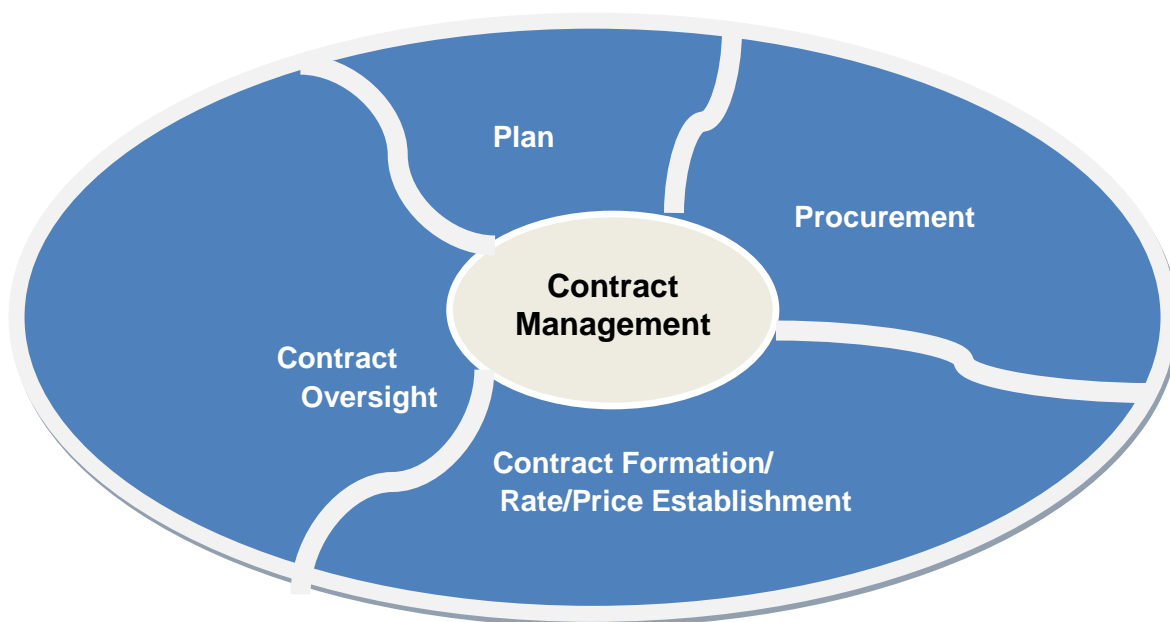


Planning

The first step in contract management is planning. Planning is crucial to the successful outcome of any procurement. With proper planning, agencies are more likely to successfully achieve their contracting objectives. Planning assists agencies in determining need, preparing the statement of work, choosing the appropriate procurement type, solicitation, negotiation, drafting the contract and contractor monitoring and oversight. These steps are complex and there are many instances where errors can be introduced into the process. Proper planning will reduce or eliminate the risk of error.

During the planning phase each of the following elements of contract management must be considered:



Plan – Identify contracting objectives and contracting strategy.

Procurement – Fairly and objectively select the most qualified contractors.

Contract Formation/Rate/Price Establishment – Ensure the contract contains provisions that hold the contractor accountable for producing desired results, including all relevant terms and conditions as well as establish processes that are cost-effective and aligned with the cost of providing the goods and services.

Contract Oversight – Monitor and enforce the terms of the contract.

The level of risk associated with each of these elements varies depending on the type of business relationship. For example, the nature and extent of contract monitoring will vary considerably between fee for service and cost reimbursement types of relationships.

General Planning

General Planning includes several areas which assist in getting the project started – such as development of the contract management team, assessing risk, developing a communication plan, determining the procurement method, planning for the content of the procurement, and determining a cost estimate.

Contract Management

Each contract management initiative should include an executive sponsor, a contract manager, purchasing department staff and program staff to assist in the contract management process. The extent and degree of executive sponsorship and participation should be directly related to the level of risk associated with the procurement. The contract manager should be experienced with the proposed type and size of procurement. Certified purchasers are not contract managers in all cases. However, certified purchasers should be familiar with this Guide. The purchasing department should review all contracts to ensure that purchasing statutes are followed and that the procurement is handled in a fair and competitive environment. The program staff will provide input as to the technical requirements and serve as the subject matter experts for the procurement.

There may be instances where an agency does not have the necessary technical expertise on staff for developing a solicitation. For example, a contract for building construction would need the expertise of a licensed architect and a licensed engineer when preparing plans and specifications for a building. In these instances, if the agency does not have a licensed architect and engineer on staff, they would contract out for that expertise.

Risk Assessment

Risks are inherent in all the stages of the procurement process. Limited resources require the use of risk assessment because there is not sufficient time to oversee all aspects of a contract. An effective risk assessment model will help focus monitoring resources on contractors with the highest risk of noncompliance. First, identify risk factors. Risk factors are indicators that assess the risk of the contract or project objectives not being achieved. General risk factors may include, but are not limited to:

- The contractor's past performance (and past performance of similar contractors);
- Turnover in key personnel;
- The dollar amount of the contract;
- Factors from desk reviews, such as the variance between expected and actual performance;
- Significant problems with payment requests;
- Results of previous monitoring visits;
- Results of monitoring visits completed by other agencies or divisions within the same agency that contract with the same contractor;
- The length of time since the last monitoring visit; and

- How experienced the contractor is with the type of work to be performed.

Once the risk factors are identified, assign weights to each factor. Weights describe how significant each factor is in identifying the contractors who should be monitored. However, weights can also be designed to ensure statutory or policy requirements. For example, if the statute requires a site visit every three years, the assigned weight would be indicative of the period since the last site visit.

Next, rate each contractor on the risk elements. Consider using a three point scale, where 3 is high risk, 2 is medium risk and 1 is low risk.

Below is a sample risk assessment. The assumptions for this sample risk assessment include:

- The agency has contracts with many vendors for providing the same service. Only three contractors are rated in this example but there are many contractors involved.
- The three risk elements used are dollars, past performance, and experience.
 - Dollars: 40% of the contractors receive less than \$100,000 from the agency per year. 50% receive between \$100,000 and \$250,000. 10% receive more than \$250,000.
 - Experience:
 - High Risk – the vendor has never done this type of work before.
 - Medium Risk – the vendor has contracted with the state before but not for this type of work.
 - Low Risk – the vendor has previously contracted with the state for the same type of work.
 - Past Performance: If the contractor has at least one significant finding from a prior monitoring or three less significant findings the contractor is considered high risk. Agencies should define their own past performance risk factors and weights.

EXAMPLE – RISK ASSESSMENT ANALYSIS

Contractor	Dollars			Experience			Past Performance			Total Risk
	Amount	Risk	Risk x Weight (0.2)	Results	Risk	Risk x Weight (0.5)	Results	Risk	Risk x Weight (0.3)	
#1	\$300K	3	.6	Held previous contract with state	1	.5	3 minor findings	2	.6	.6 + .5 + .6 = 1.7
#2	\$75K	1	.2	New to type of work	3	1.5	New – no findings	1	.3	.2 + 1.5 + .3 = 2.0
#3	\$125K	2	.4	Used before – but not for this type of work	2	1.0	Previous year finding regarding safety	3	.9	.4 + 1.0 + .9 = 2.3

In this example Contractor #3 has the highest risk, followed by Contractor #2 and #1, respectively. Typically, there will be many different risk elements. The above is a simple example shown for illustration purposes only.

Accordingly, the contractors with the highest risk level must be monitored more closely. In the above example, Contractor #3 has been used before and there was only one finding in regard to safety. This is the key area that requires close monitoring during the contract. The example can also be used for single contractors to focus on specific areas of risk within a contract and to assist agencies in determining which areas to monitor.

It is important to note that the risk assessment is a dynamic process that should be updated regularly to reflect the results of monitoring visits, reviews of payment vouchers, desk reviews, etc. For example, if a contractor has fallen significantly behind schedule in delivering services to the targeted population, the risk assessment should be updated to indicate the elevated risk and this impacts how the contract is monitored in the future. Likewise, if a contractor is well ahead of schedule in delivering services to the targeted population, the risk assessment should be updated to indicate the lower level of risk.

Risk Management

Risk management process includes: 1) risk identification, 2) risk analysis, 3) risk evaluation, 4) risk treatment and contingency plan and 5) risk monitoring. Contract management risks are as varied as are the types of contracts. Risk categories common to contract management include product risk, process risk, financial risk and schedule risk.

There is not an objective or mathematical formula that can be used to identify or quantify the risk imposed by a particular contract. Risk determination is based on subjective experience. Several factors that may be useful in identifying the level of risk may include:

- The complexity and subject matter of the procurement;
- The dollar amount of the procurement, and whether the procurement will result in a major contract;
- The anticipated payment methodology;
- The experience the agency staff have with the type of procurement;
- Whether the results of the procurement will impact the public or only impact the agency;
- Time constraints or the expected duration of the procurement; and
- The type, availability or experience of staff resources required to implement the objectives of the procurement.

The table below provides examples of the various degrees of risks associated within specific procurements:

CONTRACT FACTOR	LOW RISK	HIGH RISK
COMPLEXITY	Film Processing Services	Service contract for software development program.
DOLLAR AMOUNT	\$500	\$1,000,000
PAYMENT METHODOLOGY	Firm Fixed Price	Cost plus % of savings.
EXPERIENCE OF AGENCY STAFF	Office Supplies	Outsourcing of Information Technology Functions.

CONTRACT FACTOR	LOW RISK	HIGH RISK
IMPACT TO PUBLIC OR AGENCY	Janitorial Services	Outsourcing of Foster Care Management Services.
TIME CONSTRAINTS OR CONTRACT DURATION	14 day delivery of paper	Implementation of new program to meet legislative mandate.

A preliminary risk assessment should be conducted to make an initial determination about the level, type and amount of management, oversight and resources required to plan and implement the contract from beginning to end. Simply put, as the risk associated with a particular procurement increases, the level and degree of executive management's sponsorship, participation and oversight should be increased by a corresponding level.

A high risk contract such as a cost-plus percentage of profit arrangement, an outsourcing project or software development procurements should involve significant executive management sponsorship, participation and oversight. A low risk contract, such as routine purchases of goods or services does not typically require the participation or sponsorship of agency executive management.

Risk assessment is an ongoing process. Risk should be reviewed and re-evaluated by the contract manager on a continual basis until the contract is fully performed and final payment is made.

Communications Plan

Agencies should develop a plan to manage and control internal and external communication. After identifying internal and external stakeholders (executive management, oversight entities, etc.), determine the type, content and frequency for reporting status. Develop and report against a timetable with key decision points and milestones to communicate status. Determine who, what, when, where and how information will be communicated to the contractors regarding the potential procurement opportunity.

Determining the Procurement Method

At this point it is important to determine the procurement method as it will be a major factor in the planning process. For example, the procurement lead time for an Invitation for Bid and a Request for Proposal differ significantly.

Invitation for Bids (IFB) - The IFB uses the competitive sealed bid method. This method is used when the requirements are clearly defined, negotiations are not necessary and price is the major determining factor for selection. Best value considerations can also be used with the IFB method. Invitation for Bids is covered in the Procurement Manual.

Request for Information (RFI) - Requests for Information are used primarily as a planning tool. The RFI is an optional method that may be used to gather information in order to prepare a complete and accurate solicitation document when an agency does not have the necessary information to prepare a complete and

accurate solicitation document. RFI's are used to identify industry standards, best practices, potential performance measures, and cost or price structures or to generally ascertain the level of interest of prospective respondents. A preliminary solicitation document which provides an initial description of the program objectives and specifications usually accompanies an RFI for review by potential respondents. Agencies may use the information derived from the responses to finalize their solicitation document. Agencies are not required to incorporate any or all of the comments or suggestions made by the contractor, but the hope is that the contractor will provide useful information in the RFP development process.

Request for Offer (RFO) – Generally used for IT Commodity Purchases exempt from the DIR IT Commodity Program. The process is generally the same as the RFP process. Request for Offer purchases include the purchase of automated information systems and are covered under Texas Administrative Code, Title 34, and Section 20.391.

Request for Proposal (RFP) – Used when competitive sealed bidding is not practicable or advantageous. Generally this is when factors other than price are to be considered or when objective criteria cannot be defined. One of the key differences between an IFB and an RFP is that negotiations are allowed in an RFP. Discussions are allowed with the respondents and best and final offers are solicited. Unless otherwise exempted, agencies must submit their RFPs to CPA for review prior to solicitation.

Request for Qualifications (RFQ) – Generally used for Professional Services wherein the respondents are evaluated based solely on their qualifications. Price is not considered until after selection is made by the agency based on qualifications. Professional Services are covered under Texas Government Code, Section 2254 at: <http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>

The following table is provided to assist in making the appropriate choice in selection of a procurement method. As a reminder, agencies should first refer to any applicable statutory requirements which may direct them to use a specific procurement method.

Procurement Methods

Procurement Method	Use When	Advantages	Disadvantages
Competitive Bids (Invitation for Bids)	<p>Lots of competition exists.</p> <p>The product or service is available from more than one source.</p>	<p>Award process is simpler.</p> <p>Award is made to the lowest responsive, responsible bidder providing the best value to the State.</p>	<p>Defined specifications may be difficult to develop.</p> <p>Does not encourage innovative solutions.</p>

Procurement Method	Use When	Advantages	Disadvantages
Competitive Proposals (Request for Proposals, Request for Offer)	<p>When factors other than price are evaluated.</p> <p>When negotiations are desired.</p> <p>Vendor is expected to provide innovative ideas.</p>	<p>Allows factors other than price to be considered.</p> <p>Allows for customized proposals suggesting different approaches to the same business need.</p> <p>Allows for negotiations in order to obtain the best value for the state.</p>	<p>Lead times for procurement are much greater.</p> <p>Evaluations are more complex and subjective.</p>
Request for Information	<p>There is insufficient information to write specifications for any procurement method.</p>	<p>Provides information to prepare a complete bid or proposal document.</p> <p>Allows the business community to have input into the agency's solicitation document based on current industry practices and market factors.</p> <p>Informs agency of any potential problems early in the procurement.</p>	
Request for Qualifications [This method is usually required by statute (e.g. Professional Services)]	<p>Selection is made solely on the skills and qualifications of the contractor. Price is not a factor until after a vendor is selected.</p>	<p>Emphasizes the competency of the proposed contractors.</p>	<p>Contractor is selected before price is negotiated.</p>

Exemptions

Some purchases may be exempt from competitive bidding. Some examples are provided below. Additionally, agencies may be exempt from CPA authority based on their own enabling legislation. For example, the Texas Department of Transportation's enabling legislation exempts highway construction from CPA oversight.

- **Emergency purchases** Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. Agencies may have specific rules or policies pertaining to emergency purchases. See the State of Texas Procurement Manual for more information on Emergency Purchases (<http://www.cpa.state.tx.us/procurement/pub/manual/2-18.pdf>)
- **Proprietary Purchases** Proprietary purchases are required to comply with Texas Government Code, Section 2155.083; Electronic State Business Daily posting requirements for procurements estimated to exceed \$25,000 in value. Additionally, a product or service is proprietary if it has a distinctive feature or characteristic that is not shared or provided by competing companies or similar products or services. When the specification requirement limits consideration to one manufacturer, one product, or one service provider, a written justification must be provided and is subject to review by CPA. Proprietary purchases should be placed on CPA's *Electronic State Business Daily*; this provides transparency to the process and gives the entire vendor community the ability to view the specifications and provide de facto agreement to its proprietary nature by not responding. See the State of Texas Procurement Manual for more information on Proprietary Purchases (<http://www.cpa.state.tx.us/procurement/pub/manual/2-21.pdf>)
- **Open Enrollment Contracts** Potential contractors apply with an agency to contract through an open enrollment process. Vendor eligibility is usually based on previously determined criteria established by state or federal statute or agency rules. The enrollment process is open to new applicants throughout the contract term.

Planning for Contract Content

Clearly identifying general contracting objectives, assumptions, and constraints is an important step in the contracting process. This step may seem obvious, but when a contract fails, it often fails because the expectations were not met and there was not a true meeting of the minds. A clear understanding of the contracting objectives is essential to success. Typically a contract will be part of a larger organizational project. Agencies must carefully consider how the objectives, assumptions and constraints integrate into the larger organizational project. Identify and document potential integration risks so that a strategy for mitigating or managing those risks will be developed later.

Needs Assessment

The purpose of the needs assessment is to ensure the contracting team plans for the correct contracting objective. A clear definition of the contracting objectives and purpose to be accomplished by the contract is intended to assist the team later in developing the statement of work, solicitation, negotiation and contracting documents, and in verifying the performance of a contractor. This assessment should incorporate the initial needs assessment conducted by the agency when the determination was made to contract out for the service instead of performing it in-house.

If the contracting purpose implements, changes or supports an agency's statutory duties, it is useful to identify existing statutory requirements, agency rules, policies and business processes that will be impacted by the

contract. If business processes or practices are not documented, it is often useful to document the business processes. Once the legal requirements and business processes are clearly identified the agency can assess how these duties or processes will be changed or impacted. Document any concerns or risks identified by the assessment so that the changes and risks can be managed or mitigated in the contract document.

The success of many contracts is dependent upon how well business requirements are documented, communicated and understood by the contractor community. Do not assume that the contractor community understands the business of your agency. Detailed agency business practices are frequently incorporated into the statement of work in a contract, so agency staff input and cooperation is critical when planning and developing a statement of work and during acceptance testing.

Well Formed Contracting Objectives and Purpose

A well formed statement of the contracting objectives should provide a general understanding of what will be accomplished by a contractor. Well formed objectives will help guide and keep the contracting process focused and on track.

Technique

Defining the contracting objectives, assumptions, and constraints may sound simple and straightforward, but this definition process can be quite complex. Agencies may find that individuals on the contracting team hold different views as to the procurement's objectives. The following questions are intended to assist the team in clarifying and harmonizing potential divergent objectives and interests. Answering the following three questions will aid agencies in defining and refining the contracting objective:

1. What does your agency specifically need?
2. What will fulfilling this need do for your agency?
3. How will your agency know when the need has been met?

Each procurement is different; therefore the description of the objective, assumptions and constraints will vary. A good measure of the quality of the statement of work is whether the contracting objectives, assumptions and constraints make sense. Are the objectives, assumptions and constraints described too broadly or too narrowly? Could the reader answer the three questions?

Research

Contact and interview people within the agency and other agencies who have developed solicitations, drafted contracts and engaged in contractor oversight similar to the one being planned. Document the strengths, weaknesses, problems and the lessons learned in the interviews. Use the internet to search for copies of solicitation documents, contracts and oversight documents or products used by others. Review websites for useful information. Check with universities, trade associations and professional organizations to identify industry practices, methods, standards and rules that will deliver the goods or perform the services. Another approach to identifying information regarding the availability, features or measures for the purchase of goods or services is to publish a Request for Information (RFI). Potential contractors may respond to the RFI with information that will assist the agency during the contract management process.

While researching, agencies may wish to contact potential contractors to discuss the procurement. This is an acceptable practice as long as the agency solicits information from more than one contractor and advises the contractor up front that the agency's interest at this point is strictly for research purposes and that any formal requests for pricing or other information will be made through the formal competitive sealed bid or competitive sealed proposal process.

Business Model

A business model should represent a high level view of how the intended business transaction is expected to work. The business model may include plans relating to a contract strategy, contract management, and contractor performance monitoring approach, as well as financial assumptions and limitations.

Cost Estimates

During the planning stage of the procurement, it is necessary to develop an estimated cost of the procurement. The cost estimate should assist agencies in determining which type of procurement method to use. Even if limited by budget restraints, an estimated cost will provide an idea of the range of services that the agency can include in the statement of work.

It is recommended that agencies contact someone within the agency who has knowledge in the subject area to assist with the cost estimate. However, if unable to find anyone with knowledge in the subject area, agencies may choose to contact several contractors to obtain pricing information. If contractors are contacted, be sure to advise them that you are obtaining price estimates for information purposes only and that the estimate is not a formal solicitation. In obtaining price estimates from potential bidders, care should be taken to avoid giving a potential bidder a competitive advantage.

Procurement Lead Time

In order to ensure that contracts are processed prior to their effective dates, the table below is provided to assist agencies in the planning process.

TASK	SUGGESTED LEAD TIME FROM CONTRACT START DATE	EXAMPLE
Begin Preparation of Solicitation Document – Program Staff works with agency Purchasing Department to develop scope of work and contract language.	180 days	March 1
Submit final solicitation with required approvals to the Purchasing Department and CPA (when required).	150 days	April 1
Advertise and Issue Solicitation.	120 days	May 1
Receipt of Responses.	90 days	June 1

Evaluation of Responses.	60 days	July 1
Contract Negotiation (if allowed) and Formation.	30 days	August 1
Contract Execution – All signatures are obtained.	15-60 days	August 15
Performance Begins (effective date).	0 days	September 1

The lead times above are suggestions only and may vary depending on the specific requirements of your agency and the complexity of the procurement. Less complex procurements may be accomplished in less time, while more complex procurements may require more time. Contact your agency Purchasing Department to ascertain their lead time requirements. Examples of tasks that may lessen or increase the lead time include, but are not limited to:

- Preparation of the solicitation document. This is where the planning and research discussed earlier pays off. Some program staff are more adept at writing scopes of work and proposal documents. This will reduce the time required to prepare the solicitation document. If possible, the Purchasing Department should provide program staff with templates to assist in preparation of solicitation documents. A sample RFP template is included in this Guide. However, agencies should modify the template to meet their own agency's needs and requirements.
- The time required for the Purchasing Department to finalize the solicitation document can vary depending on how well the scope of work is written by the program staff. The Purchasing Department is responsible for ensuring the document is complete, allows for competition, and follows all applicable statutes, rules, and procedures.
- A **30 day** solicitation period is typical for most RFPs. Formal IFB's usually require **14 or 21 days**, depending on any applicable ESD requirements. However, if the procurement is very complex and requires respondents to submit significant documentation and/or complex pricing, additional time for the solicitation period should be allowed. In addition, if the scope of work is unusual or complex, there may be many questions – in which case an RFP is recommended.
- Evaluation of the proposals may take more or less time, depending on the size of the evaluation team and the complexity of the evaluation. The evaluation period could also increase if oral presentations, discussions or best and final offers are utilized.
- Contract Negotiation and Formation timeframes may vary depending on the complexity of the procurement.
- Contract Execution – This timeframe may also differ significantly between a purchase order and a contract. Depending on the signature requirements of the agency and the contractor, the contract execution lead time may need to be adjusted.