

IDENTIFYING CONTRACT RISK INCLUDING ENHANCED MONITORING PROCEDURE

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Purpose

IDENTIFYING CONTRACT RISK

Texas Workforce Commission (TWC) must evaluate contracts for the level of risk they present to the state. Identifying contract risk is critical to procurement and contracting operations and should be carefully reviewed and continually monitored.

The purpose of risk assessment is to:

- a. Strengthen contract management activities to mitigate risk;
- b. Help identify the potential for fraud and abuse;
- c. Prioritize contracts for the annual monitoring plan; and
- d. Determine the highest risk contracts.

Risk must also be assessed on an ongoing basis to identify changes that may require an adjustment in the prioritization of contract oversight activities.

TWC will utilize a risk assessment tool to determine level of risk and subsequent level of monitoring. Areas of risk reviewed are:

- Goods/Commodities;
- Contract services;
- Contract dollar threshold;
- Contract lifecycle;
- New service provided by the vendor;
- Experience with TWC;
- Does the contract affect external stakeholders or of particular interest to third parties;
- Data or information security issues;
- Governor's Disaster Declaration used; and
- Past performance and/or other subjective risk factors.

Responsibility

- Agency Contract Managers (CMs)

EXAMPLES OF CONTRACT MONITORING ACTIVITIES BASED ON RISK

1. **Risk-Based Monitoring**

Risk-based monitoring is how TWC prioritizes contract monitoring. To determine risk, the CM will complete a risk assessment. The risk assessment is completed on an annual basis, but may be completed more frequently, if necessary. TWC will use the results of the risk assessment to establish an annual monitoring plan. TWC maintains documentation of the annual contractor review recommendation or risk assessments.

The risk assessment is completed to evaluate certain contract characteristics to:

- Identify areas of associated risk;
- Prioritize contract desk reviews; and
- Develop a plan to manage and review contracts.

The CM completes the Risk Assessment Tool for their respective contract assignments by determining a risk level score based on pre-established risk factors.

2. **Enhanced Monitoring**

Pursuant to Texas Government Code Section 2261.253(c) TWC has implemented [Texas Administrative Code Rules](#) to: (i) establish a procedure to identify each contract that requires enhanced contract or performance monitoring; (ii) submit information on the contract to the agency's governing body; and (iii) require that staff immediately notify the agency's governing body of any serious issue or risk that is identified with respect to a contract monitored under this subsection. Examples of a serious issue could include fraud or customer safety concern.

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

TWC will identify which contracts for goods and services require enhanced monitoring by evaluating the risk factors, which include:

- Complexity of the goods and services to be provided;
- Contract amount;
- Length and scope of the project supported by the contract;
- Whether the services are new or have changed significantly since the last procurement of the same services;

- Whether the Agency has experience with the contractor;
- Whether the project affects external stakeholders or is of particular interest to third parties;
- Whether Agency data is accessed by the contractor; and
- Any other factors the Agency determines in a particular circumstance will create a level of risk to the state or Agency such that enhanced monitoring is required.

Level of enhanced monitoring will be determined upon completion of the agency-wide risk assessment.

For contracts requiring enhanced monitoring, the contractor shall report to the assigned contract manager on progress toward goals or performance measure achievements, the status of deliverables, if any, and on any issues of which the contractor is aware that may create an impediment to meeting the project timeline or goals.

Enhanced monitoring may also include site visits, additional meetings with contractor staff, and inspection of documentation required by TWC staff to assess progress toward achievement of performance requirements.

Projects deemed medium or high risk shall be monitored by the assigned CM and may involve additional team members such as an assigned project manager and staff from the Office of General Counsel or the Finance, Information Technology, or Regulatory Integrity Divisions, if warranted.

Exceptions:

This policy does not apply to memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

IMPLEMENTATION OF ENHANCED MONITORING

To implement enhanced monitoring, the contract manager must identify contractors requiring enhanced monitoring (i.e., monitoring frequency, key requirements, noted areas that will be monitored and monitoring activities) based on the risk score. Enhanced monitoring activities may include, but are not limited to:

- Training and technical assistance;
- Submission of contractor reports of status or progress toward meeting identified goals and outcomes established in response to assessments of unsatisfactory performance; or
- TWC monitoring reviews of the contract with documented follow-up requirements for any significant findings.

The CM must notify the contractor in writing (letter or e-mail) that enhanced monitoring protocols have been activated for the remaining contract period unless this provision was contained within the contract terms and conditions. The notice should include:

- Reference to Texas Administrative Code [§800.351](#).
- Contract number; and
- Components of the enhanced monitoring plan.

The CM is required to complete enhanced monitoring activities as per the enhanced monitoring plan and upload the enhanced monitoring plan and monitoring documents into ECPS.

MONITORING FOLLOW-UP

Monitoring follow-up ensures contractors are in compliance with the items found during a previous monitoring review. The monitoring follow-up is designed to verify the contractor implemented their corrective action plan (CAP).

If there are still deficiencies noted, the CM will document their concerns and provide additional technical assistance so the contractor can achieve compliance in the specified area.

ENHANCED MONITORING REPORTING AND COMPLIANCE

CMs must report any serious issues or risks identified with respect to contracts requiring enhanced monitoring to their management, who must promptly report such identified issues and risks to the Director of Procurement and Contract Services (PCS Director). The PCS Director shall immediately notify the Director of Business Operations, the Executive Director, and the TWC Commissioners.

On a quarterly basis, the PCS Director will provide information on each contract identified for enhanced monitoring to the Director of Business Operations, the Executive Director, and the TWC Commissioners.

Additionally, the CM must report on the status of all contracts subject to enhanced monitoring to the PCS Director on a quarterly basis.