

VENDOR COMMUNICATION

Communication between public procurement professionals and vendors is imperative and encouraged. If used effectively, communication with industry representatives is a vital resource for public procurement professionals. Steps must be taken, however, to maintain a fair opportunity to compete for all vendors and avoid any appearance of favoritism. Agency personnel must be mindful that one-on-one communications with vendors occurring prior to contract award are subject to enhanced scrutiny due to the importance of maintaining a “level playing field” among all eligible vendors during competitive procurements. If there is any doubt about appropriate communications with vendors, consult with agency legal counsel.

Fact Gathering. Texas law authorizes the exchange of information between an agency and a vendor related to future solicitations. Vendors are often experts in their respective fields and can offer insight on potential purchases, such as current trends, industry practices, and available products or solutions. The procurement team should develop a plan to obtain any needed vendor input, which may include issuance of a Request for Information (RFI), attendance at industry days, or directly contacting industry leaders or vendors listed under the applicable code on the CMBL. The result of these interactions may lead to increased competition, a more detailed and up-to-date description of technical requirements or statement of work, and ultimately better value for the State. However, Contract Developers must never tailor specifications to benefit a particular vendor, as this limits competition. Care should be taken to avoid the appearance of favoritism toward certain vendors in the fact-gathering process and when possible, agencies should avoid consulting exclusively with the incumbents or a small number of vendors, which could give the appearance of favoritism.

Drafting the Solicitation. When all fact gathering is completed and the actual solicitation-drafting process has begun, vendor communication must cease to ensure the integrity of the procurement. Contract Developers may use relevant information gathered from the vendor community when drafting specifications. Finally, if a vendor is compensated by an agency for its assistance in drafting specifications or scope of work for a solicitation, the vendor will not be eligible to bid on the resulting contract.

During the Solicitation. Once the solicitation is posted, communications between procurement professionals and vendors should follow the procedure outlined in the solicitation. This could include designating specific agency points of contact for receipt of vendor inquiries, a public question and answer process (Q&A process), and pre-bid/offer/proposal conferences. When issuing a solicitation, it is always encouraged that an agency include a Q&A process, as that will be the only time where an agency can benefit from potential vendors’ input on the solicitation and through the addendum process make any necessary corrections to the solicitation. Failure to allow for vendor input during a Q&A process may result in higher costs to the agency if the specifications are unclear.

If any information relevant to the procurement such as evaluation methods or projected ordering volumes is provided to any vendor, that information should be released to the public without delay. This includes information shared at conferences attended by some but not all potential vendors.

If an agency offers assistance with HUB plans, such assistance should be made available from a designated person, preferably the agency's HUB coordinator, who will not evaluate responses, and it should be offered and provided to all vendors equally. Agency policy may allow assistance with HUB plans during the entire posting period. To ensure a level playing field, any contact between vendors and end users or evaluators should be avoided during the advertisement period, and if a vendor fails to obey by the guidelines regarding vendor communication posted in the agency solicitation, the vendor's proposal may be subject to disqualification.

Evaluation and Negotiation. Allowable vendor-procurement professional interactions between the response due date and contract award include:

- clarification of a respondent's ability to meet the solicitation requirements;
- negotiations, as appropriate based on the procurement method, including request for best and final offer; and
- the exchange of information as necessary to facilitate a potential award.

Evaluation and vendor selection should be based on response documents formally submitted by each vendor, not other communications. If one vendor is provided an opportunity to clarify its response, similarly situated vendors should receive the same opportunity.