

## Specification Types

### Specification Control

- the quality level of the product;
- the amount of completion;
- the suitability of the product or service for the job to be done; and
- the method of evaluation used in making an award and in determining the best value bid for the purchase.

Characteristics of an Effective Specification:

**SIMPLE:** Avoid unnecessary detail, but be complete enough to ensure that requirements will satisfy their intended purpose.

**CLEAR:** Use terminology that is understandable to the agency and bidders. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese type language and jargon whenever possible.

**ACCURATE:** Use units of measure that are compatible with industry standards. All quantities and packing requirements should be clearly identified.

**COMPETITIVE:** Identify at least two commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded “extras” that could reduce or eliminate competition and increase costs.

**FLEXIBLE:** Avoid totally inflexible specifications which prevent the acceptance of a bid that could offer greater performance for fewer dollars. Use approximate values such as dimensions, weight, speed, etc. (whenever possible) if they will satisfy the intended purpose. If approximate dimensions are used, it should be within a 10 percent rule of thumb unless otherwise stated in the IFB.

See Specifications (<http://www.window.state.tx.us/procurement/pub/manual/2-23.pdf>)

A specification is a description of a product or service a user seeks to procure, and is also a description of what a bidder must offer to be considered for an award. Specifications are the primary means of communication between an agency and a vendor.

This Guide will focus on two of the most common types: Performance Based Specifications and Design Specifications.

## Performance Based Specifications vs. Design Specifications

Performance based specifications focus on outcomes or results rather than process, and the required goods and services rather than how the goods and services are produced. Conversely, design specifications outline exactly how the contractor must perform the service or how the product is made. Performance based specifications allow respondents to bring their own expertise, creativity and resources to the bid process without restricting them to predetermined methods or detailed processes. This allows the respondents to provide the product or service at less cost and shifts some of the risk to the contractors. For example, if a state agency utilizes a design specification for a unit of laboratory equipment and the equipment does not work correctly, then the results may be the fault of the specification. However, if the agency wrote a performance based specification, the unit must operate properly in order to meet the performance standards.

For example, consider the purchase of media and advertising services:

**Performance Based Specification:** Contractor shall provide media services for Texas Tourism which shall increase the tourist dollars by a minimum of 3 percent in the next fiscal year. Visits by out of state tourists shall increase a minimum of 10 percent. These figures will be measured as reported by the Texas Chamber of Commerce.

**Design Specifications:** Contractor shall conduct at least seven (7) media campaigns for Texas Tourism during the fiscal year. Three of these campaigns must be directed to out of state tourists.

**Mixed Specifications:** Contractor shall provide media services for Texas Tourism which shall include a minimum of seven media campaigns during the fiscal year. Media services shall provide for a minimum increase of 3 percent in the next fiscal year as measured and reported by the Texas Chamber of Commerce.

As you can see, the performance based specification focuses on results, whereas the design specification focuses on resources. With design specifications, the contractor may provide all seven campaigns, but the desired result of increased tourist dollars and visits may or may not occur.

As with all performance measures, agencies must ensure that performance specifications are reasonable and measurable. Note that the specification clearly outlines how the results will be measured. While performance based contracts are sometime preferable, when using this type of specification the planning, expertise and contract management may be different than design specifications.

Design specifications are appropriate for simple purchases of goods such as paper, pens, furniture, and services such as temporary staff. Usually these purchases are accomplished by defining specific quantities and specifications for the goods or services, price per unit, as well as requirements for the time, place and manner for delivery and acceptance.

Incentives: Many agencies now include incentives in their contract language. Incentives are used for outstanding performance which exceeds the goals contained in the contract. For example, if state tourism

dollars increased by 5 percent, the contract language sets forth a pre-established monetary incentive for increases above the required 3 percent.

Performance based specifications are fashioned so that respondents are allowed maximum flexibility when satisfying the requirements of a solicitation whereas, design specifications limit flexibility. It is not always beneficial to use performance based specifications. Examples of when to use performance or design specifications are provided below:

- **New installation, entire system provided by one vendor.** A performance based specification should be used as it will allow the most economical solution to be applied since it is an entirely new system.
- **New installation, system provided by various suppliers.** In this case, the agency may need to use a design specification to ensure that all of the characteristics of the system will work together. For example, a project to bid out the HVAC controls, chillers, fire alarms, etc. will all need to work together.
- **Expansion of an existing installation.** A design specification would be required in this instance as the new equipment must connect and integrate with the existing system.

## **Organization of the Statement of Work**

One way of organizing the statement of work is to divide each of the general contracting objectives into logical parts. Contracts, like projects, are often divided into phases, such as planning, development, implementation and operation or planning, equipment, installation, testing, operation and maintenance. The specific phases should support the subject matter and purpose of the contract. Phases can be further divided into small components of work (segments) and deliverables can be defined within each segment.

## **Elements of a Deliverable**

Each deliverable in a solicitation should include the following elements:

1. A description of the work.
2. A standard for performance.
3. Test conditions, method or procedure to verify that the deliverable meets with the standard.
4. A method or process to monitor and/or ensure quality in the deliverable.
5. An acceptance process for each deliverable.
6. A compensation structure that is consistent with the type and value of work performed.
7. A contractual remedy, if appropriate.

The statement of work should provide a clear and thorough description of the goods or services to be provided. If appropriate, provide the relevant environment where the product/service will be used. In certain types of procurements, it may be critical to describe the existing business processes. If the existing business process will change as a result of the procurement, then also describe what the business process will be after the procurement objectives are completed. If agencies want the respondents to suggest new business processes, ensure that this information is included in the solicitation.

## **Contract Term**

A reasonable contract term compliant with all applicable law must be established prior to solicitation and must be included in the solicitation document. All contracts must have a specific ending date. Indefinite contracts are generally prohibited. As a general policy, it's recommended that the maximum time for contracts without reissuing a competitive solicitation be 4 years. This includes any renewal or extension periods. Individual business needs may dictate a different period and agencies should consult their legal counsel for advice on this matter early in the planning process.

Contracts must include a "funding out" clause. The guide provides two forms:

### **Long version**

All obligations of the [agency] and Customers are subject to the availability of legislative appropriations, and for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The respondent acknowledges that the ability of the [agency] and the Customers to make payments under the Contract is contingent upon the continued availability of funds. The Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the [agency] or Customers continual ability to make payments under the Contract is contingent upon the funding levels appropriated to the agency or Customer. The [agency] and the Customers will use all reasonable efforts to ensure that such funds are available. The Respondent agrees that if future levels of funding for the [agency] or a Customer are not sufficient to continue operations without any operational reductions, the [agency] or the Customer, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part or that appropriate state officials eliminated to agency or agency Customers. In the event of such termination, the [agency] or the Customer will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The [agency] and the Customer shall make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The [agency] or the Customer shall be liable for payments limited only to the portion of work the [agency] or the Customer authorized in writing and which the Respondent has completed, delivered to the [agency] or Customer, and which has been accepted by the [agency] or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

### **Short version**

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency

consolidations, or any other disruptions of current appropriations, provisions of the Termination Article shall apply.

In addition, state agencies are prohibited from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. See Excess Obligations.

<http://www.window.state.tx.us/procurement/pub/manual/2-24.pdf>

Additional information regarding contract terms are discussed in Chapter 6 – Contract Formation.