

Authority to Contract

Only persons having actual authority to act on behalf of the State can bind the State in a contract.^{xlvii} The powers of all state officers are set by law. All persons dealing with state officers must know the limits of their authority and determine if the contemplated contract is within their statutory authority. One should not indulge in presumptions or rely on the implied authority of an officer or agency of the state to contract.^{xlviii} Therefore, a threshold issue in government contracting is whether a state agency has statutory authority to contract.

The legislature established through the Government Code a comprehensive regime for state purchasing, which requires state agencies to make purchases through CPA unless an exception applies.^{xlix}

This broad grant of purchasing authority to CPA has limitations. For example, the definition of 'services' applicable to CPA's authority includes skilled or unskilled labor or professional work, but does not include a: professional service subject to Texas, Government Code, Subchapter A, Chapter 2254; services of a state agency employee; consulting services or services of a consultant as defined by Texas, Government Code, Subchapter B, Chapter 2254; or the services of a public utility.

Specific statutory exemptions may also remove a particular purchase from the purview of CPA. Examples of statutory exceptions and/or exemptions from CPA authority include but are not limited to:

- Group Purchasing Programsⁱ
- Purchases from Higher Education Research Fundsⁱⁱ
- Purchases of Certain Medical Equipment by Medical or Dental Unitⁱⁱⁱ
- Exemption of Goods or Services of Blind or Visually Impaired Persons^{liii}
- Exemption for Certain Libraries and Health Facilities^{liv}
- Purchase From Gift or Grant Not Within Commission's Purchasing Authority^{lv}
- Certain Other Purchases Not Within Commission's Purchasing Authority^{lvi}
- Purchases by Veteran's Land Board^{lvii}
- Purchase of Care and Treatment Services by Texas Youth Commission^{lviii}
- Procurements by Health and Human Services Agencies (does not include common goods and services)^{lix}
- Health Care Purchasing^{lx}
- Certain Purchases by Employees Retirement System of Texas^{lxi}

- Mental Health and Mental Retardation Community Centers; Assistance Organizations^{lxii}
- Purchases by Legislature and Legislative Agencies^{lxiii}
- Local Government Purchasing Program^{lxiv}

Council on Competitive Government

In May 2010, the Council on Competitive Government (CCG) in coordination with the state print shops, TCI and the Texas Procurement and Support Services (TPASS) Division within the Comptroller's office, rolled out a new procurement process for state printing.

It substantially streamlines and improves the state printing process for agencies through the deployment of a universal online **print shop job request form**, enabling agencies to submit a job request *once* and receive bid responses from all seven state and TCI print shops. Additionally, CCG has established overarching contracts with each print shop that eliminate the need for agencies to enter into individual interagency agreement contracts (IACs) with the print shops.

Procurement Process for State Printing

The new procurement process for state printing offers a fresh look opportunity for all agency customers. What you'll see is a new **online job request process** that achieves several goals in a single submission process:

- Statutory compliance;
- Communication of needs to multiple shops simultaneously;
- Improve competition among the print shops;
- One point for checking availability and receiving bids from shops;
- One overarching Inter-agency Contracts (IAC) between CCG and the shops vs. one IAC per shop per agency; and
- Ability for agencies to identify best value while still meeting quality requirements.

Even if a statute creates an exception to CPA's authority to make purchases, the authority to purchase goods or services must be found in another statute before an agency is authorized to purchase.^{lxv} One of the statutory sources for a state agency's contracting authority is a statutory delegation.

Binding Signatures

Original signatures by those in authority to contract are the usually accepted norm through which a contract becomes binding. There may be instances where time considerations dictate the need to accept a faxed signature as evidence a respondent accepts the terms of a contract. Additionally, it is possible that an email or a chain of emails that make it clear a party accepts the terms of a contract can be enforceable. Faxed signatures or emails should always be followed up with original signatures.

i See the following excerpt from AG Opinion JC-0131 (1999).

"There are numerous limitations on the contracting authority of state officers and employees pertinent to your inquiry. First and foremost, no one has the authority to make a contract binding on the state unless authorized to do so by the constitution or by statute. See *State v. Ragland Clinic-Hosp.* 159 S.W.2d 105, 106 (Tex. 1942); *Vitapro Foods, Inc. v State*, 969 S.W.2d 84, 88 (Tex.App.-Texarkana 1998, pet granted). Normally authority to bind the state is given by the legislature to entities such as the governing boards of state agencies and to state officers, rather than to employees. In some instances, contracting authority granted to a governing board may be delegated to other officers or employees. For example, the Education Code allows the University of Houston board of trustees to delegate its contracting authority: "All contracts of the university shall be approved by a majority of the board. However, the board is authorized to adopt reasonable rules that delegate to the president or his authorized representatives the authority to negotiate, approve and execute contracts." Tex. Educ. Code Ann. §111.34 (Vernon 1991). Similarly, under the Government Code, "[t]he Texas Transportation Commission may delegate to one or more employees of the Texas Department of Transportation the authority to approve vouchers for expenditures from the state fund and the authority to approve and sign contracts and other documents." Tex. Gov't Code Ann. §2103.064 (Vernon Supp. 1999). All state officers and employees are potentially able to bind the state, but to do so they must be able to point to some constitutional or statutory authority for their actions."

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"Apparent authority is not enough to make an obligation binding upon the state; an officer or employee must have actual authority to do so. *VitaPro*, 969 S.W.2d at 88. In a contract between private parties, an agency who has no actual authority to bind his principal can nevertheless bind the principal if the principal leads the other party to believe that the agency had the authority to act on the principal's behalf. See *Moodey v. E.M.C. Servs., Inc.* 828 S.W.2d 237, 241 (Tex.App. - Houston [14th Dist.] 1992, writ denied). In such a case, the principal is estopped from claiming that the agent had no authority to act on the principal's behalf. *Id.* But the powers of state officers are set by law and all persons dealing with them are charged with notice of the limits of their authority and are bound at their peril to ascertain whether a contemplated contract is within the power conferred. *Ragland Clinic-Hosp.*, 159 S.W. 2d at 107; *VitaPro*, 969 S.W.2d at 88. Thus, even if a state officer or employee appears to have authority to bind the state, the state will not be bound unless the officer or employee had actual authority to bind the state."

"Second, the subjects of state contracts, the procedure for entering into contracts, and the general policy relating to contracts are all within the power of the legislature to establish. See *Texas Nat'l Guard Armory Bd.*, 126 S.W.2d at 637. Although an oral contract is normally just as binding and enforceable as a written contract, See *Ward v. Strickland*, 177 S.W.2d 79, 82 (Tex.Civ.App.-Dallas 1943, writ ref'd), the authority of a person or entity to enter into an oral contract on behalf of the state may be restricted by the constitution or by statute or regulation."

ii *State v. Ragland Clinic-Hosp.*, 138 Tex. 393, 159 S.W. 2d 105 (1942).; *State ex rel. Dept. of Criminal Justice v. VitaPro Foods, Inc.* 8 S.W.3d 316, 322 (Tex. 1999). Rehearing overruled.

iii Tex. Gov't. Code §2155.061 Commission Purchasing System.

(a) The commission shall acquire by purchase, lease rental or another manner all goods and services for a state agency, including a purchase that does not require a competitive bid or a spot purchase.

(b) The commission shall operate an effective and economical system for purchasing goods and services

iv Tex. Gov't Code §2162.105. Exemption from Purchasing Laws.

v Tex. Gov't Code § 2155.134

vi Tex. Gov't Code § 2155.135

vii Tex. Gov't Code § 2155.136

viii Tex. Gov't Code § 2155.138

ix Tex. Gov't Code § 2155.139

x Tex. Gov't Code § 2155.140

xi Tex. Gov't Code § 2155.141

xii Tex. Gov't Code § 2155.142

xiii Tex. Gov't Code § 2155.143

xiv Tex. Gov't Code § 2155.144

xv Tex. Gov't Code § 2155.1441

xvi Tex. Gov't Code § 2155.146

xvii Tex. Gov't Code § 2155.202

xviii Tex. Gov't Code § 2155.203

xix Tex. Gov't Code § 2155.204

xx State ex rel. Dept. of Criminal Justice v. VitaPro Foods, Inc., 8 S.W.3d 316, 322 (Tex. 1999) rehearing overruled.