

Sunset Advisory Commission

**Presentation to the House Government Transparency
and Operations Committee**

February 17, 2015

Sunset Contracting Model



What Is the Contracting Model?

- ❖ **High-level standards and best practices for contracting**
- ❖ **Used in Sunset reviews since 2009**
- ❖ **Developed from:**
 - State of Texas Contract Management Guide (Comptroller's office)
 - Legislation
 - Sunset experience
- ❖ **Continuing to evolve**

Categories in the Model

❖ **Based generally on the Contract Management Guide**

❖ **Categories:**

- Organization and oversight
- Ethics
- Planning to contract
- Solicitation
- Evaluation and award
- Contract formation
- Administration
- Closeout

Examples in Presentation

- ❖ **Covers some basic standards as examples**
- ❖ **Shows how these standards applied in Sunset reviews of:**
 - Health and Human Services Commission (HHSC: current biennium)
 - Port of Houston Authority (2012-2013 biennium)
 - Texas Department of Transportation (TxDOT: 2008-2009, 2010-2011 bienniums)

Example of Organization and Oversight Standard

An agency's organizational structure should include a strong centralized contracting function, or clear point of control or coordination, to promote accountability and consistency in its contracting documentation and functions.

❖ HHSC

- Unclear lines of authority for contracting among five agencies in system
- Example of problems – no consolidated contracting database, risk assessment, or contracting handbook required since 1999
- Sunset recommendations:
 - A key issue behind Sunset recommendation to reorganize health and human services system from five agencies to one
 - Clarify and strengthen the oversight role of HHSC's centralized procurement office
 - Direct HHSC to develop ways to apply focused, high-level attention to system contracting

Example of Contract Administration Standards

Agencies should establish policies on contract approval; carefully monitor contractor performance; and have policies and procedures in place to oversee and verify that contract services, tasks, and deliverables are completed before disbursing payments.

❖ Health and Human Services Commission

- Weak contract monitoring processes in the health and human services system
- Selected Sunset recommendations:
 - Require executive commissioner signature on large or complex contracts from anywhere in the system
 - Require formal policy defining ongoing reporting structure showing corrective action plans, their status, and any liquidated damages
 - Define a means of escalating attention on large and problematic contracts

Examples of Ethics and Contract Planning Standards

Agency purchasing personnel should make nepotism disclosures in writing to their agency's administrative head before the agency awards a contract with a value of \$1 million or more.

An agency should ensure that staff involved in the preparation of solicitations and evaluation of submittals sign non-disclosure and conflict of interest statements to protect the integrity of the evaluation process.

❖ Port of Houston Authority

- No required written nepotism disclosure
- No requirement for staff to sign a statement not to disclose information about a respondent's submission
- Led to Sunset recommendations requiring these elements

Examples of Solicitation Standards

An agency's statute and rules should allow for appropriate cost-effective bid and contract notifications.

Communication with respondents should occur only through the agency's purchasing department or other designated staff.

❖ **TxDOT**

- Newspaper notification of bid openings for construction and maintenance contracts required by statute
 - Requirement changed, as recommended by Sunset, to allow TxDOT to determine the most effective method for providing notice (2011)
 - Could result in estimated savings to Highway Fund of about \$1 million per year, assuming elimination of newspaper notice for larger projects
- No communication policy
 - Led to recommendation to require a clear written policy about who in the agency could communicate with vendors

❖ **Port of Houston Authority**

- No clear policy prohibiting commissioner communications with vendors during active solicitation
- Led to Sunset recommendation and agency adoption of such a policy

Examples of Bid Evaluation Standards

A scoring matrix for the evaluation of responses provides clear guidance on how scoring components will be weighted and should be developed before publication of the solicitation.

An agency should prepare a clear process for staff to negotiate a contract and make recommendations for a policy body to either accept or reject.

❖ Port of Houston Authority

- Too much variation in processes for evaluating responses across divisions
 - More consistent evaluation process recommended by Sunset and adopted by agency
- Unusual flexibility for Port Commission to select a vendor from staff-ranked bids
 - Sunset recommended, and agency has adopted, a policy to either accept or reject a single staff-recommended vendor in a procurement award

Examples of Contract Administration Standards

An agency's executive director and contract managers should receive standard contract training, which includes ethics. Members of the policy body should also receive a shortened version of the training.

❖ **Sunset reviews showed improved training needed at HHSC, Port of Houston Authority, and TxDOT**

❖ **Sunset recommendations:**

- HHSC to lead in establishing training requirements for high-level employees and employees involved in contract development and management
- Port of Houston Authority to establish systematic and ongoing training program for both commission members and staff
- TxDOT to require contract management training for project managers of professional services contracts

Contact Information:

**Karl Spock
Senior Manager
Sunset Staff
512-463-1300**