

Technology Contracts

The purpose of the Guide is to offer state agency contract managers recommendations on improving existing contract management processes and practices. Many of the major information resources (IR) projects initiated within state government involve procurement of technology-related goods and/or services. Technology-based procurement projects present a unique level of complexity that require specific contract management practices, processes, and strategies.

Technology Addendum Relation to the Guide

The Technology Addendum supplements and aligns with the Guide. The Technology Addendum content, as developed and maintained by the Department of Information Resources (DIR), is included in the Guide to convey information specific to technology-based procurement projects. Therefore, all information included in the Guide as overarching practices, processes, and strategies for contract management apply to technology contracts. Definition of terminology, ethical standards, legal guidance, and use of the Texas Procurement Manual, also apply.

The major distinctions between information provided in the Guide and the Technology Addendum are:

- (1) The Technology Addendum applies to all major IR projects as defined in Texas Government Code, Section 2054.003 (10):
any IR technology project identified in a state agency's biennial operating plan whose development costs exceed \$1 million and that:
 - *requires one year or longer to reach operations status;*
 - *involves more than one state agency; or*
 - *substantially alters work methods of state agency personnel or the delivery of services to clients;**and any IR technology project designated by the legislature in the General Appropriations Act as a major IR project*

Contracts established for procurement of technology-related goods and/or services are included as part of thresholds for a major IR project.

- (2) The Guide applies to and defines major contracts as contracts that have a value of at least one million dollars during the original term of the contract, not including any renewal periods. The Technology Addendum applies to certain major contracts as required by Texas Government Code, Section 2054.301(b), which include contracts that have a value of at least one million dollars under which a vendor will perform or manage an outsourced function or process. The term "outsourced function or process" relates to a contract for services where to perform the services, the vendor must develop or acquire IR technologies (as that term is defined in 2054.003 (8)) where the IR technologies will become a part of the agency's IR technologies or where the IR technologies are the principal deliverable(s) under the contract. The term "outsourced function or process" excludes a contract where the IR technologies deliverable(s) will not become a part of the agency's IR technologies or where the IR technologies are not the principal deliverable(s) under the contract.
- (3) The Guide offers, in general, recommendations on improving existing contract management processes and practices. The Technology Addendum conveys required processes and practices for development and management of solicitations and contracts for technology-based procurement projects.

(4) The Guide offers recommendations to state agency contract managers. The Technology Addendum conveys required processes and practices to contract managers, project managers, technology staff, purchasing staff, and all other staff impacted and involved with delivery of a technology-based procurement project.

Exclusions

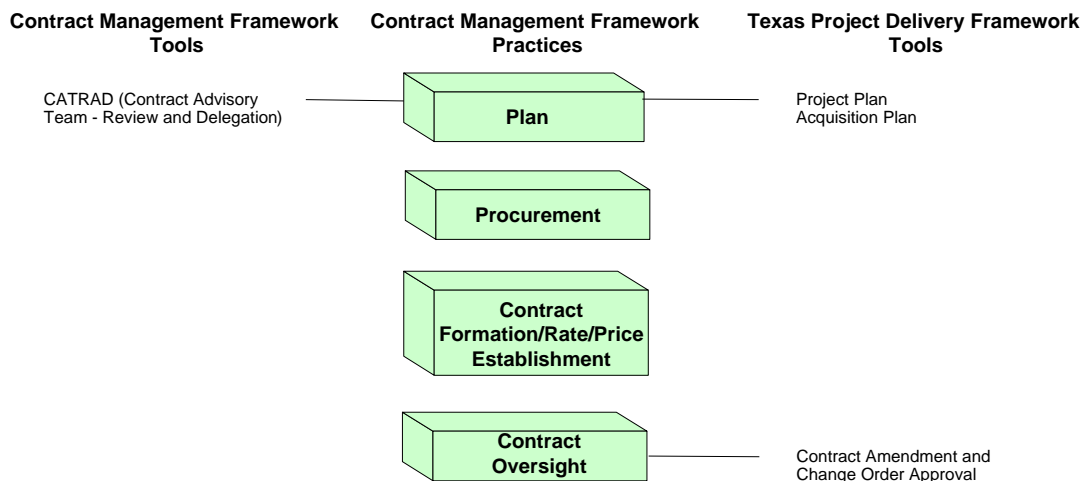
The Technology Addendum excludes addressing technology commodity item purchases available through the DIR Information and Communications Technology (ICT) Cooperative Contract Program. Each agency, excluding institutions of higher education, must purchase technology commodity items in accordance with a contract maintained by DIR. Refer to the DIR website for additional information regarding technology commodity item purchases.

The Technology Addendum excludes addressing telecommunications purchases available through DIR TEX-AN (TEXas Agency Network). TEX-AN is both the centralized telecommunications system for the state and a family of requirements contracts. Refer to the DIR website for additional information regarding TEX-AN contracts.

Texas Project Delivery Framework

The Texas Project Delivery Framework (Framework) establishes a consistent, statewide method for technology project selection, control, and evaluation based on alignment with business goals and objectives. The Framework is required for major IR projects as defined in item (1) above and for certain major contracts as described in item (2) above. If necessary, agencies may contact DIR by emailing projectdelivery@dir.texas.gov to request consultation on applicability of Framework requirements to a specific major contract. Refer to the DIR website for detailed information regarding Framework guidance and tools for technology-based procurement projects.

One of the Framework review gates is Solicitation and Contracting. The Solicitation and Contracting Review Gate includes development and management of technology-based solicitations and contracts. The Solicitation and Contracting Review Gate activities and the Project Planning Review Gate activities work in conjunction with the practices described in the Guide. Although use of other Framework tools applies to technology-based procurement projects, the following diagram specifically maps practices described in the Guide to Framework contract-related tools.



NOTE: Other non-contract related Framework tools do apply to technology procurement projects.

A Project Plan (Framework tool) must be finalized, approved at the agency level, and submitted to the Quality Assurance Team (QAT) prior to spending more than 10 percent of the funds allocated to a project and/or prior to issuance of a vendor solicitation for the project. Agencies must use the Project Plan to document planning, management, and control activities that support the project from start-up through closure.

The Acquisition Plan (Framework tool) information is a subset of the Project Plan information and describes the activities to acquire goods and/or services from outside the organization. The Acquisition Plan addresses activities for solicitation planning, solicitation development and posting, source selection, contract award, contract management, and contract closeout. As a subset of project management activities defined in the Project Plan, managing a technology-based procurement project relies on activities (e.g., risk management, change control, project monitoring, performance management) defined in the Project Planning Review Gate.

An Acquisition Plan must be finalized, approved at the agency level, and submitted to the QAT prior to issuance of a solicitation for the project. The agency head must approve contract amendment and change orders if the amendment or change order changes the contract amount above 10 percent or significantly changes the contract completion date as determined by the QAT. The Contract Amendment and Change Order Approval (Framework tool) is used to approve funding for contract amendment and change orders.

As described in the Guide, the CATRAD (Contract Advisory Team – Review and Delegation) tool must be used to submit specific information to CPA before issuance of a solicitation that is anticipated to result in a contract with a value of one million dollars or more.

Special Procurement Considerations for Major IR Projects

A state agency must comply with special procurement standards and rules when acquiring certain IR technologies that do not involve purchasing through the DIR ICT Cooperative Contract Program.

First, if a major IR project involves the purchase of certain IR technologies, then the state agency must obtain an exemption from use of the ICT Cooperative Contracts. Please refer to 1 TAC Chapter 212 for a description of that process.

Second, a major IR project may involve acquisition through any lawful means, including but not limited to, purchase, lease or seat management of some or all of the below listed commodity categories, for which special procurement standards and rules apply.

Once an exemption is obtained and /or a state agency is engaged in procuring IR technologies without use of the ICT Cooperative Contracts, the state agency must comply with the following specific procurement rules:

- For acquisition of any electronic and information resources, as defined in 1 TAC Chapter 213, state agencies are required to comply with the State of Texas Electronic and Information Resources (EIR) accessibility standards, 1 TAC Chapter 213.
- For acquisition of computer equipment, state agencies must comply with 1 TAC Sections 217.10 and 217.11 related to the computer recycling programs offered by Vendors.
- When through the ownership of hardware by a state agency or management of state agency data by a Vendor, the hardware may retain state agency data and information. Upon disposition of owned hardware by the state agency and at the end of managed services performed by a Vendor, state agencies must comply with the security standards related to the secure erasure of agency data from such hardware. 1 TAC Section 202.28 establishes the security requirements related to erasure of state agency data.
- For acquisition of network hardware and/or network software, state agencies must comply with 1 TAC Section 217.12 related to vendor certification about vulnerability testing of such hardware and software.

A contract management best practice would be to incorporate these standards and rules into project deliverables for the related major IR project to ensure the selected Vendor and the related major IR project complies with all relevant special procurement standards and rules. Examples of project deliverables include the Project Plan, Acquisition Plan, and solicitation document.

Planning in Relation to Grants

For agencies planning to use grant funds to procure a good or service, the agency is required to follow state purchasing guidelines. In addition, agencies planning on using grant funds for procurement purchases, must also comply with any applicable grant requirements or special conditions imposed by the underlying grant award that is going to be used to fund the procurement.

This chapter will be focusing on an agency's planning process prior to its grant announcement. Agencies planning on making grant awards to other entities (not the procurement of goods or services) must follow UGMS (Uniform Grant Management Standards) prepared by the Governor's Office of Budget and Planning. In making the determination as to which situation is applicable, a state agency should consult with its legal counsel early in the planning process.

A state agency is often the recipient of a federal or other source of grant funds. In that instance, the state agency is the "grantee" of a grant. Likewise, a state agency, if given statutory authority to do so, may also be responsible for awarding grant funds to other entities such as other state agencies, local governments, non-profit organizations or private entities. In this situation, the state agency is the "grantor" and the other entities are the "grantees." Even in this situation, the state agency making the grant may, in the first instance, be a "grantee" in that the state agency itself has received a grant.

General Grant Announcement Planning

Prior to preparing a grant announcement, agencies making grant awards need to develop good internal control systems to ensure that grant funds are properly used and achieve intended results. These systems can serve as the basis for ensuring grants are awarded to eligible entities for intended purposes, and are managed appropriately. Internal control systems that are not adequately designed or followed make it difficult for the agency to determine whether funds are properly used.

Policies serve as guidelines for ensuring that a grant program includes provisions for holding the grantee accountable for properly using funds and achieving approved grant purposes within a defined grant scope.

Especially when new grant program is being developed, attention must be given to establishing grant goals, criteria applicants will need to satisfy, activities eligible for funding, and how funding decisions will be made.

The grant award may result from a competitive process or merely from the grantor agency making a pre-determined amount of funding available to grantees. If an agency is utilizing a competitive process, the mere denomination of its grant announcement as a Request for Proposals does not bring the competitive process within the procurement provisions of the Guide.

Grant Agreements

All grant agreements involve a contractual relationship. The form of the agreements for grants can be either a "contract" or other grant document such as "Statement of Grant Award", "Grantee's Acceptance Letter", and/or "Terms and Conditions". Each agency should confer with its legal counsel in developing its particular document.