

TEXAS STATE BOARD OF PHARMACY

CONTRACT MANAGEMENT GUIDE

I. INTRODUCTION

The information contained in this Contract Management Guide reflects the policies, procedures, and practices of the Texas State Board of Pharmacy (TSBP) for procuring the products and services required to support the Agency's mission and goals. This guide is not intended to offer any policies related to travel or employment. It has been developed to comply with Texas Government Code 2261.256 and SB 20.

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II. CONTRACT DEFINITION

The elements of a contract must include the following:

- Offer
- Acceptance
- For a legal purpose
- Mutual obligation
- Certainty of subject matter
- For consideration
- Between competent parties

Contracts may be verbal or written, may involve any sum of money, large or small, and may be of short or prolonged duration.

Offer is a vendor's offer of particular goods or services for a price. Offers may be verbal or written in the form of catalog prices, quotes, or responses to solicitations.

Acceptance is the buyer's acceptance of the vendor's offer.

Consideration is the legal value agreed upon and given in exchange for the goods or services in question. Consideration is not restricted to the exchange of money, but many include performance of certain actions. TSBP may enter into contracts where the offeror performs a service, is paid by entities outside the agency, and the work product of the service is accepted as documentation of regulatory requirements (e.g. third-party testing of licensees).

It is the policy of TSBP to document acceptance with written purchase orders, letters of engagement, award letters, or other formal contract documents. Such documents will document the authority under which the contract is entered into, the consideration, and the mutual obligation between the vendor and buyer. Changes to contracts are to be documented in writing. Purchase orders, inter-agency agreements, and memoranda of understanding, are considered contracts.

TSBP personnel authorized to enter into contracts on behalf of the agency are the executive director, the chief financial officer, and the agency's designated purchasers.

III. ETHICS

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

By statute any person involved in the development or approval of a contract that has an actual or potential conflict of interest must disclose it and must be removed from involvement in the contract process.

All purchasing staff must sign conflict of interest statements annually. See Attachment A for the TSBP Conflict of Interest Form.

IV. PLANNING & RISK ASSESSMENT

Delegated purchases made through agency purchase orders, term-contract purchases, and purchases made under DIR contracts are subject to agency budgeting and approval processes. Agency policies for such purchases may be found in the TSBP Purchasing Procedures Guide.

Major projects that require significant investments of agency resources and mission-critical outcomes dependent on contracting must have adequate planning. Planning begins with identifying the need in question. Planning should consider the strategic goals of the agency in determining the agency's needs, project timelines, statements of work, solicitation types, and desired outcomes. Specific determinations should be found for project deliverables. Key constraints (in scope, cost, or schedule) and assumptions (availability of personnel or materials, access to knowledgeable and capable personnel, likelihood of interruptions, identification of and relations with strategic partners) should be identified in the very early stages of planning.

Each project should have a project manager assigned who will act as team lead. The project manager should be responsible for defining and achieving the specific goals and objectives for the project by managing and controlling the scope of work, quality of work, cost, and schedule.

The project team should consist of:

- The project manager
- General counsel
- Agency purchaser
- Subject Matter Experts (SMEs) as needed

Project team members may expect to be called upon in drafting statements or work, answering questions related to solicitations, and evaluation of bids.

Project teams may wish to begin by establishing a project charter. A project charter is an official written acknowledgement of the project. It provides the project manager the authority to apply agency resources to project activities and serves as the foundation for project processes. The project charter should include

Project teams should assist in an initial risk assessment of the project. See Attachment B for the Risk Assessment Matrix (RAM). The RAM should also be completed before entering into optional renewals and when significant changes occur either at the agency level or at the vendor level (new statutory mandates, new ownership of the vendor). The RAM assigns scores to key areas of potential risk and uses the scores to assess the level of risk. It must be borne in mind that risk assessment is inherently subjective and not all areas are applicable. Further, some project may have unique and unexpected categories of risk. The results of the RAM may be used to determine whether risk will be avoided, mitigated, or accepted.

V. STATEMENT OF WORK

The project team will be responsible for producing a statement of work (SOW) for contracts that will be issued to meet project goals. An SOW is a detailed statement of what is required by a contract or to complete the work in question. The SOW may be further broken down into particular specifications, listing the various components of the overall SOW. The SOW is presented in solicitations and is forms the basis for responses. Further, the SOW should be tied to the evaluation scheme as part of the best value determination. An SOW must:

- Secure the best economic advantage utilizing best value
- Be clearly defined
- Be contractually sound
- Be un-biased
- Allow for free competition to maximum extent reasonably possible.

In practical terms, the SOW must include:

- A detailed description of the services to be performed or goods to be delivered, listed as discreet specifications. There should be enough detail that vendors can understand the specific requirements and respond.
- Deliverables that must be met to receive payment.
- A clear timeline for deliverables and milestones.
- Consequences for failure to provide deliverables.
- Performance measures and testing requirements for acceptance of deliverables.

The type of solicitation must be determined at an early stage in order to allow sufficient time to post the solicitation, to evaluate responses, and to negotiate a final award. There are several distinct types of solicitation.

- Information for Bid (IFB). Used when specifications are very clearly defined and price is the major factor in determining best value. Negotiations are generally not permitted with IFBs.
- Request for Information (RFI). Used when there is insufficient information to write a statement of work. Contracts are not awarded on RFIs.
- Request for Offer/ Proposal (RFO or RFP). Used when the major factor for evaluation is the quality of the vendor's response rather than price. Negotiations are expected with RFPs.
- Request for Qualifications (RFQ). Used when the determining factor is the vendor's professional qualifications to perform the services. Price is not a factor in evaluating an RFQ.

VI. BEST VALUE

Contracts are to be awarded on the basis of best value. In determining the best value there are two major factors, price and the degree to which the vendor's goods or services meet or exceed the specifications. Other factors that weigh in determining best value can include:

- Installation costs
- Life cycle costs

- Quality and reliability of goods and services
- Delivery terms
- Vendor experience and qualifications
- Past vendor performance
- Vendor's financial resources and ability to perform
- Cost of training
- Any relevant factors depending on context

The factors used to determine best value must be specified clearly in solicitation documents. That allows vendors to respond to those factors and provide the agency with offers that meet the agency's needs.

VII. SOLICITATION

TSBP must follow TPASS procurement rules regarding delegated and non-delegated purchases. TSBP has delegated authority to make purchases of commodities up to \$25,000.00 and services up to \$100,000.00 (See the State of Texas Procurement Manual, Sections 2.10 to 2.16 for other delegated purchases (direct publications, proprietary, emergency, etc.))

TSBP must follow TPASS procurement rules for posting solicitations. See the State of Texas Procurement Manual, Section 2.23 (<http://comptroller.texas.gov/procurement/pub/manual/2-23.pdf>) .

For procurements with an estimated value (not including optional renewals, but including indirect payments) over \$25,000.00, when posting the complete solicitation package, the solicitation must be posted on the Electronic State Business Daily (ESBD) for no less than fourteen (14) days.

If the complete package cannot be posted, then the agency must post a notice including the solicitation number, description, and how to obtain the full package for no less than twenty one (21) days.

Emergency procurements may be posted for less than fourteen (14) days.

During the solicitation period all communication with bidders must pass through the agency's designated point of contact. This helps ensure that all bidders receive the same information and interpretations of the solicitation to maintain a level playing field for competition.

Questions relating to the solicitation should be in writing. The answers should be collected in a Question & Answer document and posted on the ESBD page with the rest of the solicitation. Questions relating to minor procedural points may be addressed individually. Questions that relate to the significance of specifications, establish points relating to evaluation, elaborate on details of requirements, or otherwise interpret key points of the solicitation must be a part of the Q&A document and must be shared among all bidders.

VIII. EVALUATION & AWARD

Evaluations are to be conducted according to a pre-determined scoring system. The scoring system should reflect what the agency has determined is the best value for the particular needs. By making the scoring system clear in the solicitation, the agency allows bidders to respond to the best value needs of the agency.

Responses must have all required elements (signed proposal, completed HUB subcontracting plan, etc. and must meet all minimum requirements to be considered responsive. Late or unsigned bids are not accepted.

Pricing should be separated from proposals and evaluated by purchasing. The evaluation team should evaluate elements other than cost. Evaluations are to be scored independently and each proposal should be evaluated on its individual merits in respect to the requirements of the solicitation. Evaluators may consult to clarify the intent of specification, otherwise they not to share details of their evaluations until completed.

Contracts are to be awarded on the basis of best value under the established scoring process. The agency may enter into negotiations with vendors regarding price only in certain circumstances. Negotiations are prohibited in the case of IFBs unless there is only a single bidder. Negotiations are permitted in the case of RFOs or RFPs. Notification of awards are to be posted on the ESBD.

A purchase order or notice of award incorporating the specifications of the initial solicitation, terms and conditions, and any negotiated details will be issued to the awarded vendor and will serve as the basis of the contract.

IX. CONTRACT MANAGEMENT

Major contracts should have a contract manager assigned to them. The contract manager should be an individual involved in the planning, drafting, and issuance of the initial solicitation. The contract manager may expect to act as the voice of the contract, ensuring that all parties adhere to the mutually agreed upon terms. Duties of a contract manager may include:

- Planning
- Developing the SOW
- Acting as point of contact
- Performance monitoring
- Acceptance of deliverables
- Authorizing payment
- Budget monitoring
- Change management
- Dispute resolution
- Implementation of corrective actions, including termination
- Maintenance of records
- Contract closeout

X. CHANGE, DISPUTE & TERMINATION

Changes to contracts are to be made in writing. Changes must be within the scope of the initial contract. This is vital since changes outside of the scope do not form part of the bidding process and are not subject to fair competition. Changes must be by mutual agreement, unless there is specific wording in the contract that gives the agency authority to act unilaterally.

In the event of a dispute, the contract manager should take appropriate steps to resolve the matter and prevent escalation. Initial steps are:

- Identify the problem.
- Research the issue, obtaining relevant details from all parties.
- Evaluate, reviewing the facts in regard to the relevant terms of the contract.

Termination is the cancellation of a contract, relieving parties of further unperformed actions. Contracts should include a clause allowing termination for convenience. Termination for convenience places no fault, and is exercised at the sole discretion of the agency. Termination for default is the option of last resort in cases of non-performance. Events leading to the decision to terminate must be carefully documented. The agency must offer all reasonable opportunities for the contract to meet their obligations. The agency must also assess the availability of funds, the timeline, and sources for alternate goods and services to meet agency needs in place of the terminated contract.

XI. CONTRACT CLOSE OUT

When a contract is completed the contract manager must ensure the contract file has the following items:

- Documentation that all deliverables have been received.
- All performance measures completed.
- All contract disputes are resolved.
- Final invoice is received and payment made.
- Vendor performance reported.

XII. FURTHER INFORMATION

For more detailed information on best practices for contract management and state purchasing policies, see the State of Texas Contract Management Guide and the State of Texas Procurement Manual.

<http://comptroller.texas.gov/procurement/pub/contractguide/>

<http://comptroller.texas.gov/procurement/pub/manual/>

RISK ASSESSMENT MATRIX

The RAM should be completed for each new solicitation, however risk should continue to be assessed on an on-going basis throughout the contract period. A new RAM should be completed when risk conditions undergo a substantial change (e.g., contractor's management or ownership changes). Contract management and monitoring activities should be adjusted to focus on the riskiest contractors during the entire contract period.

Score 1 point for low risk, 2 for moderate, and 3 for high. If the category of risk factor is not relevant, score a zero.

	RISK FACTOR	RISK LEVEL-LOW	RISK LEVEL-MEDIUM	RISK LEVEL-HIGH	NOTES	SCORE
1	Type of contract	Interagency, Term contract, DIR	Solicitation less than \$25K	RFP or IFB over \$25K, Proprietary		
2	Payment type	Fixed price	Rate or fee for services	Cost reimbursement		
3	Total dollar amount	Less than \$5K spot, less than \$25K contract	\$5K to \$25 delegated, \$25K to \$100K contract	\$25K or more delegated, \$100K or more contract		
4	Essential agency function	Not critical to agency mission	Moderately essential to agency mission	Critical to agency mission		
5	Public health impact	No impact on public health	Potential impact on public health	Direct impact on public health		
6	Stability & experience of contractor key management staff	No recent change and significant experience	Either a recent change or a lack of experience	Recent change and a lack of experience		
7	Subcontracting	No subcontractor involvement	Subcontractors account for less than 50% of work	Subcontractors account for 50% or more of work		
8	Compliance history	No issues of non-compliance	Moderate instances of non-compliance, or never worked with agency before	Substantial findings of non-compliance		
9	Past programmatic performance	Met or exceeded all output and outcome measures	Met 75% or more of output & outcome measures	Met less than 75% of output & outcome measures		
10	Audit outcomes	No audit required or no audit issues	Moderate audit issues	Substantial audit issues		

11	Number of years in business	More than 5 years	1 to 5 years	Less than 1 year		
12	Performance measures	Contract contains multiple defined and measurable performance measures	Contract contains at least one defined performance measure	No performance measures included in contract		
13	Deliverables	Contract contains deliverables that are clearly defined	Contract contains at least one deliverable	No deliverables included in contract		
14	Financial reports	Greater than \$1M, substantial financial reports required	Greater than \$1M, minimal financial reports required	Greater than \$1M, no financial reports required		
					Total Score:	
					Low risk:	0-16
					Moderate risk:	17-30
					High risk:	31-42

Risk factors are to a large degree subjective. Scoring of this matrix is not meant to be definitive. Additional risk factors may be listed below. Risk may be avoided, accepted, or mitigated. The agency response to the apparent risk factors may be outlined below.

Summary of risk assessment:

Additional risks:

Risk mitigation plan: