

# Open Market Purchases

## Introduction

An **open market** purchase is the purchase of a good or service made by soliciting from any available source.<sup>1</sup> The **open market purchase procedure** is the method for making an open market purchase. The open market purchase procedure is authorized by [Texas Government Codes 2155.062\(a\)\(3\)](#) and [2156.061](#). This section of the Procurement Manual provides instructions for how to administer the competition in an open market purchase. It does not dictate who administers the competitive process. To be certain your agency has been delegated authority to administer a given open market purchase, follow the instructions in Section 2.4, Selecting a Procurement Method.

The open market procedure always includes a competitive bidding process. The goals of the open market purchase procedure are to ensure a truly competitive purchase process and to provide an appropriate balance between administrative costs and potential savings.

## Open Market Blanket and Standing Purchase Orders

In addition to single-purchase POs (purchase orders), CPA or your agency may establish open market blanket POs and open market standing POs. Each of these types of PO may include a provision for renewal. Guidelines for each of these POs follow.

### **Open Market Blanket Purchase Orders**

An **open market blanket purchase order** is a purchase contract for a good or service for which your agency has a repetitive need on an "as-required" basis. The advantages of this type of order include avoiding large inventories and avoiding the administrative expense of processing frequent purchase orders. A disadvantage of this type of order is that purchase quantities are not guaranteed, which may not result in the best prices.

With an open market blanket PO, the vendor does not ship goods or perform services until your agency authorizes them to do so in writing, via a "call out." Establish a procedure for recording blanket order call outs to assist your agency in meeting order inspection requirements.<sup>2</sup> Purchase order call outs may only be used to purchase goods for the fiscal year to which they apply. For example, you may not purchase consumables for the next fiscal year using a blanket PO established for the current fiscal year. When establishing an open market blanket PO, include the following:

- The beginning and ending time period for the blanket order.
- A statement noting that all deliveries will be ordered on an "as required" basis.
- The estimated quantity.
- A statement limiting the maximum quantity that may be purchased.
- A statement that none of the quantities are guaranteed.

## **Open Market Standing Purchase Orders**

An **open market standing purchase order** is a purchase contract for a good or service for which your agency has a repetitive need and can predetermine purchase quantities and delivery times. Open market standing POs differ from open market blanket POs in that the goods are delivered on a predetermined schedule instead of on an as-needed basis. Open market standing POs differ from scheduled purchase contracts in that they are usually single-agency in scope and have a significantly smaller volume than scheduled purchase contracts. See Section 2.9, Scheduled Purchase Contracts, for more information.

## **Renewing Open Market Blanket and Standing Purchase Orders**

To renew an open market purchase order, the following conditions must apply:

1. There must be a provision in the specifications allowing for renewal. This provision may or may not require consent from the vendor.
2. The renewal must be requested before the contract has expired.

## **Open Market Purchase Procedures**

Open market purchases are made both by CPA and by agencies. See Section 2.4, Selecting the Procurement Method, to determine if an open market procedure is appropriate for a given purchase. The correct open market procedure for a purchase depends on the estimated dollar amount of the purchase and whether or not your agency has been delegated the authority to make the purchase. For this reason, this subsection is divided into three parts:

- **Open Market Informal Solicitation** is used for agency-administered open market purchases of commodities or services greater than \$5,000 but not greater than \$25,000. This process might be used by an agency to purchase perishable goods.
- **Open Market Formal Solicitation** is used for agency administered open market purchases of commodities or services greater than \$25,000. For example, this

process could be used by your agency to purchase fuel, oil or grease, or for a service purchase in excess of \$100,000 that has been delegated to your agency.

- **CPA Administered Open Market Purchase** is used for CPA-administered open market purchases of commodities or services. This process is used for all open market purchases that are not delegated to your agency.

## **Open Market Informal Solicitation**

Open Market Informal Solicitation is used for agency-administered open market purchases of commodities or services greater than \$5,000 but not greater than \$25,000. The following provides instructions for performing an Open Market Informal Solicitation. See Section 2.4, Selecting a Procurement Method, to determine whether this process is appropriate for a given purchase.

1. Collect the detailed specification for the required good or service. See Section 2.0, Identify End User Needs, for more information on specifications.
2. Using the [CMBL](#), locate vendors in the applicable highway district who provide the required good or service until you have a list of at least three (3) vendors<sup>4</sup> of which two (2) must be HUB (Historically Underutilized Business) vendors who provide the required commodity or service and also service the specified highway district.<sup>3</sup> If you are unable to locate at least two (2) appropriate HUB vendors using the [CMBL](#), note this in the procurement file.
3. If it will enhance competition, you may add non-CMBL vendors to the final bid list with written approval from the head of your agency or designee.<sup>5</sup> If applicable, also attempt to solicit a bid from the vendor who last held the contract for the required good or service.<sup>6</sup>
4. Solicit and collect a bid for the required good or service from each vendor identified in the previous steps. Bid prices are considered firm for acceptance for 30 days from the bid opening date for open market purchases.<sup>7</sup> The acceptable methods for soliciting and collecting informal bids (greater than \$5,000 but not greater than \$25,000) are:
  - a. In person.
  - b. Via direct mail.
  - c. Over the telephone.
  - d. Via facsimile transmission.
  - e. Via electronic mail.<sup>8</sup>

5. Tabulate the bids and select the vendor who provides best value to the State.<sup>9</sup> Include the following information in your tabulation:

a. Vendors contacted, including those who did not respond, and their corresponding bid amounts.

b. For HUBs, the ethnicity/gender of the CPA Certified HUB.

c. Agents contacted and their telephone numbers, email addresses, etc.

d. Awarded vendor.

e. Statement of reasons for award.<sup>10</sup>

6. Keep a record of all open market bids. Make open market bid tabulations open for public inspection, and retain the tabulation of the bids for inspection by the state auditor or the auditor's representative.<sup>11</sup>

7. Issue a PO and make the award by obtaining the signature of your agency's purchasing director or their designee as reflected in your agency's Procurement Plan.<sup>12</sup>

## **Open Market Formal Solicitation**

Open Market Formal Solicitation is used for agency administered open market purchases of commodities or services greater than \$25,000. The following provides instructions for performing an Open Market Formal Solicitation. See Section 2.4, Selecting a Procurement Method, to determine whether this process is appropriate for a given purchase.

1. Collect the detailed specification for the required commodity or service. See Section 2.0 Identify End User Needs, for more information on specifications.

2. Using the specification, create a written IFB (Invitation for Bid). See the [Procurement Forms Library](#) for a sample.<sup>13</sup>

3. Post the solicitation information to the [ESBD](#) for (Electronic State Business Daily) unless the purchase is explicitly exempted from [Texas Government Code Chapter 2155, Subchapter B, 2155.083](#).

4. Using the [CMBL](#) (Centralized Master Bidders List), locate all vendors who provide the required commodity or service and also service your highway district.<sup>14</sup> If the procurement is a service purchase in excess of \$100,000, do not limit the search to your

highway district.<sup>15</sup> Print the vendor list from the [CMBL](#) and include it in the procurement file.

5. If it will enhance competition, you may add non-CMBL vendors to the final bid list with written approval from the head of your agency or designee.<sup>16</sup>

6. Solicit a bid for the required commodity or service from each vendor identified in the previous steps. If applicable, also attempt to solicit a bid from the vendor who last held the contract for the required commodity or service.<sup>17</sup> The acceptable methods for soliciting formal bids (greater than \$25,000) are:

a. Via direct mail.

b. Via facsimile transmission.

c. Via electronic mail.<sup>18</sup>

7. Collect the bids. Bid prices are considered firm for acceptance for 30 days from the bid opening date for open market purchases.<sup>19</sup>

8. Tabulate the bids and select the vendor who provides best value to the State.<sup>20</sup> Include the following information in your tabulation:

a. Vendors contacted, including those who did not respond.

b. For HUBs, the ethnicity/gender of the CPA Certified HUB.

c. Agents contacted and their telephone numbers, email addresses, etc.

d. Bid amounts and no-bids.

e. Awarded vendor.

f. Statement of reasons for award.<sup>21</sup>

9. Keep a record of all open market bids. Make open market bid tabulations open for public inspection, and retain the tabulation of the bids for inspection by the state auditor or the auditor's representative.<sup>22</sup>

10. Issue a PO and make the award by obtaining the signature of your agency's director or their designee as reflected in your agency's Procurement Plan.<sup>23</sup> Keep a record of all open market orders.<sup>24</sup>

## CPA Administered Open Market Purchase

CPA Administered Open Market Purchase is used for CPA-administered open market purchases. See Section 2.4, Selecting a Procurement Method, to determine whether this process is appropriate for a given purchase

1. Complete an [Open Market Requisition Form](#) or your agency's equivalent to this form. A sample form is located in the [Procurement Forms Library](#).<sup>25</sup> Be certain to include:
  - a. Billing and shipping addresses. Use [Agency Invoice and Destination Codes](#), if available.
  - b. Texas Department of Transportation Highway district. See the CPA [Counties in Texas Highway Districts](#)<sup>26</sup> webpage for a list.
  - c. Requisition number.
  - d. Requisition date.
  - e. Estimated total dollar value.
  - f. [NIGP \(National Institute of Public Purchasing\) commodity class and item number\(s\)](#). Multiple items may be designated on the same requisition.
  - g. Abbreviated item or service description.
  - h. Quantity and unit of measure.
  - i. Detailed specification.
  - j. CPA standard open market clauses. See the CPA [Procurement Related Information](#)<sup>27</sup> webpage for a list of clauses.
  - k. Clauses specific to or required by your agency.
  - l. HUB Subcontracting opportunities, as appropriate. See Section 2.28, Historically Underutilized Business Program, for details.
  - m. Any additional information applicable to the purchase.
  - n. Authorized signature.

2. If you wish to review the bids before award, include written notification that you wish to review the bids on the Open Market Requisition.
3. Submit the completed [Open Market Requisition Form](#) to CPA on-line, via email, via fax, via direct mail, or in person. The average CPA processing time for an open market requisition is approximately 45 calendar days. This may vary depending on the nature of the purchase.
4. The appropriate CPA Purchaser reviews the requisition and communicates any suggested changes to your agency within approximately 14 days of receipt of the requisition. If the CPA Purchaser suggests changes, work with the Purchaser to resolve discrepancies.
5. If your [Open Market Requisition](#) is for a service with an estimated purchase price over \$100,000, and the CPA Purchaser determines that there is no competitive advantage to CPA administering the competitive process, they will delegate the authority to make the purchase to your agency. If CPA delegates the open market service purchase to your agency, procure the service using the **Open Market Formal Solicitation Process** subheading above.
6. The CPA Purchaser creates an IFB (Invitation for Bid) for the commodity and posts the solicitation to the [ESBD](#) (Electronic State Business Daily). Review the [ESBD](#) posting and promptly submit any corrections to the CPA Purchaser in writing. The CPA Purchaser integrates any corrections into the IFB with an addendum. Addendums are also reflected on the [ESBD](#).
7. CPA collects bids.
8. CPA conducts a public open market bid opening. CPA will also accept requests for bid readings.
9. CPA tabulates the bids and posts the results to the [CPA Open Market Bid Tabulations](#)<sup>28</sup> webpage. Bid tabulations remain on CPA's website until the end of the following FY (fiscal year). For example, a bid tabulation posted in FY 04 remains on CPA's website until the end of FY 05.
10. If requested (see Step 2), the CPA Purchaser:
  - a. Completes a Purchasing Referral Letter, which is used to communicate the CPA Purchaser's recommendation for award and funds inquiries.

b. Provides a copy of the entire bid package, including the Purchasing Referral Letter, to your agency for review before making an award.

If the vendor your agency would select based on the best value criteria outlined in statute differs from CPA's best value award, promptly send written justification for a different award to the CPA Purchaser, along with the Purchasing Referral Letter. The commission shall consider, but is not bound by, your agency's recommendation in making the award.

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11. If the best value bid, as determined by CPA, will exceed the estimated purchase price listed on your [Open Market Requisition Form](#) by 10% or more, the CPA Purchaser will indicate this on the Purchasing Referral Letter and request written confirmation that your agency has the funds to honor the award. In this case, return the completed Purchasing Referral Letter along with either a confirmation letter or a cancellation letter to the CPA Purchaser. If your agency has the funds to honor the award, continue Step 12; Otherwise, the CPA Purchaser cancels the requisition and does not make an award.

12. CPA Purchaser issues a PO and makes the award by obtaining the signature of CPA's Statewide Procurement Manager.

13. CPA sends a copy of the PO to your agency and to the awarded vendor.

14. CPA posts the award to the [CPA Open Market Awards](#)<sup>30</sup> webpage.

## **Endnotes**

- <sup>1</sup> [Texas Administrative Code, Title 34, Part 1, Chapter 20, Rule 20.32](#)
- <sup>2</sup> [Texas Government Code 2155, Subchapter D, Section 2155.322](#)
- <sup>3</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41](#)
- <sup>4</sup> [Texas Government Code 2156, Subchapter B, Section 2156.062](#)
- <sup>5</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.34](#)
- <sup>6</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41](#)
- <sup>7</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36](#)
- <sup>8</sup> [Texas Government Code 2156, Title 10, Subtitle D, Section 2156.063](#)
- <sup>9</sup> [Texas Government Code 2156, Subchapter B, Section 2156.062](#)
- <sup>10</sup> [Texas Government Code 2156, Subchapter B, Section 2156.066](#)
- <sup>11</sup> [Texas Government Code 2156, Subchapter B, Section 2156.064](#)
- <sup>12</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36](#)
- <sup>13</sup> [http://www.window.state.tx.us/procurement/tools/proc\\_forms/index.html](http://www.window.state.tx.us/procurement/tools/proc_forms/index.html)
- <sup>14</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41](#)
- <sup>15</sup> [Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41](#)

- <sup>16</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.34
- <sup>17</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.41
- <sup>18</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36
- <sup>19</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36
- <sup>20</sup> Texas Government Code 2156, Subchapter B, Section 2156.062
- <sup>21</sup> Texas Government Code 2156, Subchapter B, Section 2156.066
- <sup>22</sup> Texas Government Code 2156, Subchapter B, Section 2156.064
- <sup>23</sup> Texas Administrative Code Title 34, Part 1, Chapter 20, Rule 20.36
- <sup>24</sup> Texas Government Code 2156, Subchapter B, Section 2156.064
- <sup>25</sup> [http://www.window.state.tx.us/procurement/tools/proc\\_forms/index.html](http://www.window.state.tx.us/procurement/tools/proc_forms/index.html)
- <sup>26</sup> [http://www.window.state.tx.us/bid\\_districts.html](http://www.window.state.tx.us/bid_districts.html)
- <sup>27</sup> [ftp://ftp.cpa.state.tx.us/pub/misc/om\\_clause.p01](ftp://ftp.cpa.state.tx.us/pub/misc/om_clause.p01)
- <sup>28</sup> <http://www.window.state.tx.us/tabs/>
- <sup>29</sup> Texas Government Code 2156, Subchapter B, Section 2156.065
- <sup>30</sup> <http://www.window.state.tx.us/reqs/>

## Section 2.8

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