

Board Procurement Policy

Purpose

This Board Procurement Policy ("Policy") applies to the acquisition of goods and services by the TRS Board of Trustees (the "Board"). This Policy will be administered consistent with applicable federal and state laws and TRS policies and procedures, as well as with TRS' fiduciary responsibilities.

Core Value: This policy relates to the TRS values of Ethics and Accountability because it sets forth TRS' dedication to ensuring Board contracts are procured in a manner consistent with applicable legal authority, TRS policies and procedures, as well as TRS' ethical standards and fiduciary responsibilities. This policy also promotes Accountability by providing transparency into the requirements for TRS' Board procurements and oversight of Board procurements.

Reference:

Chapter 551, Government Code

Section 825.103, Government Code

Section 825.203, Government Code

Chapter 2254, Government Code

Sections 1575.052, .104, .106-.110, Insurance Code

Sections 1576.003, .008-.009, Insurance Code

Sections 1579.052, .054-.055, .057, Insurance Code

Statutory Exemptions: Pursuant to Section 825.103 of the Texas Government Code, TRS shall acquire goods or services by procurement methods approved by the Board or the Board's designee. To the extent necessary to serve the best interests of TRS, the Board recognizes its general statutory exemptions from the State Purchasing and General Services Act, Subtitle D and F, Title 10, Texas Government Code and the Consulting Services Procurement Act, Subchapter B, Chapter 2254, Texas Government Code.

Applies to: TRS Trustees and all TRS staff performing duties related to the Board's procurements.

Definitions:

Award: An award is made upon final execution of a contract.

Blackout Period: The period of time during which prospective vendors and Board members are prohibited from having any *ex parte* contacts regarding the opportunity.

Board Contract Management Review Process: The process employed by the staff for the monitoring of and reporting on vendor or contractor performance of Board contracts.

Competitive Procurement: The process of inviting and obtaining responses from competing vendors in response to TRS specifications, by which an award is made based on best value.

Notice of Award: An official announcement of an executed contract which is typically posted on the State Electronic State Business Daily (ESBD).

Request for Proposals (RFP): A written solicitation requesting the submission of proposals.

Request for Qualifications (RFQ): A written solicitation requesting the submission of qualifications or specialized services.

Selection of a Vendor: A Board vote in an open meeting to select a vendor (or a vendor and alternate(s)) for a Board contract, contingent upon the successful negotiation of the terms of the contract as delegated to the Executive Director and subject to a determination that the final, negotiated terms are deemed to be in the best interest of TRS. Vendor selection by the Board is not the award of a contract.

Policy Statement:

To the extent appropriate, competitive procedures will be used when acquiring goods and services, unless such procedures would not be likely to serve the best interests of TRS. For the avoidance of doubt, the phrase "competitive procedures" is not limited to widespread publication of all opportunities and includes a range of procurement procedures tailored to each procurement depending on the circumstances. Other procurement methods may be considered if competitive procedures would not be reasonably likely to enhance competition, fairness, or value by producing a greater number of qualified candidates.

Nothing in this Policy, any procedures relating to this Policy, or contained in the TRS Procurement and Contract Management Guide (TRS Guide), shall be construed to impede the exercise of the fiduciary duties of the Board or TRS staff or prevent the Board from following state or federal guidance, if desired. In the event of an actual or potential conflict between fiduciary duties and otherwise applicable laws or policies, the Executive Director, in consultation with the General Counsel, will recommend to the Board the appropriate course of action for the relevant procurement or contract.

Board Authorized Contracts; Delegation of Other Procurements

The Board will consider and authorize awards of the following procurements:

- 1) Any contract explicitly required by the Board's Bylaws and policies to be considered for authorization by the Board, including:
 - a) Selecting fiduciary counsel;
 - b) Selecting one or more custodian banks to provide custodial and security lending services for TRS assets;

- c) Selecting one or more investment advisors pursuant to Section 1.3 of the Investment Policy Statement;
 - d) Selecting one or more proxy advisors pursuant to the ProxyVoting Policy;
 - e) Selecting members of the Medical Board; and
 - f) Selecting a fully insured long term care carrier.
- 2) Any contract required to be authorized by the Board pursuant to state law, including:
- a) Selecting the pension and health trust fund actuaries;
 - b) Selecting one or more pharmacy benefit managers;
 - c) Selecting one or more third party health plan administrator managers; and
 - d) Selecting one or more fully insured health plans.
- 3) Contracts involving the sale, acquisition, or encumbrance of real property, or the leasing of real property for a term of three (3) years or more, not to include lease extensions or options exercised under the lease;
- 4) Contracts having an estimated value of \$1 million or more per year and not otherwise listed in subsections 1-3 above; and
- 5) Any other contract not specifically enumerated above that the Board elects to procure.

For those contracts that are to be brought to the Board for approval solely because they exceed an estimated value of \$1 million or more per year, TRS staff will present a report to the Board at each quarterly meeting summarizing the key information for the proposed procurement. The Board may accept the report in its entirety or identify specific procurements for additional discussion or direct selection or approval by the Board.

This Policy does not apply to investment transactions involving securities, investment vehicles or external investment managers exercising investment discretion unless otherwise directed by the Board or required by the Investment Policy Statement.

The Board retains discretion to delegate procurement of these contracts to the Executive Director (or his or her designees) pursuant to Texas Government Code Section 825.103 and expressly delegates all other contracting and purchasing decisions not set forth above to the Executive Director (or his or her designees), including as required by Texas Government Code Section 2261.254.

Contracting and purchasing activities performed by TRS staff shall follow applicable guidelines set forth in the TRS Guide.

Methods of Procurement

The Board will generally use one of the following methods to acquire goods and services, based on the nature of the goods and services to be acquired:

- 1) Request for Proposal (RFP)
- 2) Request for Qualifications (RFQ)
- 3) Any other method required by law or determined by the Board to be appropriate, including without limitation the services of, or programs administered by, the

Comptroller of Public Accounts, the State Office of Risk Management, and the Department of Information Resources.

The Board will consider the following factors in determining which method is most appropriate under the prevailing facts and circumstances and in the best interests of TRS:

- 1) The length of time since the last contracting opportunity for the same or similar goods or services;
- 2) The marketplace or industry practices, standards, and expectations for specific procurements;
- 3) The type of contract, goods or services to be acquired, including whether the vendor's qualifications are as or more important than cost;
- 4) The level of competition in the relevant market or whether the prospective pool of vendors is limited to one or a few qualified candidates;
- 5) TRS' familiarity with the relevant vendors and market for the goods or services (or both) being acquired;
- 6) The cost of the relevant procurement methods relative to the benefits to be received from the process for each; and
- 7) The length of time available to complete the procurement process.

The Board may seek the recommendations of TRS staff and the advice of Legal & Compliance (L&C) and fiduciary counsel when considering which acquisition method would be the most appropriate under the circumstances.

If the RFP or RFQ method is used, TRS will follow applicable federal and state law and applicable TRS policies and procedures set forth in the TRS Guide.

If the Board elects any other method, records will be created and maintained by TRS staff to document the process through the final contracting phase. A description of the actual procurement process will be provided to the Board at the time of the vendor selection.

Vendor Selection

For each opportunity that will be considered by the Board, the Board, applicable TRS staff, and all prospective vendors will observe a "blackout period" during which prospective vendors and Board members are prohibited from having any *ex parte* contacts regarding that opportunity.

The blackout period will begin upon the start of the formal acquisition process and continue until a final decision on the opportunity has been made. TRS staff will notify the Board when the blackout period commences and ends.

The blackout period does not apply to the staff's due diligence communications with prospective vendors or to staff or trustee meetings or communications with an existing vendor, so long as discussions are restricted to matters within the scope of the existing contract and communications relating to the pending opportunity are avoided.

As requested by the Board, the Executive Director (or his or her designees) shall evaluate submissions received from prospective vendors, perform appropriate due diligence, and provide a recommendation to the Board on one or more finalists to be selected. No recommendation by the Executive Director (or his or her designees) or other staff will be binding on the Board. The Board may go into closed session to discuss a Board procurement under Section 825.115(e) of the Texas Government Code, upon a finding by the Board that to deliberate or confer in open meeting would have a detrimental effect on the position of the retirement system in negotiations with a third person. Final selection of a vendor(s) by the Board will be made in open meeting, pursuant to the Texas Open Meetings Act (Chapter 551, Texas Government Code).

When considering an acquisition under this Policy, the Board will select the vendor that, in the Board's judgment, represents the best overall value for TRS based on the candidates' qualifications, experience, proposed contract terms and conditions, proposed fees, and other relevant factors. In this policy, "best overall value" means a combination of factors that, in the judgment of the Board, are most consistent with the best interests of TRS.

Except as otherwise expressly authorized by the Board, contracts for acquisitions authorized by the Board under this Policy may have an initial term not to exceed five (5) years in duration, with one or more options for extensions not to exceed a total of two (2) years. The Board, at its option, may authorize renewals or extensions of agreements that are nearing their scheduled expiration dates without requiring a new acquisition process, provided the Board first determines that renewal or extension continues to provide the best overall value. The Board may also delegate to the Executive Director renewals, extensions, and amendments, as well as contract negotiations.

A record that documents the process and rationale for the vendor selection shall be maintained for each Board contracting opportunity by TRS Procurement and Contracting (P&C).

Notwithstanding any other provision of this Policy, no procurement, agreement, contract, or award considered or authorized by the Board will be legally binding on TRS unless and until a definitive agreement has been negotiated, executed and delivered on behalf of TRS by the Executive Director or other authorized TRS signatory.

Evaluation and Oversight of Contracts

All vendors who are parties to contracts authorized by the Board will be subject to performance monitoring and periodic evaluation by management, staff, and the Board, as requested, throughout the terms of their contracts. The Board may specify factors to be used for such monitoring or evaluation based on recommendations provided by the Executive Director.

At the Board's direction, the Executive Director (or his or her designees) will report to the Board the results of the staff's monitoring and evaluation activities involving vendors under Board-authorized contracts. The Executive Director (or his or her designees) will also identify in a timely manner any significant issues or actions taken.

The Executive Director (or his or her designees) will report in accordance with the Board Contract Management Review Process to the Board any significant or material failures by vendors to comply with the terms of their respective contracts or to provide the expected levels of services or quality.

The Executive Director (or his or her designees) also will report to the Board any potential issue that may arise in the solicitation, purchasing, or contractor selection process for contracts for the purchase of goods or services that have a value exceeding \$5 million.

Trustee Training

Training for the Board regarding contracting shall be provided by TRS management, staff, L&C, and fiduciary counsel at the commencement of a new Trustee's tenure on the Board, and further on an as-needed basis or in conjunction with routine fiduciary training.

Violations: A violation of this policy may result in corrective action.

Cross Reference/Related Documents: TRS Board of Trustees Ethics Policy, TRS Procurement and Contract Management Guide, Board Contract Management Review Process, Confidentiality Policy, Board of Trustees External Communication Policy

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This policy does not constitute a contract, a promise or guarantee of employment, or a guarantee of access to TRS premises or information resources, as applicable, and may be modified, superseded, or eliminated by TRS without notice to the employee.