS' fiduciary duty. TRS in no way delegates any authority over any assets of any trust fund for which TRS is trustee to another entity.

Notwithstanding any other law, under [Texas Government Code Section 825.103\(d\)](#), TRS has exclusive authority over the purchase of goods and services as TRS funds are not appropriated from the general revenue fund but are specifically money from trusts under the administration of the retirement system. The source for TRS' expenditures is either from one of TRS' trusts or from one of TRS' soft dollar arrangements. Therefore, it is TRS' policy that no General Revenue funds (also referred to as appropriated funds) are expended by TRS in its procurement and contracting initiatives. Further, funds appropriated by the General Appropriations Act either (1) were already funds in one of TRS' trusts, or (2) become TRS trust funds

upon receipt by TRS. The effect on TRS procurement and contracting is that in the absence of a statutory directive specific to TRS, TRS' funds are not subject to procurement and contracting requirements associated with funds appropriated by the General Appropriations Act.

1.2.3 Soft Dollar Policy Statement

Soft dollar expenditures are incidental to investment transactions involving plan assets held in trust for the exclusive benefit of plan participants and must comply with fiduciary principles and the Soft Dollar Policy adopted by the TRS Board of Trustees. Soft dollar expenditures are generally excluded from this Policy as outlined in [Section 1.4](#) below.

The Texas Constitution requires TRS' Board of Trustees to exercise fiduciary discretion in the investment and management of pension assets. This is a core fiduciary function and the exercise of fiduciary investment discretion is based on the prudent person rule, although state law may provide guidance as to the methods or procedures a fiduciary should consider. It is TRS' policy that TRS may contract with investment services providers using methods and procedures determined in each case to be consistent with fiduciary duties and in TRS' best interests, which in some cases may include non-competitive procedures. The reasoning for non-competitive procurements of investment services exceeding \$100,000 must be documented and maintained with the procurement or contract file.

1.3 Ethics and Confidentiality

While TRS employees must always act in accordance with TRS' Employee Ethics Policy, Procurement and Contracting is an area especially prone to public oversight and scrutiny. Just because an action or decision does not violate any rule or statute does not mean the action or decision is above reproach nor that TRS will not be called into question in the courts of public or political opinion. [Texas Government Code Section 825.101](#) provides that TRS' Board of Trustees "shall administer the retirement system for the sole and exclusive benefit of the members and participants." All purchases and contracts must fulfill a justifiable business purpose.

1.3.1 Conflict of Interest

There are many nuances to determining whether a conflict of interest exists; however, the core of a conflict of interest is whether the situation could reasonably result in impaired judgment or involve the potential for personal gain in a procurement or contracting decision or action. In accordance with TRS' Employee Ethics Policy, employees must report any situation that could be perceived as a conflict of interest regarding TRS procurement or contracting to the Executive Director.

1.3.2 Confidential Information and Data Protection Requirements

Information TRS deems confidential can take many forms. Generally speaking, **all** information pertaining to member records (e.g. names, addresses, benefit choices, healthcare issues, etc.) and pre-trade investment information constitute the core of TRS' confidential information.

Purchases and Contracts involving a vendor or contractor having access to (1) TRS' confidential information or (2) login access to TRS' computer systems require additional purchasing or contracting components to protect TRS' confidential information. All TRS staff have the responsibility to inform the Procurement and Contracts team and Legal Services staff involved with a particular purchase when either of these may occur as a result of the purchase or contract.

1.3.3 Information Fidelity

TRS' purchasers, contract administrators, legal, and management staff rely on information provided by TRS staff and existing TRS contractors throughout the procurement or contracting cycle to make decisions in TRS' best interests. TRS employees and existing contractors shall not:

1. Knowingly provide information containing a material omission or falsehood;
2. Intentionally delay providing, or refuse to provide, information that is reasonably likely to have a negative impact on a procurement or contracting process;
3. Knowingly undermine TRS procurement or contracting processes;
4. Knowingly attempt to influence, either positively or negatively, vendors, evaluators, or decision makers prior to or throughout the procurement or contracting process in a manner not in TRS' best interests; or
5. Attempt to manipulate the procurement or contracting process to achieve a predetermined outcome.

Every TRS employee or existing TRS contractor providing information prior to or during the procurement or contracting process shall be responsible for the information they provide. Failure to act ethically may result in disciplinary action up to and including termination of employment or contract.

1.3.4 External Communications Pertaining to Purchasing or Contracting

Sharing information with prospective vendors, contractors, suppliers, service providers, manufacturers, wholesalers, etc. (collectively Prospective Contractors) must be handled with care and appropriate levels of confidentiality to both ensure

Prospective Contractors are treated equitably and TRS' interests are protected in a responsible manner.

At no time unless specifically authorized by Procurement and Contracts or Legal Services shall TRS staff or existing TRS contractors reveal the following information to Prospective Contractors:

1. TRS' actual or near approximations of budgetary amounts
2. Information provided by a TRS attorney or outside counsel (advice and interpretations provided by an attorney are attorney-client privileged).
3. Documents containing TRS' internal negotiation discussions or strategies.
4. Information likely to harm TRS' negotiation position or result in higher pricing.
5. Information on TRS' evaluation positions during a procurement process.

Prior to the purchasing process staff may communicate with Prospective Contractors to obtain:

1. information about available product or service offerings;
2. draft specifications or statements of work (SOWs) to serve as a basis for TRS to develop and finalize specifications or SOWs – Note however that per [Texas Government Code Section 2155.004](#) TRS cannot award a contract to any person or entity who was paid by TRS to assist with specification or SOW development;
3. pricing estimates for budget purposes; or
4. written price quotes; however, the Prospective Contractor should be notified that such quotes are not binding on TRS as TRS must follow applicable procurement processes.

During the formal purchase process, communications between TRS staff and Prospective Contractors shall be coordinated by Procurement and Contracts or Legal Services. During the procurement process, the following information shall be deemed confidential and (1) not revealed to staff or existing TRS contractors who have not signed a Non-Disclosure Agreement (NDA), or Prospective Contractors, and (2) not stored in SharePoint or network drives generally accessible by staff or existing TRS contractors who have not signed an NDA:

1. Solicitation responses;
2. Evaluator notes, scoring, or other evaluator information; and
3. Evaluator meeting notes and other communications involving evaluation of solicitation responses

Failure to observe these requirements may result in disciplinary action up to and including termination of employment or contract.

1.4 Applicability

Unless expressly excluded below, this policy applies to all procurements and contracts executed by TRS, including:

1. purchases of goods and services;
2. interagency and intergovernmental agreements;
3. leases of goods and services;
4. amendments, modifications, and renewals of contracts or agreements; and
5. all other agreements that are intended to be legally binding on TRS.

Contracts reviewed and authorized prior to the adoption of this policy shall remain in full force and effect; however, any modification or extension of such contracts shall be reviewed and authorized in accordance with this policy.

Exclusions

This policy does not apply to:

- A. applicable procurements or contracts involving soft dollar funds or arrangements;
- B. procurements utilizing mixed funds, funds from sources subject to the contract policy and funds from sources that are not subject to this policy;
- C. acquisition of specific investments;
- D. selection of investment agents, brokers, consultants, financial advisors, or financial services providers;
- E. external managers who manage assets for TRS;
- F. purchasing decisions of TRS subsidiary corporations;
- G. agents for taxes and similar investment related services in foreign jurisdictions and other such contracts the Executive Director, Deputy Director, Chief Financial Officer, or Procurement and Contracts Manager determine are impractical to make subject to this policy;
- H. Procurements conducted and paid by outside vendors, including the master custodian, on behalf of TRS are subject to the procurement policy and procedures of the outside vendor or master custodian and are not subject to this policy;
- I. agreements regarding the administration of benefits pertaining to individual participant accounts;
- J. agreements in settlement of litigation or claims; or
- K. utilities such as telephone service, electricity, cable television, natural gas, water and wastewater.

The Executive Director may authorize written policy exclusions for procurement processes including procurement and contracting initiatives for TRS subsidiary offices. Additionally, regardless of the exclusions listed above, TRS' Board of Trustees, Management, or Staff may determine that a competitive process is in TRS' best interests;

therefore, nothing in this Policy shall prohibit a competitive procurement process unless otherwise prohibited by law.

1.5 Training

To support consistency and the uniform application of requirements as well as provide for staff education, training will be conducted on a periodic basis as specified in the procedures maintained by the Procurement and Contracts team. Technical assistance will be available as needed to assist Contract Sponsors and other TRS staff involved with the procurement and contracting process. Training for the Board of Trustees is conducted in accordance with provisions stated in the TRS Board of Trustee Procurement Policy.

2 TRS CONTRACTING POLICY

2.1 Authority for Contracting

TRS' authority for contracting is based in [Texas Government Code 825.101](#), which grants exclusive control over all assets held in trust by TRS to TRS' Board of Trustees.

2.1.1 Board Procured Contracts (see Board Procurement Policy)

Board Procured Contracts include, but are not limited to, the following contracts and any actions involving the renewal or expiration of such contracts:

1. Any contract with a value of \$5,000,000 or more;
2. Contracts involving the sale, acquisition, or encumbrance of real property;
3. Contracts for the leasing of real property for a term of five or more years;
4. Consulting actuary to the Board (pension or healthcare);
5. Outside legal counsel (including investments, fiduciary, healthcare and contingent fee counsel);
6. Custodian banks and securities lending agents;
7. Investment consultants and advisors to the Board (including agents, brokers, consultants, financial advisors, and financial services providers);
8. Insurance providers (including life, disability, and long-term care insurance providers);
9. Medical board appointees;
10. Pharmacy benefit managers (including Medicare Part D providers);
11. Third-party health plan administrators (including Health Maintenance Organizations and Medicare Advantage Plan providers);
12. Health benefit program consultants; and
13. Any other contract the Board elects to procure.

This list is subject to amendment by the TRS Board. See [TRS Bylaws](#) §6.1 (June 12, 2015). The Contract Sponsor is responsible for notifying the Procurement and

Contracts team at the initial request when authorization is given for a Board procured contract.

2.1.2 Contracting Authority Restricted

Executive Officers or other staff may ***initiate*** the procurement or contract process within their respective areas, subject to the requirements of this policy and applicable law, fiduciary responsibilities, policies, directives and funds availability, via submission of a purchase requisition (previously referred to as the TRS-146); **however, Executive Officers and other TRS staff are restricted from signing contracts, procurement exemption justifications, or purchase orders, for the procurement of goods or services unless in accordance with this policy. This includes obligating TRS via informal methods such as agreeing to contract via email or telephone.**

2.1.3 Delegation of Contracting and Signature Authority

1. In accordance with [TRS Bylaws](#) Section 5.6 (b) (amended 6/12/2015) and Board Procurement Policy (dated 6/12/2015), TRS' Board of Trustees has delegated to TRS' Executive Director or the Executive Director's designee, the authority to contract for goods and services on TRS' behalf in accordance with the budget and subject to applicable actions of the Board of Trustees. Board procured contracts in **Section 2.1.1** above are signed by the Executive Director unless otherwise directed by the Board of Trustees. Additionally, the Executive Director signs purchases and contracts exceeding \$1,000,000.
2. The Executive Director delegates contracting and signature authority for urgent matters to the Deputy Executive Director when the Executive Director is away from the office for extended periods in accordance with written delegation procedures.
3. The Executive Director delegates contracting and signature authority for purchases and contracts in an amount exceeding \$500,000 and not exceeding \$1,000,000 and otherwise in accordance with this policy to the Chief Financial Officer.

Dual Signature - Because purchase orders should be signed by persons holding valid purchasing certifications, purchase orders exceeding \$500,000 should have dual signatures. The dual signatures should include the Procurement and Contracts Manager, as well as the Chief Financial Officer (>\$500,000 - \$1,000,000), or the Executive Director (>\$1,000,000) as applicable. Additionally, the Chief Financial Officer or Executive Director, as applicable, should sign any contract documents associated with the purchase order.

4. The Executive Director delegates contracting and signature authority for purchases and contracts not exceeding \$500,000 and otherwise in accordance with this policy to the Procurement and Contracts Manager and other TRS staff as determined by the Executive Director via a specific written delegation. Procurements and Contracts will maintain official delegation authority documentation. Other staff delegated specific contracting and signature authority are responsible for ensuring that applicable procurement rules are followed and Legal review is obtained as well as providing a copy of the delegation authority to, and coordinating with the Procurement and Contracts Manager to ensure contract(s) are imaged in TRS' centralized contract repository.
5. The Executive Director allows that delegation of certain authority may be made by the Procurement and Contracts Manager to Procurement and Contracts Staff for the efficient processing of procurements based on procurement certification levels held and individual Procurement and Contracts staff skillset.
6. The Executive Director allows that delegation of certain authority to purchase subscriptions, memberships, registrations, and fees that do not exceed \$10,000 or require signature of a vendor agreement may be made by the Accounts Payable and Travel Team Manager to Accounts Payable and Travel Team members for the efficient processing of transactions based on attainment of appropriate training and skillsets.
7. The Executive Director allows that any of the above authorized contracting and signature authority delegees may further delegate their responsibilities to a departmental staff member on a temporary basis to provide for the timely processing of purchasing and contracts tasks. It is the intent of this policy that temporary delegation be issued in writing and sent to: ContractAdministration@trs.texas.gov and retained with the final contract file and only be used for periods exceeding an absence of three business days.

2.1.4 Delegation of Exemption Authority

Use of TRS' procurement and contracting exemptions must be determined by the Procurement and Contracts Manager. Once the internal assessment is completed, written approval must and maintained in the contract file. With proper justification, the following exemption categories are allowable:

2.1.4.1 Purchases Utilizing TRS Exemption(s)

Purchases involving the use of TRS' procurement exemptions are allowed when TRS has a fiduciary responsibility to act quickly or when it is in TRS' best interests. As these purchases restrict competition, a justification is necessary.

Signature authority for TRS exemption justification approvals has been delegated to the following individuals:

- A. Executive Director for purchases or contracts above \$1,000,000.
- B. Chief Financial Officer for purchases or contracts above \$500,000, but not exceeding \$1,000,000.
- C. Procurement and Contracts Manager for purchases or contracts not exceeding \$500,000.

Exemption justifications are reviewed by the Procurement and Contracts Manager prior to Executive Director's or Chief Financial Officer's signature.

2.1.4.2 Proprietary or Sole Source Purchases

Proprietary or sole source purchases are allowed; however this process should be used sparingly. Proprietary purchases are available from one source at the manufacturing level, but more than one source exists at the reseller level. Sole source purchases mean there is only one source for the good or service. As these purchases restrict competition, a justification is necessary. Proprietary or sole source purchases require the Requestor to prepare a justification that answers the following key questions:

- 1. What are the unique features of the specified product or service?
- 2. What is your justification for each of these unique features?
- 3. What alternate sources have been researched for applicability to your needs?
- 4. Why were the alternate sources' products or services not satisfactory?

Proprietary and Sole Source justifications are reviewed by the Procurement and Contracts Manager and signed by TRS' Executive Director.

2.1.4.3 Emergency Purchases

Emergency Purchases are allowed to prevent a hazard to life, safety, welfare, or property, or in order to prevent economic loss, damage, or danger to TRS trust assets. Emergency Purchases are also allowed when the TRS Board of Trustees, Executive Director, Deputy Director, or their designee determine that immediate action is necessary to best serve the interests of TRS and/or the beneficiaries of the trust. Emergency Purchases require the Requestor to prepare a justification that answers the following key questions:

- 1. What is the emergency and why does it exist?
- 2. Why was it not possible to anticipate the need for the goods or services?

3. What safety, operational, or financial harm will TRS incur if the purchase is not made immediately?

Emergency justifications are reviewed by the Procurement and Contracts Manager and signed by TRS' Executive Director.

2.1.5 Escalation of Signature Authority:

Any position delegated signature authority by this policy may escalate their signature authority to a higher level authority at any time if in their judgement a higher level authority should be aware of specific issues.

2.1.6 Contracts or Purchases Requiring Additional Internal Authorizations

Contracts or Purchases requiring additional internal authorizations include, but are not limited to:

1. Information Technology Hardware, Software, and Peripherals must be approved by TRS' Information Resource Manager (IRM);
2. Memberships must be approved by the Executive Director;
3. Special Budget Approval – (e.g. TEAM Expenditures); and
4. Special Project Monitoring by the Project Management Office (PMO) – (Large IT projects).

2.1.7 Contracts Requiring Additional External Authorizations

Contracts requiring additional external authorizations include the following:

1. Outside Audit Services - TRS shall submit requests for outside audit services to the State Auditor's Office (SAO) for review, comment, and approval prior to issuing a solicitation. If the request is not approved by SAO, the Executive Director will decide whether TRS fiduciary duty, law, and/or TRS' best interests require TRS to proceed with the procurement. If approved by SAO, a copy of the resulting purchase order or contract must be provided to SAO. Additionally, a copy of the SAO authorization must be maintained with the procurement or contract file.
2. Outside Legal Services - Legal Services prepares a request for qualifications or proposal documents for outside legal counsel contracts. Outside legal counsel contracts require the approval of the Office of the Attorney General (OAG). OAG must approve all invoices for outside legal counsel contracts prior to payment. If approved by OAG, a copy of the resulting purchase order or contract must be provided to OAG. Additionally, a copy of the OAG authorization must be maintained with the procurement or contract file.

2.2 Legal Review Policy

1. Contracts requiring review by Legal Services (Legal Reviewed Contracts) include each of the following contract types:
 - A. Board Procured Contracts identified in **Section 2.1.1** (also see Board Procurement Policy);
 - B. Contracts for Professional Services or Consultant contracts (as defined by [Texas Government Code, Chapter 2254](#));
 - C. Contracts considered by the Contract Sponsor or Procurement and Contracts to require significant involvement of Legal Services (e.g. contracts involving TRS confidential data or access to TRS' computer systems);
 - D. Contracts for outside audit services;
 - E. Outside vendor contracts exceeding \$500,000;
 - F. All other contracts that are estimated to exceed \$500,000; and
 - G. Other contracts upon request.
2. Legal Services is also responsible for ensuring that all contract clauses are reviewed, approved, and are contractually sound prior to use.
3. Legal Services shall review and make recommendations regarding use of specific exceptions and/or exemptions and whether they apply to TRS under applicable statutes or other law.
4. Legal Services shall also review and provide advice on legal issues that arise during the procurement process and throughout administration of the contract.

3 BUDGET AUTHORITY

Each Executive Officer has budget authority within their respective areas to authorize the expenditure of funds to ***initiate*** new purchase or contract requests, as well as renewals or extensions thereof, via submission of a purchase requisition. The submission of a requisition serves as a certification that sufficient funds exist within the budget for the current fiscal year, as well as intent to allocate funding for future fiscal years to be obligated by the purchase or contract. Each Executive Officer may delegate this budget approval to their subordinates at the Executive Officer's discretion; however, the Executive Officer retains responsibility for all budgetary expenditures within their respective areas.

4 CONTRACTING PROCESS

The Procurement and Contracts Manager has primary responsibility for coordinating and overseeing the acquisition of goods and services for TRS. This responsibility is to be carried out in a practical and economical manner subject to applicable procurement law, rule, and policy.

Purchases of goods and services must be coordinated through Procurement and Contracts and comply with applicable purchasing procedures. Acquisitions through soft dollar arrangements

must comply with TRS soft dollar policies and budget. This policy is not applicable to contracting requirements for investment deal or mixed investment deal contracts.

4.1 [Contract Sponsor](#) Designation

For contracts approved or awarded by the TRS Board of Trustees, the Executive Director or the Executive Director's designee shall serve as the Contract Sponsor. Unless otherwise directed, the Executive Director delegates Contract Sponsor duties to Executive Officers who have the responsibility for ***initiating*** procurement and contracting processes within their respective areas of responsibility, subject to the requirements of this policy and applicable law, fiduciary responsibilities, policies, directives, and funds availability. For purposes of this policy, the Executive Officers include the following:

1. Deputy Executive Director
2. Chief Audit Executive
3. Chief Benefit Officer
4. Chief Financial Officer
5. Chief Health Care Officer
6. Chief Information Officer
7. Chief Investment Officer
8. General Counsel
9. Director of Communications
10. Director of Human Resources
11. Director of Governmental Relations
12. Director of Strategic Initiatives

Executive Officers may further delegate these responsibilities to their subordinates at the Executive Officer's discretion; however, the Executive Officer retains Contract Sponsor responsibility for all contracts within their respective areas. This delegation includes, for example, the authority to identify the purchasing or contracting needs of their respective areas of responsibility, identify contractors who may furnish the needed goods or services, and coordinate all other phases of the contracting process with appropriate departments and authorized staff as applicable.

4.2 Contract Coordination

Contract Sponsors must ascertain and comply with all relevant legal, policy, and procedural requirements. In order to ensure compliance and achieve the best outcome for TRS, a Contract Sponsor should coordinate with the following staff as applicable for advice and assistance well in advance of purchasing and contracting deadlines or existing contract expiration:

1. Procurement and Contracts– to verify required procedures and processes; to obtain assistance in developing the RFO, RFP, RFQ, or other solicitation document; to ensure

- proper public solicitation posting, to provide notice of purchasing and contracting decisions that must be reported to third parties and otherwise to obtain assistance in administering and monitoring the contract and complying with this policy;
2. General Accounting Budget Team – to ascertain the availability of funds for current and future fiscal years to be obligated by the purchase order or contract
 3. Legal Department – to determine the authority for acquiring the services, to ascertain the proper statutory procedure to follow, to obtain recommendations and/or assistance in the preparation of the solicitation document, including obtaining any required language for inclusion, and to file proper notices with the Texas Register as applicable;
 4. Subject Matter Experts – to provide technical advice during the procurement or contracting process.

4.3 Submission of a Purchase Requisition

1. To start the purchase or contract process, submit a Purchase Request and Expenditure Authorization (also known as the TRS Form 146) - submission of a requisition provides for the following:
 1. authorization to create a purchase or contract;
 2. identification of the funding source and certification funds exist for the purchase or contract;
 3. approval of management staff responsible for the source budget;
 4. encumbrance of funds in TRS' accounting system;
 5. identification of the purchase or contract type and amount which drives procurement and contracting process requirements;
 6. identification of the person requesting the goods or services;
 7. identification of the goods and / or services to be procured
 8. identification of potential sources to acquire the goods or services;
 9. identification of the timeframe in which goods or services are needed;
 10. tracking of pending purchases and contracts; and
 11. authorization to make payment for goods or services in accordance with the purchase or contract terms.

Note: The Investment Management Division has a different process for soft dollar funded purchases. Because some services are not ultimately contracted, IMD purchase requisitions are submitted near the completion of the contract. All requests to contract involving soft dollars come from the centralized Investment Operations business unit who authorize the creation of a contract and ensure requests are in accordance with previously approved budgetary expenditures.

4.4 Roles and Responsibilities

4.4.1 Contract Sponsor

Contract Sponsor Roles and Responsibilities include:

1. Identifying the need for the contract and determines availability of funds within the departmental budget;
2. Coordinating with the Accounts Payable and Travel team to verify whether the comptroller, pursuant to applicable law, is currently prohibited from issuing payment for the good, service, or Contractor. *Payment of food is an example of such a prohibition;*
3. Providing timely and sufficient information in the requisition submission to initiate the purchase or contract process;
4. Identifying appropriate staff and subject matter experts to assist you with the contracting process, including provision of draft solicitation documents, statements of work, and/or serve as evaluators for formal solicitation processes;
5. Providing information to the appropriate TRS personnel required to make reports and provide information regarding the contract required by law and policy, consulting with Legal Services and Procurement and Contracts;
6. Ensuring invoices are in accordance with the contract, invoiced deliverables or items have been received, and approving payments to be made by TRS under the contract;
7. Timely forwarding legal or other notices regarding the contract to appropriate staff, including Legal Services;
8. Delivering the original contract, all attachments or exhibits, and backup copies to the designated repositories and custodians in the event they are received directly by the Contract Sponsor;
9. Tracking, reviewing, and accepting deliverables under the contract received from or performed by from the Contractor and ensuring the deliverables meet the contract specifications;
10. Monitoring and obtaining compliance by the Contractor, and overseeing compliance by TRS;
11. Resolving conflicts or disputes between the Contractor and TRS and promptly alerting Procurement and Contracts to developing problems or issues. If the Contract Sponsor cannot resolve problems with the Contractor and if the dispute continues, the Contract Sponsor will meet with the departmental Executive Officer and Procurement and Contracts, and Legal Services as appropriate in an effort to resolve the dispute;
12. Assisting with Contractor requests to interpret clauses or specifications in coordination with Procurement and Contracts and Legal Services as applicable.
13. Initiation of requisitions for renewals or amendments as needed and in sufficient advance of procurement deadlines and purchase or contract expiration as well as coordinating changes with Procurement and Contracts and where applicable, with Legal Services inasmuch as those actions may require additional authorization, delegation, posting, or other processing requirements;

14. Monitoring Contractor performance over the life of the contract and ensuring performance reviews and evaluations are completed and reported to Procurement and Contracts; and
15. Completion of contract administration paperwork necessary to develop risk scores, provide notification of renewal or non-renewal, identify issues such as fraud, waste, or abuse or suggestions for improvement, and provide other information for the proper administration of the contract.

4.4.2 Procurement and Contracts Manager

1. Work collaboratively with TRS staff to finalize solicitation documents, statements of work, purchase orders, contracts, or vendor contract documents;
2. Conduct internal assessments as needed to determine applicable procurement and contracting methods based on established policies and procedures;
3. Ensure appropriate procurement and contracting processes are utilized to acquire approved goods and services;
4. Ensure all purchase and contract phases are conducted in accordance with applicable procurement and contracting rules, TRS procurement policy, and in TRS' best interests;
5. Ensure Historically Underutilized Businesses are afforded opportunities to participate in TRS procurement and contract activities to the extent possible;
6. Serve as the evaluation team leader on formal solicitation evaluation processes;
7. Negotiate or coordinate the negotiation process of procurements and contracts;
8. Sign purchase orders and contracts in accordance with authority delegated by this policy;
9. Image appropriate procurement or contract documentation in TRS' imaging system;
10. Provide a contract administration function to assist Contract Sponsors in assessing TRS' contracts and vendor performance; and
11. Provide reports as required by applicable statute, TRS management, or staff.

4.4.3 Legal Services

1. Review requested contracts;
2. Assist with the development of contract language or contract clauses;
3. Provide advice on appropriate procurement or contracting actions;
4. Serve in an advisory capacity on formal solicitation evaluation processes upon request;
5. Negotiate or assist in the negotiation of contract terms; and
6. Provide recommendations.

4.5 Contract Lifecycle

There are many processes that may be involved in a complex procurement. Some phases are required and some are optional dependent upon the nature of the specific procurement. The Contract Sponsor and Procurement and Contracts Manager must work collaboratively to determine appropriate and necessary phases for a specific procurement. See the table in [Exhibit 1](#) for a description of the contract lifecycle.

4.6 Procurement and Contracting Methods

4.6.1 Determining Procurement Method

After discussing the merits of applicable procurement methods with Contract Sponsors or staff, the Procurement and Contracts Manager shall have final determination authority regarding the use of the most appropriate procurement method that will best achieve TRS' objectives within applicable statutory and policy requirements. Legal Services may verify the appropriateness of the procurement method and assist in the procurement process. With written approval of the Executive Director or the Executive Director's designee, TRS may exercise its authority under [Texas Government Code Section 825.103\(d\)](#) to forego competitive procurement requirements in accordance with [Section 2.1.4](#).

4.6.2 Solicitation Requirements

In the absence of (1) existing statewide contracts available to TRS sufficient to acquire needed goods and services, or (2) authorization for an approved exemption process, TRS will solicit informal pricing from three vendors for purchases anticipated to exceed \$5,000 and TRS will issue a public, competitive, formal solicitation for purchases anticipated to exceed \$25,000. Available formal solicitation methods include:

1. **Invitation for Bids (IFB)** - The IFB is most commonly used for routine purchases of goods or well-defined services. Negotiations are not allowed under this process and a contract award is generally based on determining the lowest bidder who met all of the specifications advertised in the IFB.
2. **Request for Offer (RFO)** - The RFO is primarily used for Information Technology and Telecommunications goods or services. Negotiations are allowed under this process and a contract award is generally based on a determination of the respondent who provided the best value based on the evaluation criteria advertised in the RFO (a combination of price and services).
3. **Request for Proposal (RFP)** - The RFP is primarily used for complex purchases and may also be used for consulting services. It is often used when TRS will accept alternative methods for meeting TRS' needs. Negotiations are allowed under this method and a contract award is based on a determination of the respondent who provided the best value based on the evaluation criteria advertised in the RFP (a combination of price and services).

4. **Request for Qualifications (RFQ)** - The RFQ is primarily used for Outside Counsel contracts and for professional services. The RFQ process requires TRS to determine which respondent is best qualified to provide the service exclusive of price. Once this determination is made, TRS will negotiate with the best qualified respondent(s) for pricing and services to be provided. A contract award is based on a determination of the best qualified service provider for a fair and reasonable price.

(Note that the Request for Information (RFI) is not a formal solicitation process as a contract cannot be awarded under an RFI. RFIs are primarily used to gather information to aid in the preparation of one of the above formal solicitation methods.)

4.7 Procurement and Contract Lead Times

While all purchases are important, Procurement and Contracts must prioritize procurement and contracting efforts to best fulfill TRS' interests. However, below are general procurement and contract lead times. Timeframes listed below begin when a purchase requisition is received by the Procurement and Contracts team and are negatively impacted when insufficient information is provided to complete the procurement process. In the event TRS staff has an urgent need, please contact the assigned purchaser to discuss expediting receipt of needed goods or services. Contract Sponsors are responsible for beginning procurement processes well in advance of current contract expiration and to allow sufficient lead time for procurement processes. The following is intended to provide a brief summary of anticipated lead time frames.

1. Simple office supplies, furnishings, computer equipment, and other routine items less than \$5,000 or from CPA contracts and DIR contracts are generally completed **within 10 business days**.
2. Moderately detailed or complex procurements such as printing services, detailed equipment requirements, or large quantities available from DIR are generally completed **in 15-20 business days**.
3. Detailed or complex services requiring a formal solicitation process are generally completed **in 3-6 months**.
4. Large IT projects, healthcare, and other highly complex services can take **6-9 months or longer** to complete by the time specifications are developed and the procurement and contracting processes are completed.

4.8 Historically Underutilized Businesses (HUBs)

1. TRS is committed to making a good faith effort to ensure that all HUBs have the opportunity to respond to solicitations for TRS purchases and contracts for goods or services. TRS is committed to promoting the Mentor-Protégé Program, which enhances relationships between state agencies, prime contractors, and HUB contractors.
2. For formal solicitations estimated to exceed \$100,000, the assigned Purchaser, with assistance from the Contract Sponsor, shall determine whether subcontracting opportunities are probable for the contract. If subcontracting opportunities are probable, vendors are required to submit a HUB Subcontracting Plan (HSP) with their solicitation response as a condition of being eligible to receive a purchase or contract. If subcontracting opportunities are not probable, documentation of this determination will be maintained with the procurement or contract file.

4.9 Confidentiality/Non-Disclosure Agreements

All persons having access to procurement or contracting information (e.g. TRS staff, existing TRS contractors who assist with specification development, those who will serve on an evaluation team [voting evaluators, subject matter experts, or advisors], or who will be involved in a decision-making capacity) are required to sign a Non-Disclosure Agreement generally at the beginning of a formal procurement process and in all cases prior to receiving any information submitted in response to a solicitation. These persons must keep information pertaining to the procurement process confidential, unless otherwise required by law, until such time as a contract is issued. It is TRS policy that no information from evaluation reviews or discussions be communicated to anyone outside the evaluation team until such time as the evaluation team has completed the evaluation. If any member of an evaluation team receives a request for information concerning any aspect of the solicitation process, the request must be forwarded to the assigned Purchaser.

Note: Pursuant to [Texas Government Code § 572.069](#), a former TRS officer or employee who participated on TRS' behalf in a procurement or contract negotiation may not accept employment with that provider before the second anniversary of the date the officer's or employee's service or employment with TRS ceased.

4.10 Specifications and Statement of Work (SOW)

A specification is a description of a product or service TRS seeks to procure, and is also a description of information a respondent must provide to be considered for a contract award. Specifications are the primary means of communicating requirements to prospective suppliers during a procurement process. Good specifications should be simple, clear, accurate, competitive, and flexible.

A statement of work should provide a clear and thorough description of the goods or services to be provided. If appropriate, provide the relevant environment where the product/service will be used. In certain types of procurements, it may be critical to describe the existing business processes. If the existing business process will change as a result of the procurement, then also describe what the business process will be after the procurement objectives are completed. If TRS wants the respondents to suggest new business processes, ensure that this information is included in the solicitation.

4.11 Posting and Other Requirements

4.11.1 Advertising and Public Notification Requirements

Contract solicitations and awards must comply with all posting, publication and notice requirements prescribed by applicable law.

1. **Electronic State Business Daily (ESBD)** - TRS Policy requires procurement opportunities exceeding \$25,000.00 be advertised on the ESBD for a minimum of 14 days for an entire solicitation posting or 21 days for posting a notice only in accordance with [Texas Government Code Section 2155.083](#). This does not apply to procurements or contracts funded by soft dollars.
2. **Centralized Master Bidders List (CMBL)** - In addition to posting on the ESBD, TRS utilizes the State of Texas CMBL when advertising competitive solicitations. The CMBL may be supplemented with additional vendors to increase competition or provide notice to HUB vendors.
3. **Texas Register** - TRS will post procurement and contracting notices in the Texas Register in accordance with applicable law.

4.12 Response Receipt

TRS' Mailroom is the designated default receiving point for responses to TRS' formal solicitations unless otherwise determined by Procurement and Contracts. Responses must be received at the specified location and prior to or at the designated time and date advertised in the solicitation. The date/time stamp in the Mailroom is the official time clock used to determine timely delivery.

4.13 Response Evaluation and Award Recommendation

Evaluation of responses is a particularly important component of the procurement process and care must be taken to equitably and objectively evaluate responses in compliance with applicable law to avoid a protest. Generally speaking, TRS must specify in the solicitation document the known factors other than price that TRS will consider in determining which

response offers the best value for TRS and the evaluation must be performed in accordance with the advertised evaluation criteria.

The Procurement and Contracts Manager verifies each respondent meets the minimum qualifications advertised in the solicitation. The Contract Sponsor may assist in determining compliance with the minimum qualifications upon request.

An evaluation team must be formed to review responses received to formal solicitations. The Contract Sponsor, with assistance from the Procurement and Contracts team as necessary, will determine the applicable personnel to serve on the evaluation team in either a scoring or advisory capacity. A cross functional team often best represents TRS' interests and may be comprised of subject matter experts from the business unit, representatives from IT, Budget, and other areas. Representatives from Procurement and Contracts, Legal Services, Internal Audit, and Risk Management often participate on the evaluation team in advisory roles. The assigned Purchaser serves as the evaluation team leader and is responsible for developing the evaluation tool, training and leading the evaluation team. The assigned Purchaser compiles and verifies the accuracy of evaluation scores. Evaluation team scores are used as a basis for the Contract Sponsor to submit a recommendation for awarding a contract. The award recommendation must be supported by the evaluation criteria, scores and overall best value. The Contract Sponsor should provide a copy of the award recommendation to the other members of the evaluation team. In the event that Procurement and Contracts does not support the recommendation, the final decision will be escalated to the signatory according to policy. Evaluator's scoresheets, notes, other evaluation documentation, and reasons for awarding a contract must be documented and maintained with the procurement or contract file.

4.14 Clarifications, Discussions, and Negotiation

Negotiation is a bargaining process between two or more parties, each with its own agenda and objectives, seeking to reach mutually satisfactory and acceptable agreements or compromises. TRS may engage in clarifications, discussions, or negotiation under certain circumstances.

Negotiations are allowed for RFO, RFP, RFQ, whenever only one response is received, for sole source purchases or for emergency purchases when soliciting is not practical. Negotiations are not allowed when the IFB solicitation process is used.

Prohibited disclosures during negotiations include:

- 1.) technical leveling which is helping a respondent to bring their proposal up to the level of other proposals through successive rounds of discussion, usually by pointing out proposal weaknesses. However, TRS has the discretion to seek clarifications of a response in order to better understand the contents of a response, to seek additional information, or avoid having to reject a response due to a minor technicality;

- 2.) technical transfusion which is the disclosing of technical information or approaches from one response to other competitors in the course of discussion;
- 3.) disclosing competing respondents' cost/prices (even if the disclosure is made without identifying the respondent by name); and
- 4.) advising a respondent of its price standing relative to other respondents.

As with the evaluation team, a cross functional negotiation team often best represents TRS' interests in negotiations. The assigned Purchaser coordinates the negotiation process with the Contract Sponsor, subject matter experts from the business unit, Legal Services, representatives from IT, Budget, Internal Audit, Risk Management, and others with needed expertise on the team. However, in some cases the negotiation team includes only selected evaluation team members and not all of the evaluation team members.

4.15 Selection of Contractors

The Board of Trustees or, where authorized, the appropriate Board Committee retains the authority to select the following Contractors:

1. Those who directly serve the Board (or Board Committee);
2. Those whom the Board or the Executive Director determines should be selected by the Board;
3. Contractors required by law to be selected by the Board; and
4. Contracts in which the value, compensation or cost, including expenses, with an annual value expected to exceed \$5,000,000.

With respect to other contracts, the Executive Director may select other Contractors or delegate the selection to Contract Sponsors, other employees, agents, or agencies in accordance with applicable law, TRS policies, budgets, and directives. Unless otherwise indicated, any delegation of authority to select a Contractor shall be limited to the specific contract and shall not apply to other contracts whether or not of a similar nature or for similar goods or services.

4.16 Purchase Order or Contract Drafting

Procurement and Contracts will draft and complete purchase order documents in accordance with applicable statute, rule, and TRS policy. For contracts established by utilizing existing State of Texas master agreements such as Department of Information Resources (DIR), Comptroller of Public Accounts (CPA), Texas Multiple Award Schedule (TXMAS), Texas Facilities Commission (TFC), Council on Competitive Government (CCG), etc., Procurement and Contracts will consult with Legal Services on contracts estimated to exceed \$500,000 to determine the need for Legal Review. The process for Legal Reviewed contracts is the same as with other contracts except that Legal Services will verify the appropriateness of the procurement method, assist in the procurement process, and draft the contract.

Legal Services will draft contract documents in accordance with applicable statute, rule, and TRS policy. Legal Services is also responsible for additional specific processes required for outside legal counsel contracts. Procurement and Contracts determines if a Texas Register posting is required for certain consulting contracts and if so provides information to Legal Services who posts the notice in the Texas Register.

The Procurement and Contracts must consult with Legal Services to obtain legal review and/or drafting of written contracts other than standard or pre-approved purchase orders and other form contracts pre-approved by Legal Services in accordance with [Section 2.2](#) herein. Legal Services should be consulted regarding any non-standard or limiting language involved in a purchase order. Legal Services is responsible for developing required and suggested contractual provisions. Contract provisions should be sufficient to hold contractors accountable for delivery of quality goods and services and prevent the inappropriate or inefficient use of funds, including trust assets and, where applicable, funds appropriated from the General Revenue of the State. These provisions may include clearly defined goals, outputs, and measurable outcomes; clearly defined sanctions or penalties for noncompliance with contract terms and conditions; and specifications for accounting, reporting, and when applicable auditing the contract for compliance and completion.

4.17 Vendor Protest and Dispute Resolution

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest in accordance with the rules found in [Texas Administrative Code, Title 34, Rule 51.2](#). In most cases, receipt of a protest will prevent TRS from proceeding with the procurement until the protest is resolved. Protest avoidance is another reason it is paramount that TRS' actions involving procurements are carefully considered and vendors are treated equitably throughout the procurement process.

4.18 Central Contract Repository

TRS policy requires all original contract documents and collateral documentation listed in procedures maintained by Procurement and Contracts obligating TRS in any way to be maintained in a Central Contract Repository. TRS maintains two central repositories as follows:

All executed contracts other than investment deal contracts or mixed investment deal contracts, and all attachments or exhibits as well as all related RFOs, RFPs, RFQs or similar documents, the responses thereto, and related documentation will be imaged in TRS' imaging system. As TRS' system of record, the imaging system contains TRS' official contract files.

Investment deal contracts including mixed investment deal contracts shall be maintained within the Investments Management Division.

4.19 Records Retention

In accordance with [Texas Government Code Section 441.1855](#), TRS shall retain each contract entered into and all contract solicitation documents related to the contract, and may destroy the contract and documents only after the seventh anniversary of the date (a) the contract is completed or expires; or (b) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

4.20 Contract Administration

All goods and services procured for TRS offer some risk. Based on an established dollar value threshold, the extent of that risk to specific purchase orders or contracts must be assessed by examining risk factor criteria. Depending upon the extent to which the purchase order or contract meets any of the established criteria, the purchase order, or contract will be assigned a risk assessment score, tracked, monitored, and reviewed by the Contract Administration Manager to reduce risk exposure for TRS. The Contract Administration Manager coordinates with the Contract Sponsor on missing documentation issues, and the Contract Sponsor and if necessary Legal Services to resolve any contract disputes. The Contract Administration Manager also oversees the processes for providing contract renewal notification and contract closeout.

4.20.1 Contract Review / Escalation

The Contract Administration Manager performs an initial review and subsequent periodic reviews of contract files for completeness and quality control purposes. As a public entity, certain documentation is required to be maintained with procurement files to ensure transparency, avoid noncompliance with state law and TRS policies, to be able to fulfill public information requests, and for reporting purposes. Contract Sponsors and TRS contractors are required to provide requested information and failure to do so will result in escalation to appropriate management.

4.20.2 Risk Assessment

Upon creation of a new contract with a value exceeding \$25,000, a Risk Assessment Questionnaire is prepared. Procurement and Contracts completes a portion with information from the contract, and the Contract Sponsor is responsible for completing the remaining sections. This form is used by the Contract Administration Manager to develop a risk score which is used to determine the frequency and level of reviews over the life of the contract. TRS' contracts with a nongovernmental entity for claims administration of a group health benefit plan shall automatically receive the highest risk score and be subject

to enhanced contract monitoring and subject to immediate attention of contract monitoring staff in accordance with [Texas Government Code §2261.256](#) and any other applicable law or statute.

4.20.3 Monitoring and Performance Review

The Contract Sponsor has primary responsibility for monitoring a contractor's performance and promptly reporting issues to the Contract Administration Manager over the life of the contract. The Contract Administration Manager will conduct periodic reviews and provide forms to assist the Contract Sponsor with documenting contractor performance.

4.20.4 Tracking

The Contract Administration Manager tracks active TRS contracts and will periodically send Contract Sponsors documentation to complete to achieve contract administration objectives.

4.20.5 Reporting

The Procurement and Contracts team prepares reports of purchase and contracting activities. Major reports include the semi- and annual HUB reports, Legislative Budget Board reporting, annual reporting of proprietary purchases, HUB data prepared for the biennial Legislative Appropriations Request, and management reports.

4.20.6 Dispute Resolution

TRS may employ a variety of options to resolve disputes; however, TRS is prohibited from engaging in formal dispute resolution processes involving binding arbitration. While TRS attempts to resolve disputes and issues at the lowest level, Contract Sponsors shall notify Procurement and Contracts and Legal Services to discuss available options to resolve the dispute.

4.20.7 Contract Closeout

When purchase orders or contracts are completed for whatever reason (e.g. reached the end of the term, TRS elects to non-renew, TRS elects to terminate, etc.), the Contract Sponsor must notify the Contract Administration Manager of the contract completion. This is necessary to close out the contract file. Upon no active issues or holds concerning the contract existing and reaching conclusion of applicable records retention schedules, the contract will be purged.

5 SPECIAL CONTRACTING SITUATIONS

5.1 Selection of External Investment Managers (External Managers)

The TRS Internal Investment Committee follows established procedures referenced in the Investment Policy Statement for the selection and contracting of External Managers (Brokers)

5.2 Selection of Cloud Computing Services Provider

Additional requirements for assessing and approving a Cloud Computing Services Provider is provided in TRS' Cloud Computing Policy. Purchase Orders and Contracts for cloud computing software, storage, data access, or other services shall be made in compliance with TRS' Cloud Computing Policy.

5.3 Selection of Healthcare Services Provider

TRS' contracts with a nongovernmental entity for claims administration of a group health benefit plan have additional requirements. TRS' healthcare contracts include ActiveCare HPA, PBM; and Care HPA, PBM, MAP, HMOs, and LTC, but do not include ancillary Health Insurance Benefit services such as claims audit services.

TRS may not enter into a healthcare contract for the purchase of goods or services with a private vendor with whom any of the following TRS employees or officials have a financial interest:

- i. a member of TRS' Board of Trustees;
 - ii. the executive director, general counsel, or Procurement and Contracts Manager;
- or
- iii. a family member related to an employee or official described in i. or ii. within the second degree by marriage or blood.

Each TRS employee or official who is involved in a healthcare contract procurement or in contract management shall disclose to TRS any potential conflict of interest specified by state law or TRS policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by TRS.

All healthcare contracts over \$5,000,000 must contain a written verification that the solicitation and purchasing methods and contractor selection process comply with state law and TRS policy. Additionally, Procurement and Contracts must submit to the TRS Board of Trustees information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

All healthcare contracts over \$10,000,000 (and those over \$1,000,000 if awarded on a non-competitive basis) must be reported to the Legislative Budget Board at least 10 days prior to making a payment.

Healthcare contracts have enhanced contract monitoring and are subject to immediate attention of contract monitoring staff in accordance with [Texas Government Code §2261.256](#) and any other applicable law or statute. TRS' Procurement and Contracts Manager shall immediately notify TRS' Board of Trustees or Executive Director, as appropriate, of any serious issue or risk that is identified with a healthcare contract.

Healthcare contracts and the related solicitation document must be posted on TRS' website until the contract expires or terminates.

After a healthcare contract is completed or otherwise terminated, TRS shall review the vendor's performance under the contract and report to the comptroller, using the tracking system established by [Section 2262.055](#) (vendor performance tracking system), on the results of the review regarding a vendor's performance.

TRS shall develop and comply with a purchasing accountability and risk analysis procedure. The procedure must provide for:

- (1) assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
- (2) identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff; and
- (3) establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.

TRS shall publish a contract management handbook that establishes consistent contracting policies and practices to be followed and that is consistent with applicable portions of the comptroller's contract management guide. TRS shall post on the TRS' Internet website the procedures described by (2) and (3) above and submit to the comptroller a link to the web page that includes the procedures.

EXHIBITS

The following exhibit list is provided as a reference and does not represent all available procurement and contracting forms and resources. Please refer to the [Procurement and Contracts](#) team for additional assistance.

- Exhibit 1 Contract Life Cycle
- Exhibit 2 Acronyms and Definitions
- Exhibit 3 Delegated Signature and Authority Matrix

Exhibit 1 – Contract Lifecycle

Step	Contract Phase	Responsible Party	Detail Requirements
1	Contract Need Identified	Sponsor	It is the Contract Sponsor's responsibility to determine the need for goods or services.
2	Verifying Budget Availability	Sponsor	It is the responsibility of each department requiring contracted goods or services to verify the availability of funds in their budget. For consulting and professional contracts, the Contract Sponsor should determine if the funds are coming from the Professional Services category of the TRS budget.
3	Initialization of Contract Specification Development	Sponsor with assistance from Procurement and Contracts, and Legal Services as required	The Contract Sponsor will notify Procurement and Contracts in a timely manner when it has been determined there is a need for a contract. It is the Purchaser's responsibility to assist departments in developing and writing detailed specifications for contracts. The Contract Administration Manager (CAM) may provide assistance as required. Legal Services will assist with specifications as required for all Legally Reviewed (LR) contracts. Procurement and Contracts can provide examples of previous or similar solicitations to TRS staff upon request.
4	Development of Solicitation Specifications	Sponsor, Procurement and Contracts, Legal Services, and Affected Departments as required	An interdisciplinary team will be established by the Contract Sponsor as necessary to assist in specifications development. At a minimum, this team should include representatives from all affected areas. The specifications will be determined to be final when the team gives approval.
5	Determining the Procurement Process; Legal Issues	Procurement and Contracts, Legal Services, and Sponsor as applicable	It responsibility of the Procurement and Contracts team to determine the correct procurement and advertising process as required by this policy. For LR contracts, Legal Services may verify the appropriateness of the procurement method. It is the responsibility of the Procurement and Contracts team and the Contract Sponsor to seek the advice of Legal Services regarding legal issues that arise during the procurement

Exhibit 1 – Contract Lifecycle

Step	Contract Phase	Responsible Party	Detail Requirements
			process and throughout administration of the contract.
6	Issuing a Solicitation	Procurement and Contracts	Procurement and Contracts will advertise the solicitation in conformance with requirements of this policy. TRS will use the State of Texas Government Code Title 10 purchasing regulations as guidelines unless the law, fiduciary duties, or the best interest of TRS as determined by the Board, the Executive Director or their designees requires or provides otherwise. Should TRS exercise its authorization not to comply, the Executive Director or their designee will sign a justification authorizing the exception taken.
7	Pre-solicitation Conference (optional) and/or Site Visit (optional)	Procurement and Contracts and Sponsor	In more complicated or complex contracts, it may be advisable to conduct a pre-solicitation conference. This conference gives vendors an opportunity to ask questions pertaining to the solicitation document and to complete on site visits, whenever necessary.
8	Evaluation of Responses	Evaluation Team as designated by Sponsor and Procurement and Contracts	Prior to receipt of responses, the Contract Sponsor and Procurement and Contracts will determine the applicable personnel to serve on the evaluation team as voting members or advisors in order to evaluate responses and determine (or recommend for LR contracts requiring Board authorization) the contract award. The evaluation team should include representatives from all departments necessary to fully evaluate the responses and to ensure that any associated risks to TRS are addressed. Procurement and Contracts along with the Contract Sponsor will develop evaluation material and procedures utilized by the Evaluation Team.
9	Awarding the Contract	Evaluation Team	The Evaluation Team scores will assist in determining the contract award (or recommend for LR contracts requiring Board authorization). For LR contracts, the Contract Sponsor will prepare a memo for the Executive Director with the award recommendation for approval.

Exhibit 1 – Contract Lifecycle

Step	Contract Phase	Responsible Party	Detail Requirements
			The Procurement and Contracts team will be responsible for notifying the vendor of the contract award.
10	Writing the Final Contract	Procurement and Contracts and Legal Services	Other than LR contracts, it will be the responsibility of the Procurement and Contracting team to draft and finalize a written contract in accordance with established procedures. For LR contracts, Legal Services will work with the Contract Sponsor and the vendor to develop a mutually acceptable contract.
11	Signing the Contract	Procurement and Contracts Manager, Executive Director or Executive Director’s designee, Legal Services, as applicable, and Vendor	<p>Other than LR contracts, Procurement and Contracts will issue and execute a contract in the form of a purchase order (PO). Purchasing will forward a copy of the PO to the vendor and Contract Sponsor. For LR contracts, the Contract Sponsor, along with Procurement and Contracts, coordinates with Legal Services, who will supervise contract execution.</p> <p>For LR contracts requiring Board authorization, the Board will designate the signature authority to sign the final contract. For all other LR contracts, the Executive Director or the Executive Director’s designee will be the signature authority to sign the final contract. For outside legal counsel contracts, Legal Services will obtain Office of the Attorney General approval of the contract before incurring liability for TRS. For external auditor contracts, Internal Audit will obtain State Auditor Office approval of the contract prior to TRS incurring liability. Once the original contract is fully executed, Procurement and Contracts will be responsible for establishing the contract file and distributing copies to the Contract Sponsor, the vendor, and Legal Services or Internal Audit.</p>
12	Start up Pre-Performance Conference	Sponsor, Vendor, Procurement and Contracts, and CAM as applicable	To ensure a good start to the contract, a pre-performance conference with all contract parties is recommended. This meeting will provide detailed information to the vendor prior to beginning the work, including but not

Exhibit 1 – Contract Lifecycle

Step	Contract Phase	Responsible Party	Detail Requirements
			limited to, the names of contacts and their roles in the process in case questions arise during the contract period.
13	Directing Vendor	Sponsor	The Contract Sponsor is responsible for the day-to-day direction of the contract to ensure that the vendor complies with the contract specifications.
14	Monitoring Contract	Sponsor	The Contract Sponsor will be responsible for monitoring the contract to ensure that the contract is administered in a timely and efficient manner and that the vendor fulfills the contract requirements. The Contract Sponsor should attempt to resolve any minor issues that arise in performance of the contract.
15	Reporting Contract Problems	Sponsor and CAM	For significant issues or minor issues that cannot be resolved, the Contract Sponsor will notify the CAM for assistance. The CAM will notify Legal Services, the Executive Director, and the TRS Board of Trustees as necessary.
16	Coordinating Contract Resolution	Sponsor and as necessary CAM and Legal Services	The Contract Sponsor, CAM and involved parties will determine the desired resolution. Upon agreement, the CAM will schedule a meeting with the vendor and affected parties to achieve resolution.
17	Amendments	Sponsor, Procurement and Contracts and Legal Services	If the Contract Sponsor determines a need for an amendment to the contract, they shall notify Procurement and Contracts or Legal Services (for LR contracts) to determine the ability to make the change. If allowable, Procurement and Contracts or Legal Services (for LR contracts) will initiate the documents. Board approval may be needed to amend some contracts.
18	Contract Renewal Notification	CAM	The CAM will notify the Contract Sponsor of impending contract expiration by a Notice of Contract Expiration (NOCE). The NOCE will indicate if renewal options remain or if the contract will need to be re-solicited.
19	Exercising Contract Renewal (or non-renewal)	Sponsor and Procurement and Contracts	The Contract Sponsor returns the NOCE to the Procurement and Contracts team indicating their desire to renew or re-

Exhibit 1 – Contract Lifecycle

Step	Contract Phase	Responsible Party	Detail Requirements
			<p>solicit the contract or letting it expire. If renewing or re-soliciting, along with the NOCE the Sponsor will provide a requisition and other forms indicated on the NOCE. If re-soliciting, the Sponsor should begin working with Procurement and Contracts to revise the specifications. Procurement and Contracts will take the necessary actions to renew or re-solicit the contract. For LR contracts, Legal Services will be contacted to prepare the necessary documents. Board approval may be required to renew.</p>
20	Interpretation of Contract Provisions	Legal Services and CAM	<p>For LR contracts, the Contract Sponsor should contact Legal Services or the CAM regarding interpretation of contract provisions. For non-LR contracts, the Sponsor should contact the CAM for interpretation of contract provisions.</p>
21	Contract Reporting	CAM, Procurement and Contracts Manager, and/or Legal Services	<p>Internal and external reports will be compiled by the CAM, the Procurement and Contracts Manager, and/or Legal Services and submitted accordingly. Reports to the Texas Register under TGC § 2254.024(6) (certain Consulting Services), are prepared by Legal Services within 20 days of contract award based on information provided by the Procurement and Contracts.</p>
22	Evaluation of vendor’s Performance and Overall Contract Success	Sponsor and CAM	<p>During each contract period, the Contract Sponsor will provide feedback on the vendor’s performance solicited using the NOCE provided by the CAM. Upon expiration of the contract, the CAM will send the Contract Closeout form to the Sponsor to rate the vendor’s performance, overall effectiveness of the contract, and any areas for improvement. All documentation will be included in the contract file.</p>

Exhibit 2 – Acronyms and Definitions

ACRONYMS:

APL	Approved Products List
BAFO	Best and Final Offer
BEVO	Budget Expenditure Voucher Operation
CAM	Contract Administration Manager
CATS	Contract Administration and Tracking System
CCG	Council on Competitive Government
CMBL	Centralized Master Bidders List administered by CPA
CPA	Comptroller of Public Accounts
CRN	Contract Renewal Notice
EPLS	Excluded Parties List System
ESBD	Electronic State Business Daily
GAA	General Appropriations Act of the State of Texas
HMO	Health Maintenance Organization
HPA	Health Plan Administrator
HUB	Historically Underutilized Business
IFB	Invitation for Bids
LR	Legal Review
LTC	Long Term Care
MAP	Medicare Advantage Plan
OAG	Office of the Attorney General
PBM	Pharmacy Benefit Manager
RAQ	Risk Assessment Questionnaire
RFI	Request for Information
RFO	Request for Offer
RFP	Request for Proposal
RFQ	Request for Qualifications
SAO	State Auditor's Office
SOW	Statement of Work
TCI	Texas Correctional Industries
TFC	Texas Facilities Commission
TGC	Texas Government Code
TIBH	Texas Industries for the Blind and Handicapped
TXMAST	Texas Multiple Award Schedule

Exhibit 2 – Acronyms and Definitions

DEFINITIONS

1. **Central Repository** – Location where final contract file documents are maintained - TRS’ Imaging System
2. **Consultant Services** - The service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. A mixed consulting services contract is a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services. Under [Texas Government Code Section 2254](#), contracts for certain consulting services for more than \$14,000 must be reported to the Legislative Budget Board. Contracts for professional services, investment counseling, actuarial services, and consulting services determined by the board to be necessary to perform constitutional fiduciary duties are exempt, as are external investment managers exercising investment discretion for TRS, except that “board finding” contracts must be published in the Texas Register after entering into the contract. Contracts for consulting services for more than \$15,000 are “Major Consulting Services Contracts.” Notice of extensions, renewals, and modifications of non-exempt Major Consulting Services Contracts must be sent to the LBB.
3. **Contract Sponsor** - The TRS employee who is ultimately responsible for the contract. The primary contract sponsor is the chief officer or director for the operational division requesting the goods or services. Primary contract sponsors may delegate authority to initiate purchases and/or manage the contracting process within their respective area. The primary contract sponsors are as follows:

Deputy Executive Director	Chief Health Care Officer	Director of Communications
Chief Audit Executive	Chief Information Officer	Director of Human Resources
Chief Benefit Officer	Chief Investment Officer	Director of Governmental Relations
Chief Financial Officer	General Counsel	Director of Strategic Initiatives
4. **Contract Workers** – A contract for independent contractors, temporary workers supplied by staffing companies or vendors, and other types of workers who are not TRS employees. Managers within each TRS department are responsible for compliance with the Non-TRS-Worker Policies and Procedures. Contract Worker contracts generally fall into one of the following categories:
 - 4.1. **Temporary Employment Services** - A contract for skilled or unskilled labor such as janitorial, interns, clerical, temporary personnel, but does not include professional or consulting services.
 - 4.2. **IT Staffing Services** - Information Technology-related temporary contracts (e.g., programmers, project managers, data analysts).
5. **Formal Bid** - A written bid submitted in a sealed envelope in accordance with a prescribed format, or an electronic data interchange transmitted to TRS in accordance with procedures established by the State.
6. **Informal Bid** - An unsealed, competitive bid submitted by letter, telephone, telegram, or other means used for purchases less than \$25,000.
7. **Interagency Contract [IAC]** – A contract between state agencies for services, materials, or equipment entered into under [Texas Government Code Section 771](#). While an “Interagency Contract” is the most commonly used, IACs are known by a variety of different names such as (1) Interagency Cooperation Contract [ICC], (2)

Exhibit 2 – Acronyms and Definitions

Interagency Cooperation Agreement [ICA], (3) Interagency Agreement [IAA], (4) Memorandum of Understanding [MOU], (5) Memorandum of Agreement [MOA], and (6) Letter of Agreement [LOA], all of which are essentially the same kind of contractual agreement. IACs may or may not involve transfer of funds between agencies.

8. **Interlocal Agreement (ILA)** - An agreement between a state agency and a local authority (e.g., municipality, county) for services, materials, and/or equipment in which funds may or may not be transferred between the parties.
9. **Lease Agreements** - A contract granting use of equipment and property (including intellectual property) or other fixed assets for a specific term in exchange for payment. Ownership remains with the vendor. From an accounting perspective, a Lease Agreement is known as an operating lease.
10. **Lease - Purchase Agreements** - A contract granting use of equipment and property (including intellectual property) or other fixed assets for a specific term in exchange for payment; however, TRS has the option of owning the equipment, property, or asset. Ownership remains with the vendor until TRS exercises the purchase option in accordance with the agreement. From an accounting perspective, a Lease - Purchase Agreement is also known as a capital lease. Special requirements apply to Lease - Purchase Agreements and are therefore generally not used at TRS.
11. **License Agreement** – A contract for the use of intellectual property (e.g., software, databases, paid websites, publications, graphics, etc.). Ownership remains with the intellectual property owner and not TRS.
12. **Maintenance and Support Agreements** - An agreement to provide maintenance, support, or both for purchased equipment or information systems hardware and/or TRS-owned or licensed software, or TRS' facility.
13. **Major Information Systems** – Under [Texas Government Code Section 2054.008](#), a contract to purchase computer or telecommunications equipment and/or services that includes one of the following:
 - 13.1. One or more computers that in the aggregate cost more than \$100,000;
 - 13.2. A service related to computers, including computer software, that costs more than \$100,000; and
 - 13.3. A telecommunications apparatus or device that serves as a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network and costs more than \$100,000.

Contracts for Major Information Systems must be reported to the Legislative Budget Board. While Section 2054 does not apply to TRS per [Texas Government Code Section 825.103\(e\)](#), and TRS may use DIR contracts at TRS' discretion, TRS voluntarily complies with these requirements unless an exemption process is documented.

14. **Major Information Resources Projects** – A contract for:
 - 14.1. Any information resources technology project identified in TRS' biennial operating plan with a development cost exceeding \$1 million **and** that:
 - 14.1.1. Requires one year or longer to reach operations status;
 - 14.1.2. Involves more than one state agency; **or**
 - 14.1.3. Substantially alters work methods of state agency personnel or the delivery of service to clients.

Exhibit 2 – Acronyms and Definitions

14.2. Any information resources technology project designated by the Legislature in the General Appropriations Act as a major information resources project.

TRS is exempt from Texas Government Code Sections [2054](#), [2055](#), [2261](#), and [2262](#) pertaining to Major Information Resources Projects.

- 15. **Memorandum of Understanding (MOU) also known as a Memorandum of Agreement (MOA)** – See Interagency Contract.
- 16. **Outside Audit Contract** - A contract for outside audit services that has been pre-approved by the State Auditor’s Office.
- 17. **Outside Counsel Agreement** - An agreement for outside legal services that has been approved by the Attorney General's Office in accordance with Texas Government Code Sections [825.203](#) and [402.0212](#).
- 18. **Outsourcing** - Contracting for services to be performed outside of TRS.
- 19. **Professional Services** - A contract between TRS and a professional services provider as defined in [Texas Government Code Section 2254.002\(2\)](#). Professional services for more than \$14,000 must be reported to the Legislative Budget Board. Services not listed below, such as law practice, are not categorized as Professional Services. Per Section [2254.002](#), "Professional Services" means services:

Within the scope of the practice, as defined by state law, of:	or	Provided in connection with the professional employment or practice of a person who is licensed or registered as:
Accounting;		A certified public accountant;
Architecture;		An architect;
Landscape architecture;		A landscape architect;
Land surveying;		A land surveyor;
Medicine;		A physician, including a surgeon;
Optometry;		An optometrist;
Professional engineering;		A professional engineer;
Real estate appraising; or		A state certified or state licensed real estate appraiser; or
Professional nursing.		A registered nurse.

- 20. **Purchase Contracts** – Contracts (Purchase Orders) for commodities or other services for TRS’ direct benefit or use, including services contracts and conference facilities contracts.
- 21. **Service Level Agreement [SLA]** – An agreement that defines, lists, and specifies the services to be provided by each party to the agreement and typically defines the type or quantity of services to be provided, resolution paths, and contractual consequences if agreed service levels are not provided. SLAs are used to provide detailed guidance for compliance with contractual requirements. SLAs can allocate responsibility and accountability for specific tasks or categories of tasks to be performed on a regular or scheduled basis. Conditions on performance or acceptance of performance can also be specified.
- 22. **Soft Dollar, Commission Sharing, and Commission Recapture Contracts** – TRS trades securities with specialized brokers who offer soft dollar, commission sharing, or commission recapture programs. In effect,

Exhibit 2 – Acronyms and Definitions

TRS pays higher commissions to buy or sell securities in order to receive credits or payment of the excess sums generated. These contracts provide funds held by the broker or custodian or Cost Sharing Account (CSA) or Commission Recapture Account (CRA) funds for expenditure in accordance with the TRS Soft Dollar Policy for the use and benefit of the TRS investment function.

23. **Investment Transaction Contracts [a.k.a. “Deal Contracts”]** – Contracts involving transactions in, securities, futures, options, and swaps, etc. are not contracts for goods or services. Investment Management Agreements are agreements for specialized investment advisory services, and are based on a delegation of investment discretion, and create fiduciary duties and liabilities. As such, they are not subject to procurement requirements but arise from TRS’ constitutional fiduciary functions. Engagement of external managers requires investment due diligence satisfying fiduciary requirements.
24. **Exempt Purchases** – Purchase Orders or Contracts in which TRS exercises statutory, fiduciary, or policy exemption authority must include a rationale or justification requiring prior signature approval by the Executive Director or the Executive Director’s designee. Examples include sole source or proprietary contracts, emergency purchases which are defined as unforeseen and will impact safety or cause operational or financial harm.

TRS voluntarily complies with State of Texas procurement law and rules unless TRS has a specific statutory exemption, or a justification is signed by TRS’ Executive Director or designee.

