

Contract Management Guide

Commonwealth of Kentucky

Finance and Administration Cabinet

Office of Procurement Services

Division of Contract Management



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Contract Management Guide Version History

The Finance and Administration Cabinet's Office of Procurement Services is responsible for updating this Contract Management Guide (CMG), which is being created to provide guidance and best practices to improve statewide contracting practices.

<u>Release / Revision Date</u>	<u>Contract Management Guide Version</u>	<u>Description</u>
TBD	1.0	Initial release

Introduction and Purpose

Introduction

The Finance and Administration Cabinet's Office of Procurement Services (OPS) has established the Division of Contract Management (DCM) to assist state agencies with planning for, establishing, and carrying out all aspects of contract management.

Continuous and appropriate contract management is critical to the success of any contract. The management of a contract does not, however, begin at the moment of award or when the first order is placed against the contract. Effective contract management begins long before a solicitation is created. All actions, non-actions, decisions made, details included or omitted, and risks analyzed or missed before a solicitation is issued affect the ability of the resulting contract to provide the level of benefit that was expected from the contract.

This Contract Management Guide is designed to provide a framework for Contract Management processes and practices for the State. This Guide will provide practical guidance as well as best practices to improve agency contracting and contract management processes. It will assist contract managers in leveraging technology, metrics, training, and lessons learned for the purpose of minimizing project risks, and it will clearly define roles and responsibilities of all players in the contract management process. It will also seek to describe the primary duties of an agency contract manager, including how to develop a solicitation and contract that will help in future contract management, and most importantly, how to manage the contract through monitoring of contractor and subcontractor performance.

DCM is dedicated to assisting all state agencies with contract management activities to ensure the success of all contracts. DCM and state agencies will follow specific phases to assist in identifying and managing high-risk, high-profile, high-dollar, and high-complexity contract needs for which enhanced contract management is needed. This assistance with contract management will encompass the below three phases.

Phase 1: Annual Procurement Plan (APP) & Risk Self-Assessment (RSA)

The initial phase in planning for upcoming procurements for state agencies will be the completion of the Annual Procurement Plan. State agencies will submit these to OPS as required by KRS 45A.045 (1)(a). OPS will review all submitted plans and determine which upcoming procurements require the completion of a Risk Self-Assessment prior to the creation and submission of a Requisition (RQS).

Phase 2: Review Requisition Submittals

As the procurements identified in the APP are initiated at the agency level, the second phase will begin in which state agencies will conduct research, develop scopes of work, specifications, and other solicitation requirements. These will be incorporated into an RQS in eMARS and submitted for review by OPS and DCM.

Phase 3: Contract Administration

After award of a contract, DCM will work closely with state agencies to see that performance evaluation, mitigation, and re-evaluation of risks are being performed frequently throughout the contract term to ensure successful completion of all contract requirements.

**These Phases are discussed in more detail in this guide along with additional best practices information for planning, solicitation, award, and contract administration processes.*

Purpose

The purpose of the Contract Management Guide (CMG) is to offer state agency contract managers recommendations for improving existing contract management processes and practices. It is designed to provide initial recommended guidance on the role, functions, associated process flows, and descriptions of processes for contract management program implementation. Once implemented, it is anticipated that the processes outlined in this guide will be adapted and updated to address specific needs of the Commonwealth and lessons learned in the process of implementing the contract management program.

This guide is not designed to relieve the state agencies and contractors of their responsibility to ensure compliance with laws, rules, and regulations related to their specific programs and funding sources. The CMG is intended to work hand in hand with the Commonwealth's statutes, regulations, and policies to achieve the maximum benefit for state agencies and vendors in contract management activities. Where appropriate, links are provided for additional detailed information not otherwise included in the CMG.

Since the needs of each agency and requirements of each contract are different, the information in the CMG will not always be applied universally. However, the CMG provides a framework which agencies should use to make contracting decisions that are in the best interest of the Commonwealth.

This guide supplements but does not replace existing statutory and regulation requirements and agency rules, policies and procedures. Each agency is independently responsible for developing sound business procedures in accordance with applicable federal and state laws, regulations, policies and procedures.

This guide is not intended to be a manual on the law of contracts or constitute legal advice.

****Always consult an attorney for legal advice concerning contracts.***

KPI Certificate Requirements

All state agency procurement staff must be trained in accordance with the KPI Certificate Program. The level of training by procurement staff is one of the determining factors for an agency's small purchase authority, making the KPI certificate program very beneficial to state agencies. Training and certificate requirements, training course descriptions with offering dates, and frequently asked questions may be found at:

<https://finance.ky.gov/eProcurement/Pages/kentucky-procurement-institute-training-and-certificate-program.aspx>

Ethical Standards Guidance

General

State officials and employees are responsible for protecting the safety and welfare of taxpayers' dollars. All state officials and employees should strive to display conduct that promotes trust among the public. Therefore, they shall avoid acts which are improper or give the appearance of impropriety. This conduct is particularly important for state purchasing personnel and contract management personnel who are charged with the commitment and disbursement of state funds.

State Ethics Policy

The Executive Branch Ethics Commission's enabling statute is embodied in [Kentucky Revised Statute Chapter 11A](#). The laws setting out the Code of Ethics are contained in Kentucky Revised Statute Chapter 11A and [Title 9 Kentucky Administrative Regulations](#), as well as [Executive Order 2008-454](#), its amendment, [Executive Order 2009-882](#), and [Executive Order 2020-423](#).

The Executive Branch Code of Ethics created by Kentucky Revised Statutes (KRS) Chapter 11A, effective July 14, 1992, establishes the ethical standards that govern the conduct of all executive branch employees. The code of ethics was enacted to promote public confidence in the government of the Commonwealth and its employees.

The Guide to Executive Branch Code of Ethics may be found at: <https://ethics.ky.gov/SiteCollectionDocuments/Guide%20to%20Executive%20Branch%20Code%20of%20Ethics%20-%20June%202019%20-%202011th%20Edition.pdf>

Standards of Conduct

As per the Executive Branch Ethics Commission, executive branch employees:

- must be independent and impartial;
- must not make decisions and policies outside the established processes of government;
- should not use public office to obtain private benefits for yourself or others;
- actions should promote public confidence in the integrity of government;
- should not engage or be involved in any activity which has the potential to become a conflict of interest with your state employment. (KRS 11A.005)

Prohibited activities for executive branch employees are:

- they shall not use or attempt to use their influence in any matter which involves a substantial conflict between personal or private interest and their duties in the public interest;
- they shall not use or attempt to use any means to influence a public agency in derogation of the state at large;
- they shall not use their official position or office to obtain financial gain for self or any members of their family;
- they shall not use or attempt to use their official position to secure or create privileges, exemptions, advantages, or treatment for yourself or others in derogation of the public interest at large.
(KRS 11A.020 (1)(a)-(d))

Conflict of Interest

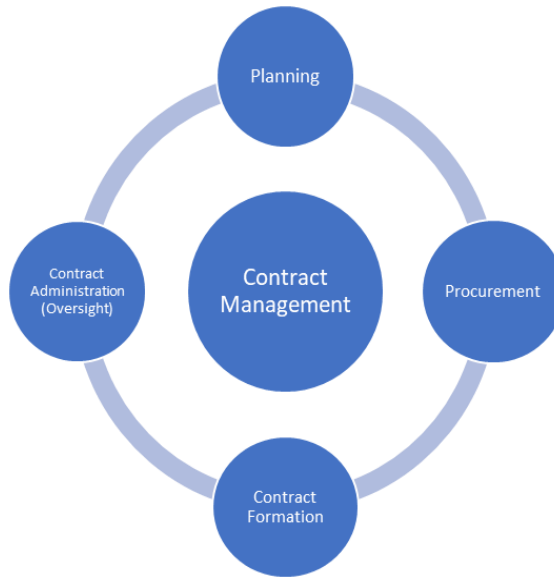
All public servants must:

- avoid all conduct which might in any way lead members of the general public to conclude that you are using your official position to further your professional or private interest when appearing before a state agency; AND
- disclose in writing to your superior the fact that you have abstained from action on an official decision in which you have or may have a personal or private interest. (KRS 11A.020 (2)-(4))

Framework and Processes of Contract Management

Contract Management Framework

Effective contract management is dependent on the interaction of the following elements. These four elements are critical to the successful solicitation, award, performance, monitoring, modifying, and close out of a contract.



Planning - After identification of need, identify objectives and determine strategies for the appropriate contracting process.

Procurement - Using the appropriate procurement method, fairly and objectively select the most qualified responsive and responsible vendor.

Contract Formation – Ensure the contract contains provisions that hold the vendor accountable for producing the 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 Administration - Monitor and enforce the terms of the contract.

Contract management may involve a variety of distinct disciplines and roles including:

- Executive Management
- Project Management
- Organizational Management
- Planning Staff
- Procurement Staff
- Program Staff (subject matter experts and monitors)

Legal Staff
Quality Control/Assurance
Accounting/Budget/Audit

It is important to remember that 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. KPI Certificate-holding procurement staff are not contract managers in all cases; however, all state procurement staff should be familiar with this Guide. The purchasing department should review all procurements 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. If the agency does not have personnel on staff with the appropriate expertise, agencies should inquire about any existing contracts at OPS that offer those consultant services. If none are available, the agency may need to issue an RFP to solicit for the needed services.

Planning

The first step in contract management is planning. Planning is crucial to the successful outcome of any procurement and, with good planning, state agencies are more likely to successfully achieve their contracting objectives. Planning helps 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 and includes several activities which assist in getting the project started – such as development of the contract management team, assessing risk, developing a communication plan, assessing the need and conducting market research, determining the procurement method, planning for the content of the procurement, and determining a cost estimate.

Phase 1: Annual Procurement Plan & Risk Self-Assessment

The initial step in planning for upcoming procurements for state agencies will be the completion of the Annual Procurement Plan (APP) and the Risk Self-Assessment (RSA).

Annual Procurement Plan (APP)

In accordance with KRS 45A.045 (1)(a), agencies will be required to develop and submit an Annual Procurement Plan to OPS outlining their anticipated purchases in the following categories for the coming fiscal year:

- Goods and non-professional services exceeding \$20,000; AND
- Professional services contracts (PSC) exceeding \$20,000

The Annual Procurement Plan will request some basic information for each procurement including items such as:

- Purchase Title
- Purchase Description
- Procurement Type
- Replacing Existing Contract?
- Anticipated Requisition Date
- Anticipated Procurement Method
- Desired Award Date
- Estimated Budget
- Agency Contact Information

Risk Self-Assessment (RSA)

For anticipated procurements on the APP exceeding \$600,000, considered to be major procurement projects, OPS will review and determine which require the completion of a Risk Self-Assessment (RSA) prior to the creation and submission of a Requisition (RQS). Agencies will be asked to complete and submit an RSA for each of those.

Review APP & RSA

Upon receipt of the Annual Procurement Plans from the agencies, DCM will receive a copy of the full Plan submittals and supporting RSA. The DCM will then need to review the submittals and RSA to determine what actions, if any need to be taken for the agency's procurement projects.

Possible Actions

After review of the APP and RSA, the DCM will need to determine what action is required for each agency procurement project. The possible actions at this point in the process include:

1. **Do Nothing** – The DCM sees no risk and doesn't require any additional action. The agency may continue forward with the project.

2. **Request Additional Information** – The DCM may seek to gather additional information about the project from the agency. The DCM should be clear that it has made no decision on action of yet, and that the additional information is being collected to assist them in making a final action determination.
3. **Establish a Meet & Confer Schedule** – The DCM may decide to act to monitor the project utilizing a meet and confer process. This process requires that the agency meet with the DCM to provide a project update in brief face-to-face or virtual meetings on a specified cycle. The project update must be documented and submitted to the DCM. A Project Status Report template has been provided as part of this guide.
4. **Request that DCM be a Member of the Project Team** – In very limited circumstances, on very high-profile, high-risk projects, the DCM may request that they be included in the project team during the planning phase of the project to ensure the project is progressing properly and that key risk areas are being addressed. If they request to be included on the project team, DCM will be a resource to the team and there to help them to eliminate or mitigate key risk areas in their project in the solicitation effort. DCM will not be taking control of the project and will not be managing the project on behalf of the agency.

Project Tracking Worksheet

After the review of the APP and RSAs is completed, the DCM will need to develop a project tracking worksheet using the APP information to document what actions were taken for each project. This tracking worksheet will be provided to OPS and reviewed with OPS management to ensure that the DCM and OPS are communicating throughout the procurement process regarding the procurement project. This way, if OPS is contacted regarding the project, they will know to check in with the DCM on the required projects.

Analyzing for Planning

Various factors should be analyzed and considered during the planning phase for all solicitations.

Primary factors are:

- Identification of need
- Thorough analysis of needs vs. wants
- Input from all stakeholders
- Budget available
- Timeframe for completion
- Assessment of risk

If applicable:

- Analysis of current contract. Which parts have been successful and which need revision?
- Are all requirements still appropriate or do they need to be tightened or loosened?
- Are the service levels still appropriate or do they need to be scaled up or down?
- Will the new budget be sufficient to cover the same services?
- What is the balance of risk between agency and vendor?
- Does this balance need to be changed? (higher vendor risk can frequently mean higher cost for the agency)
- Is there a risk of damages such that the agency should consider requesting insurance coverage?
- Is there risk such that the agency should consider a Performance or another type of bond?
- What is the past and current quality level of service/goods delivered?
- What, if any, problems have surfaced in the life of the contract?
- What solutions were presented? Were these solutions successful?
- Was the level of risk going forward reduced by the new solutions? If not, why not?
- How was the risk of previous problems resurfacing mitigated?
- How was that mitigation monitored?
- What are the critical success factors for this contract going forward?
- What are the possible risks to those success factors going forward?

Once the research and analyses are completed, development of the requirements for the new solicitation can proceed.

Communications Plan

During the planning phase, agencies should establish a plan for managing internal and external communications regarding the procurement. This plan should identify the responsible parties for drafting and finalizing the scope of work and other documents to be submitted with the requisition (RQS). This plan should also include identification of all stakeholders and the type and frequency of communication to those stakeholders regarding status. A timeline should be established that clearly outlines the key decision points in the procurement planning and sets milestones for communicating regarding those decision points as well as scheduled status updates.

Confidentiality in all Phases of Contracting

Confidentiality is key to ensuring the integrity of the entire procurement and contracting process. Any vendor who contacts staff other than the Buyer to discuss the procurement is at risk of being deemed ineligible for award. In order to prevent such an issue, Agency staff must be sure to:

- Limit all communication with vendors during the planning stage. If an RFI or RFQ is issued to obtain information from the vendor community, the Buyer will be the sole point of contact.
- Limit the number of internal agency staff involved to only those who are critical to the procurement.
- Have participating agency staff sign a confidentiality/non-disclosure form early in the process.
- Refer all inquiries regarding the solicitation to the Buyer and do not discuss anything with the caller. This requirement remains in effect until a contract has been fully executed and finalized in eMARS.
- For procurements that will be issued by OPS, the OPS Buyer will also have participating agency staff sign confidentiality forms prior to receiving proposals for review and scoring.

Risk

Risks are inherent in all stages of the procurement process. Limited resources require the use of risk assessment because there is not always sufficient time to oversee all aspects of a contract. An effective risk assessment model will help focus monitoring resources on contracts with the highest risk of noncompliance.

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. Typically, 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. High risk contracts should involve significant executive management sponsorship/involvement while low risk contracts normally would not.

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 typically based on subjective experience. Some examples of factors that may be useful in identifying the level of risk are:

- 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 method
- 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
- The type, availability or experience of staff resources required to implement the objectives of the procurement

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.

Procurement

Phase 2: Review Requisition Submittals

Requisition Submittal

Once the agency has completed its specifications they will complete and submit the appropriate requisition (RQS) in eMARS, the state's eProcurement system. The requisition will be submitted to OPS and will be accompanied by an updated RSA and Risk Register. A template for submission of the specifications and the Risk Register have been provided as part of the Guide. The updated RSA will be created using the same template used in Phase 1.

Review of Submittals

When the RQS and associated documents are received at OPS, OPS will forward the specifications, RSA and Risk Register to DCM for those projects requiring further review as outlined on the project tracking sheet provided to OPS by the DCM. During this process both the DCM and OPS will be reviewing the procurement project. OPS will be reviewing the specifications and RQS for completeness, quality of specifications, and appropriate sourcing approach. Some requisitions will require SPR1 approval (for vehicles, printing, IT, etc.) so the approved SPR1 must be attached to the header of the RQS document. DCM will be reviewing the specifications, RSA, and Risk Register to reassess the project risk and assure OPS the project is ready to assign to a buyer. Until OPS receives this feedback from the DCM, they will not assign a buyer to process the requisition and solicitation.

Possible Actions

After review of the project documents, in addition to communicating status to OPS, the DCM will need to determine what action is required for the procurement project. The possible actions at this point in the process include:

1. **Do Nothing** – The DCM sees no risk and doesn't require any additional action. The agency may continue forward with the project. This would only

occur if the DCM determines that the original RSA risk concerns have been addressed in the submitted documents.

2. **Request Additional Information** – The DCM may seek to gather additional information about the project from the agency. The DCM should be clear that it has made no decision on action of yet, and that the additional information is being collected to assist them in making a final action determination.
3. **Provide Feedback to the Agency** – The DCM may provide feedback to the agency regarding the specifications. The feedback may be regarding edits to the specifications or may be recommendations for risk mitigating components to include in the solicitation document to address risks identified.
4. **Continue/Establish a Meet & Confer Schedule** – The DCM may decide to act to monitor the project utilizing a meet and confer process. This process requires that the agency meet with the DCM to provide a project update in a brief face-to-face meeting on a specified cycle. The project update must be documented and submitted to the DCM. A Project Update template has been provided as part of this guide.
5. **Request a Contract Management Plan** – For larger, high-risk projects, the DCM may request that shortly following contract award the agency submit a Contract Administration Plan (CMP) to the DCM. This document would be reviewed by the DCM for completeness and would be the cornerstone of future Meet & Confer Meetings with the agency. The DCM may also make recommendations for edits to the CMP after review. A template for a CMP has been provided as part of this Guide.

Best Practices for Procurement

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 a Request for Bid and a Request for Proposal differ significantly.

- **Request for Bid (RFB)** – The RFB 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 evaluation criteria are used with the RFB method. OPS will issue RFBs on behalf of the agency unless the agency has been delegated sufficient purchasing authority to do so themselves.

- **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 RFB and an RFP is that negotiations are allowed in an RFP. Discussions are also allowed with the respondents and best and final offers are often solicited. OPS will issue RFPs on behalf of the agency unless the need is for professional services, in which case the agency will issue their own RFP to award a Personal Services Contract (PSC).

Professional services (personal services contract) require the issuance of an RFP as per KRS 45A.695. --- KRS 45A.690(g) defines a “personal service contract” as “an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon.” Examples of these are: legal, medical, auditing, consulting, and training services. Please contact OPS with any questions regarding personal services contracts.

**The following tables are 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.*

- **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 do so. 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 all, or even any, of the comments or suggestions made by the contractors, but the hope is that they will provide useful information for the RFP development process.

Procurement Methods

Procurement Method	Use When	Advantages	Disadvantages
Competitive Bids (Request 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 Negotiations (Request for Proposals)	<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>

Procurement Method	Use When	Advantages	Disadvantages
Request for Information	There is insufficient information to write specifications for any procurement method.	<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>	

Competitive Bidding Exceptions

There are instances when purchases may be exempt from competitive bidding. Some examples are provided below.

Emergency purchases – FAP 111-39-00 - An “emergency condition” means a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failure, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates or similar events. KRS 45A095(1)(a).

*Information and required processes for emergency purchases are outlined in

FAP 111-39-00 [FAP 111-39-00.pdf \(ky.gov\)](#)

and KRS 45A.095

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=47029>

Other Competitive Bidding Exceptions:

FAP 111-08-00 Specified by Law or Regulation [FAP 111-08-00.pdf \(ky.gov\)](#)

FAP 111-09-00 Standing Determination of Not Practicable or Feasible [FAP 111-09-00.pdf \(ky.gov\)](#)

FAP 111-10-00 Sole Source [FAP 111-10-00 Sole Source 071506.pdf \(ky.gov\)](#)

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 and conveying of the contracting objectives are essential to success. If 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 do so. 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.

Forming 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. These objectives will help guide and keep the contracting process focused and on track.

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 various objectives and interests. Answering the following three questions will help agencies to define and refine 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 but a good measure of the quality of the statement of work is whether the contracting objectives, assumptions, and constraints make sense. Are these described too broadly or too narrowly in the statement of work? Could the reader answer the above 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.

Cost Estimates

During the planning stage of the procurement, agencies should determine 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 vendors to obtain pricing information.

****If vendors are contacted, agencies must advise them that the price estimates are for informational purposes only and that the estimate is not a formal solicitation. Agencies must be careful to avoid giving any vendor any kind of competitive advantage during this process.**

Procurement Lead Time

To ensure that contracts are processed prior to their effective dates, the following example table 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 for RQS.	180 days	March 1
Agency submits the RQS document to OPS in eMARS. DCM reviews the RQS for risk mitigation, etc., before it is assigned to a buyer.	150 days	April 1
Solicitation Issued.	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.
- The time required for the Purchasing Department to finalize the solicitation or

requisition (RQS) 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 can be typical for some RFPs; however, some can be more lengthy. Formal RFB's usually require 14 or 21 days, depending on applicable 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, an RFP may be recommended.
- Evaluation of the proposals may take more or less time, depending on the size of the evaluation team, the complexity of the evaluation, and the number of proposals received. 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 depending on the type of contract and the signature requirements for the agency and the contractor. If these are substantial factors, the contract execution lead time may need to be adjusted.

After an agency determines which solicitation method is appropriate, the solicitation document is prepared. (Refer to "Procurement Methods" table above for the various procurement types). Keep in mind that except as otherwise provided by statute, a purchase of or contract for goods or services shall, whenever possible, be accomplished through competitive solicitation. In preparing the solicitation document, review the relevant statutes and rules to identify each of the statutory and regulatory requirements necessary to comply with the law before attempting to draft a solicitation document. Employees involved in preparing an agency-issued RFP should sign and submit a Non-Disclosure Statement and Conflict of Interest statement prior to beginning work on a solicitation.

Preparing the Statement of Work

The Statement of Work is very important as it forms the basic framework for the resulting contract. The needs assessment discussed earlier is the foundation for the Statement of Work. The Statement of Work is a detailed description of what is required of the contractor to satisfactorily perform the work. The success or failure of a contract can usually be linked to the adequacy of the planning, analysis and thoroughness of the statement of work. Time spent planning, analyzing, and

drafting the statement of work will result in saving time,resources, and money and will improve the quality of the goods or services provided. It is very important that the statement of work:

- Secure the best economic advantage utilizing best value;
- Be clearly defined;
- Be contractually sound;
- Be unbiased and non-prejudiced toward respondents;
- Encourage innovative solutions to the requirements described, if appropriate;
and
- Allow for free and open competition to the maximum extent reasonably possible.

Specifications

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.

Specifications 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 RFB.

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 Kentucky 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 Kentucky Chambers of Commerce.

Design Specifications: Contractor shall conduct at least seven (7) media campaigns for Kentucky 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 Kentucky 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 Kentucky Chambers of Commerce.

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 normally prohibited. As a general policy, it's recommended that the maximum time for contracts without reissuing a competitive solicitation be 5 years. This includes any renewal or extension periods. Individual business needs may dictate a different period and agencies should consult their legal counsel and/or OPS for advice on this matter early in the planning process.

Payment Types

The method of payment has a direct impact on how the statement of work is written and how the contract is managed. Agencies must measure or verify that the work is complete and how much and how often the agency will pay the contractor. As with specification types, there are also various payment types. The payments should be consistent with the type of product or service delivered. Payments should be structured to fairly compensate the contractor and encourage timely and complete performance of work.

Agencies can control the payment process by dividing the overall contract payments into smaller amounts that each reflect a small increment of work or deliverable. This is an effective technique for managing financial risk. If there is a dispute, by using the deliverable elements, the scope of the dispute can be contained to a discrete deliverable rather than the entire contract. Likewise, the amount of money associated with the deliverable is also known and limited. In slightly different ways, each of the deliverable elements either lessens risk or shifts risk from the State to the contractor.

For simple one-time purchases, invoices are to be compared to the contract to ensure proper billing by the vendor. Any errors in billing must be corrected before payment can be made. Payment is to be made only after receipt of all goods or services, after full inspection and acceptance of the goods or services, **and** after the appropriate approvals have been given for payment.

Partial payments may be made if allowed by the contract. Any partial payment must be only for the goods or services already received, inspected, and accepted. Under no circumstances should an agency pay for goods or services that have not yet been received.

For contracts that require progress payments or scheduled payments for services, agencies must verify that the services have been performed as required (i.e. timely, as fully specified, and to the quality level required) and that the vendor has billed accurately as specified in the contract. Any invoice discrepancies must be corrected before payment is to be processed.

Define the Agency's Role

Clearly define the role the agency will play in the work to be performed and any specific contributions, resources or tasks the agency will provide. Detail any background data or work already accomplished that the anticipated contract will build on and make it available during the solicitation phase of the procurement. Specify whether the contractor should rely on the accuracy of any such background data or work or whether the data or work is provided for information purposes only. If provided for informational purposes only, advise if the contractor is responsible for verifying the accuracy of the information to the extent necessary to perform the contract. Define the roles of the agency staff that will administer the contract and monitor the contractor's progress.

Quantity

The solicitation document must quantify the amount, frequency and/or location required to meet performance.

Quality

The solicitation document must identify the level of quality required for acceptable performance. For example: *All dusting shall be done so as to ensure cleanliness of surfaces, as determined through inspection by the contract administrator.*

Established Standards

If established standards (international, national, state, local) are available, they can be used to assist in defining the contract performance requirements. Examples of national and international standards include American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM) and International Organization for Standardization (ISO). Using established standards provides consistency in measuring acceptability, quality or accuracy of the performance of one or more parties to a contract.

Contracts will often incorporate by reference "standards" maintained by entities representing particular industries such as Generally Accepted Accounting Principles (GAAP), Institute of Electrical and Electronic Engineers (IEEE) or ISO. If a standard is incorporated by reference, identify any industry, state or agency standards of performance that relate to each activity, task, work product or

deliverable. Merely referring to “industry standards” is usually inadequate. If an industry standard is used, specifically identify the standard by number to eliminate confusion.

Warranty as a Standard

A warranty is a type of standard that can describe performance. Consider including warranty language as a contractual standard of performance. An express warranty and an implied warranty are technically different. However, each standard works to describe a type of contractually based performance.

Unless excluded or modified by the language in the contract, warranties or standards may be implied or imposed into a contract by a statute or case law. For example, in the sale or lease of some types of personal property or goods there may be statutory warranties implied into a contract, such as those regarding title, merchantability, or being fit for a particular purpose.

The best practice is to include clear standards for the contractual performance or an express warranty describing the objective expectation of performance rather than relying on an implied warranty. Generally, it is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that the seller have a specific intention to make a warranty. However, a mere affirmation of the value of the goods or a statement merely purporting to be the seller’s opinion or commendation of the goods does not create a warranty.

Contractor Qualifications

The statement of work should specify the minimum qualifications required of the contractor. Typically, in an RFP, the contractor qualifications are less stringent than in an RFB because the contractor qualifications are part of the evaluation criteria. At a minimum, the statement of work should require that the contractor have a specified level of experience in the type of work to be performed.

Contractors should not be allowed to assign any portion of the contract or their performance, to others, for example, subcontractors, without the prior written consent of the agency. Contractors remain responsible for the performance of the contract notwithstanding any such assignment or subcontract. This ensures that the evaluated and selected entity will actually be responsible for performance and that proposed transactions may be reviewed for compliance with the conflict of interest and related party provisions.

Also refer to FAP 120-08-07 for more information regarding Assignment of Benefits.

Performance and Payment Bonds

As per [KRS 45A.190\(2\)](#) and [FAP 111-27-00](#), payment and performance bonds shall be furnished to the Commonwealth for all construction contracts in excess of \$40,000.

A Performance Bond shall be obtained from a surety company authorized to do business in the Commonwealth. The amount of the Bond shall be equal to 100% of the contract price.

A Payment Bond shall be obtained from a surety company authorized to do business in the Commonwealth to cover labor and supplies in an amount equal to 100% of the original contract price.

A contract shall not be awarded to a contractor who fails or refuses to furnish the bond of a construction project in excess of \$40,000. ([200 KAR 5:305](#))

As per [KRS 45A.190\(3\)](#), when any contract in an amount in excess of \$40,000 for commodities, supplies, equipment, or services of any kind, or when a contract for construction services costing \$40,000 or less is proposed to be solicited, the Agency (end user) contract administrator shall evaluate whether a Performance Bond should be required in the procurement document and make his recommendation to the purchasing agency. The agency contract administrator shall note the reason that a Performance Bond is or is not recommended and this notation shall be part of the permanent record of the procurement/contract.

If a Performance Bond is required, the requirement shall be included in the procurement solicitation document (RFB, RFP) or in the quote request for Special Authority contracts. If the Performance Bond will be required for a contract that will not be solicited, such as Sole Source or other Special Authority, the Performance Bond should only be requested after the SPR1 has been approved by Finance.

After award of the contract, the agency contract administrator shall make audits of the performance of the contracts upon completion of 1/3 of the contract and upon completion of 2/3 of the contract. For contracts taking longer than 1 year to complete, audits of performance shall be conducted at least annually.

Release of Bonds

Before a vendor is released from a performance bond, the agency contract administrator shall review the audits of performance, make a final performance review, and promptly determine whether, in his or her opinion, the vendor has fully complied with the terms of the contract. The opinion of the agency contract administrator shall be made in writing or electronically, set forth the reasons for his or her opinion regarding compliance or noncompliance, and be signed by the agency contract administrator. This signature may be electronic.

The head of the user agency shall consider the performance audits, final performance review, and the opinion of the agency contract administrator regarding compliance or noncompliance in determining whether to recommend to the purchasing agency that the performance bond be released or whether a claim should be made against the Performance Bond. This determination from the agency head shall be in writing, signed by the using agency head, and forwarded to the purchasing agency. This determination may have an electronic signature and be transmitted electronically.

If the recommendation of the using agency is not followed by the purchasing agency, the purchasing agency shall place a statement in the file explaining why it is not followed.

*Please see [KRS 45A.190](#), [200 KAR 5:305](#), and [FAP 111-27-00](#) for additional bonding information and consult with your agency legal counsel for guidance.

Evaluation Criteria

All solicitation documents must advise the respondents how their submission will be evaluated. In a Request for Bid where price is the primary criteria and other evaluation criteria such as delivery, warranty, etc. have a smaller weight in the evaluation, the solicitation should explain what formulas will be used to determine bidders' scores.

In a Request for Proposal, the evaluation criteria must reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract. The criteria should allow the evaluation team to fairly evaluate the proposals. The evaluation criteria may take a variety of sources of information into consideration such as the written response, the oral presentation, documented past performance of the respondents and references relevant to the contract. Specific portions of the required response should directly relate to the evaluation criteria.

To ensure fairness in evaluation, the evaluation criteria should reflect only those requirements specified in the solicitation document. The language within the solicitation will determine the scope of the evaluation criteria and the flexibility the evaluation team will have when evaluating proposals, so the evaluation criteria should not be unduly restrictive. Respondents must have notice in the solicitation of all requirements. The solicitation should clearly state the consequence of failing to meet these requirements such as reduction in evaluation score or disqualification. Be careful of any requirements that may disqualify a proposal. Be sure that those are truly necessary before including.

Criteria that was not included in the solicitation may **not** be used in the selection or ranking of a proposal. For example, if respondents receive additional points for possessing a national accreditation, or meeting the unique needs of the customers, these criteria must be included in the solicitation so that the

respondents know there is an opportunity to score higher by providing these options. Likewise, if this information is not requested in the solicitation, respondents who fail to offer these options cannot be penalized.

At a minimum, the criteria must include the weight assigned to each criterion. Some agencies prefer to give more detailed information as to how each criterion is broken down into smaller units while others do not. Either is generally acceptable.

When determining the evaluation criteria, also consider the proposal submission requirements associated with each criterion. For example, what information needs to be included in the response for “methodology” in order to effectively evaluate a respondent’s response for that criterion? Another example is “experience, skills, and qualifications of company and staff.” What information is required for the evaluation team to score this criterion? Years in business? Years of staff experience? Certified or licensed employees? Experience performing similar size projects, etc?

Cost is typically the most significant evaluation factor. However, there are procurements in which the skills and experience of the contractor or other factors may be more important than cost. For example, if a trainer has to have a specific set of skills, the agency may be willing to pay more for these skills. When establishing the criteria weight, consider the importance of the criteria to the overall project. The criteria deemed most important by the agency should be weighted higher than the other criteria.

Best Value Considerations

Best value considerations should also be included in the statement of work. The lowest cost is not necessarily the best value for all procurements. For example, a commodity or service of higher quality, such as a longer lifespan, may be a better value and investment for the state agency, even if the initial cost is more. Agencies need to think strategically when considering their procurement needs. Do not make the mistake of obtaining only what is necessary to meet the immediate needs of the agency. Be sure to include consideration of any long-term needs. Ask “What is the desired outcome of the procurement” and “What is the best way to achieve this outcome?”

More information on Best Value can be found in [KRS 45A.070](#), [KRS 45A.080](#), and [FAP 111-35-00](#).

Proposal Submission Requirements

The solicitation document should include one section listing all of the required information that respondents must submit with their response. This will assist respondents in ensuring required documentation is submitted with the proposal. Additionally, recommended or required proposal formats should be specified in this section, such as page number limitations, size of paper, number of copies, etc. As stated previously, ensure that the solicitation document requests information on those items to be evaluated.

Monitoring

The methods used to monitor contractor performance should be clearly stated in the solicitation. Forcing a contractor, without prior knowledge, to produce time-consuming reports or maintain stringent testing requirements outside normal industry parameters will most likely be challenged. It is important that agencies develop and include a monitoring strategy in the solicitation.

The amount of monitoring should be balanced and adequate to meet the need, but limited in type, scope and frequency sufficient to achieve the desired result without unnecessarily increasing costs. Overly restrictive oversight can interfere with the contractor's ability to accomplish the work and may unnecessarily and inadvertently increase the cost of the work.

The statement of work should set specific deadlines for completion of tasks and a schedule for submittal of deliverables, required meetings, presentations or other activities. The contract manager must consider monitoring methods to ensure the contractor performs as specified in the statement of work.

Additionally, different funding sources such as federal grants may have specific requirements for contract monitoring. The contract manager must be familiar with these requirements and include them in the statement of work. *(Further discussion on contract monitoring is covered later in the Contract Administration section of this guide.)*

Reporting

The solicitation should clearly define the reporting requirements for the awarded contract. Status reporting and performance and activity reporting are terms used to describe information that a contractor must provide to show the status of a contract. These terms must be defined in the statement of work and the definition of each should include content, frequency, and audience for each report.

A status report describes the level of completion of the work and/or the cost of the

contract. “Percent complete” is often used to describe status. A baseline for timeline and budget should be established in order for the completion of percentage to be meaningful throughout the contract.

If deliverables are specified, include the format of the deliverable and the number of copies required. For example, if a deliverable is a final project report, state how many copies of the report are needed and specify the format of the electronic copy. State all items that must be included in the report. These requirements are usually addressed in the statement of work within the solicitation document.

If vendor provided information is anticipated to be reported as part of the agency’s performance measures, ensure that there are requirements that allow for data verification and that the data corresponds with the data required for the performance measures.

If possible, include in the solicitation document the desired format or a sample of any required reports.

Carefully consider what reporting items and/or information would be critical to be maintained and provided to the next awarded vendor for continuity and information preservation purposes. Once determined, be sure to include this requirement language in the scope of work.

Inspection and Testing

The statement of work should provide for inspection and testing. The agency should include inspection and testing of goods and services purchased under the contract to ensure compliance with the specifications of the solicitation and the contract.

In the case of goods purchased, tests should be performed on samples submitted with the proposal and samples taken from regular shipments. All costs of inspection and testing should be borne by the contractor. In the event the goods tested fail to meet or exceed all conditions and requirements of the solicitation and contract, the goods should be rejected in whole or in part at the contractor’s expense. Latent defects can result in cancellation of a contract at no expense to the state. Agencies should contact legal counsel regarding latent defects.

Final Acceptance

The statement of work should clearly define how the agency will determine that the contract has been satisfactorily completed. The statement of work sets a standard for acceptance of the deliverable and establishes a procedure to receive

or reject the deliverable based on specific factors.

Tracking the status of several phases, segments, and deliverables that may each have multiple tasks, activities, and products, can be challenging.

Agencies should establish a formal acceptance process for each step in a contract that will allow both the contract manager and the contractor to verify and accept the progress on each task, activity, and requirement that needs to be tracked.

Additional Issues to Consider

Listed below are additional issues which agencies should consider when writing the statement of work. These items may affect pricing, so it is important that respondents are aware of these requirements. The statement of work answers the questions of who, what, when, where, why and how. If these questions are answered, it is a reasonable assumption that the statement of work is complete.

Remember to include any special requirements or important information, such as:

- Licenses or permits required
- Availability of state agency equipment for use
- Storage space for contractor materials/supplies
- Intellectual property/copyright issues
- Subcontractor requirement
- Insurance requirements
- Conflict of interests/organizational restrictions

End of contract transition language

It is critical to realize the importance of future transitions and address this need in the statement of work and throughout the procurement. Agencies should carefully consider what items and/or information would need to be maintained and provided to subsequent awardees. This ensures quality service continuity and crucial information preservation from one contract to the next.

Once it is determined that a transition plan will be required, be sure to include language that requires and lists specific deliverables in the RFB statement of work.

For RFPs, agencies may require and list specific deliverables needed for any future transition or they may opt to ask vendors to provide a detailed account of their transition policy and processes as part of their proposal. These can be discussed as part of RFP negotiations, if needed, to ensure that the final plan is optimal for the agency.

Advertising the Solicitation

Solicitations are posted to the enhanced Management Administrative Reporting System (eMARS) in accordance with the below statutes, regulations, and Finance and Administration Policies:

- For Competitive Sealed Bidding (RFB): [KRS 45A.080](#); [200 KAR 5:306](#); and [FAP 111-35-00](#).
- For Competitively Negotiated Contracts (RFP): [KRS 45A.085](#); [200 KAR 5:307](#); and [FAP 111-57-00](#).

It is recommended that any vendors known to the agency to be able to provide the goods and/or services being solicited be entered into the “Free Form Vendor” section of the requisition document and/or the RFB or RFP with a valid email address. This allows the eMARS system to automatically notify any vendors who may be able to provide the goods or services but who are not yet registered in the eMARS system as a vendor.

Pre-Solicitation Conferences

Agencies may conduct mandatory or non-mandatory pre-solicitation conferences.

Agencies should carefully consider the use of a mandatory conference and confer with legal counsel as this may limit competition. Conferences should be mandatory only if an on-site visit is required to have a full understanding of the procurement or if the solicitation is so complex that agency staff believes attendance is critical for potential respondents to fully understand the procurement.

The solicitation document must indicate the date, time and location of the conference. The conference is usually held one to two weeks after the solicitation has been published. All conference attendees must be documented through a sign-in sheet. This is especially important if the conference has been deemed mandatory because the sign-in sheet is the document used by the agency to verify respondent attendance at the conference.

The Buyer should be the person who conducts the conference but should do so in coordination with the program staff. The Buyer or Buyer’s assistant should take detailed notes/minutes of the meeting.

The Buyer should notify all attendees that the conference is to allow the vendor

community to view the location but that any information provided during the conference is NOT binding. Vendors must submit all questions in writing to the Buyer after the conference and prior to any deadline listed in the solicitation. The Buyer will post an Addendum to eMARS with official responses to all questions received.

All changes to solicitations must be made through an addendum issued by the Buyer. The addendum is made publicly available to all potential respondents by posting it to eMARS. When issuing an addendum, consider the amount of time remaining until the opening date of the solicitation. It may be necessary to extend the bid opening or proposal deadline to meet the minimum posting period of 7 days as per KRS 45A.080(3).

All conferences should be manually documented for future reference. Below is a typical agenda for a pre-solicitation conference:

- Opening – Buyer introduces agency representatives and explains their roles in the procurement.
- Introduction – Attendees introduce themselves and identify the company they are representing.
- Solicitation Overview/Review – This is the main focus of the conference. The document is reviewed page by page or section by section. It is not necessary or recommended to read the entire document, but the entire document should be addressed. Questions should be answered and both recorded as the pages or sections are discussed.
- Closing Summary –Remind attendees to submit all questions in writing to the Buyer as soon as possible, that no verbal responses are binding, and that official responses will be posted to eMARS via an Addendum to the solicitation.
- See Pre-Solicitation Conference Guidelines.

Communication with Respondents

The Buyer on the RFP must be listed as the sole point of contact within the solicitation document. It must also list all available forms of communication contacts for the Buyer, such as telephone, email, etc.

All communication prior to and during the RFP process is confidential and shall be conducted only through the Buyer on the RFP. Agency program staff must not have contact with potential respondents outside of pre-solicitation conferences

where the Buyer is present and directing the communications. If a potential respondent contacts agency program staff, they must be directed to communicate only with the Buyer on the RFP.

Any respondent that contacts someone other than the Buyer during the open procurement period (submission of RQS through award of a contract) regarding a solicitation may be disqualified.

The Buyer ensures that all potential respondents receive identical information to uphold public trust, avoid unfair advantage among potential respondents, and prevent any actual or perceived impropriety.

Written Questions

The solicitation document may invite respondents to submit written questions concerning a solicitation. This option may be in addition to or in lieu of a pre-solicitation conference. The date and time for submission of written questions should be specified in the solicitation document, if applicable. Written questions should be submitted in the format required within the solicitation document. The Buyer will respond to all procurement process related questions and will obtain responses for all program-related questions from the end users. The Buyer will compile these into an Addendum that is the official response to vendor questions. This official response will be posted as an Addendum to the solicitation within the eMARS system.

Solicitation Submission and Opening

If electronic submission will be used, the solicitation must provide information and instructions for the process. The inclusion of the FAQ site for electronic submission should be included as well for vendor reference and assistance.

If hard copies will be accepted, the correct location for submission must be clearly indicated in the solicitation along with all other submission requirements.

As per KRS 45A.080 (4), "Bids shall be opened publicly or entered through a reverse auction at the time and place designated in the invitation for bids." The solicitation documents must indicate the date, time, and location for the public bid opening by the agency. In some circumstances, public bid openings may be held via conference call instead of in-person. If electronic submission will be used, this must be clearly stated in the solicitation and the call-in number should be listed in a prominent location within the solicitation.

All bids received in response to a Request for Bid are subject to Open Records release as soon as the bid opening is completed.

Proposals submitted in response to Request for Proposals may be submitted via

hard copy and, in some instances, may be submitted electronically. Submissions for Request for Proposals are not opened publicly and are not subject to Open Records Requests until a contract is awarded or the procurement is closed.

As per 200 KAR 5:307 Section 4, "Proposals shall not be subject to public inspection until negotiations between the purchasing agency and all offerors have been concluded and a contract awarded..."

Evaluation and Award for RFPs

Agencies must conduct evaluations in a fair and impartial manner consistent with Kentucky law. The following topics are included as the generally accepted tools that may be employed to conduct fair and impartial evaluations. An agency may choose to consult with legal counsel to ensure the use of the proper tools for each procurement.

As previously discussed, the solicitation document should include a general description of the evaluation process, the evaluation criteria or categories, and the relative weights to be assigned to each evaluation criterion or category.

Prior to receipt of the responses to a solicitation, the agency may decide it is beneficial to develop an evaluation guide, which shall set forth all the details about number of evaluation teams/team members, the detailed scoring matrix, and the decision-making apparatus for the evaluation of the responses and award of any resulting contracts. Having such a guide is recommended but is not required. With a well-developed evaluation guide, the agency merely follows what is in the guide to ensure a smooth process.

Evaluation Teams

The evaluation team should be comprised of individuals who are stakeholders in the final product or service and/or individuals who have the necessary technical or program expertise. The Buyer is usually the team leader for the evaluation team and serves as a non-voting member. The evaluation team members are typically selected by program staff, with appropriate review and approval by Executive Management. It is important to select members of the team who understand the needs of the organization and understand the desired outcome of the procurement. The evaluation team should bring together as much knowledge as possible to ensure the best qualified vendor is selected. Evaluation team members may have input into the solicitation document, especially the evaluation criteria and assigned weights, if the agency so chooses. The team members should fully understand the requirements of the solicitation and must be able to critically read and evaluate responses and to document their judgments concisely and clearly in accordance

with the evaluation.

The recommended size of an evaluation team is three to five members. However, some projects may require additional members or additional teams due to the nature of the procurement. Coordination and management of the evaluation process becomes more difficult as the size and number of teams increase. To avoid potential individual bias, the team should not be less than three members.

Scoring Matrix

A scoring matrix can be used by the evaluation team members to score the individual responses based on the evaluation criteria defined in the solicitation document. The evaluation team scoring matrix should be completed prior to publishing the solicitation document because, when developing the scoring matrix, agencies may see that additions or revisions are needed to the solicitation document. If time does not permit the scoring matrix to be completed prior to publication, the scoring matrix must be completed prior to the opening and review of the solicitation responses. A Sample RFP Scoring Matrix Sheet is included at the end of this guide.

Responsive Proposals

After all proposals are opened and recorded, the Buyer determines if the proposals submitted are responsive. This is sometimes referred to as an administrative review. At a minimum, this includes the signed Proposal or bid document and any other required documents such as bid bonds. In addition, the Buyer will review the proposals to ensure that minimum qualifications are met. Consultation with legal counsel is sometimes necessary to determine a proposal's responsiveness.

An administrative review checklist is a good tool for ensuring the proposals are responsive. The evaluation team will only be provided with those proposals deemed responsive. A sample RFP Proposal Response Checklist is included at the end of this guide.

Evaluation Team Training / Agreement to Evaluation Rules

The Buyer is also the leader of the evaluation process and assumes the role of Team Leader for all evaluations. In advance of receiving responses for evaluation, the Buyer provides direction for the evaluation team to outline the team's duties and responsibilities. This may be a separate meeting but can also be held in conjunction with and just prior to the evaluation. Team members should be instructed on their responsibilities including the critical nature of confidentiality to the integrity of the evaluation process. Each evaluation team member should

submit a signed Non-Disclosure Statement to the Buyer prior to having access to any proposal documents or engaging in any discussion about the proposals.

The Buyer will review all evaluation criteria with the team members and explain how the evaluation process will be conducted. **Communication between team members during the evaluation must be limited to asking questions of the Buyer and, if allowed, obtaining information from technical experts to better understand the proposal contents and requirements.**

Each proposal must be evaluated individually against the requirements of the solicitation document. Each proposal response is considered independently with no regard to all other responses.

A sample RFP Non-Disclosure Form and an RFP Evaluation Team Member Agreement are included at the end of this guide.

Single Responses

To determine why an agency receives only one response to a competitive solicitation, the Buyer should do the following:

- Re-review the solicitation for any unduly restrictive requirements. (This can include the appropriate agency member(s).)
- Contact some potential respondents to determine why they did not submit a response.

If it is determined that there were unduly restrictive requirements in the solicitation document, the agency may decide to re-advertise the solicitation. Otherwise, the agency should consider the reasons that other responses were not received and determine if it is in the best interest of the state to make an award, to re-advertise with a revised solicitation, or to determine if a proprietary or single source purchasing justification is required.

Proposal Evaluation

Once the proposals have been reviewed and deemed responsive by the Buyer, the evaluation team shall be provided with the qualified responses.

Only the Technical Proposals are provided to the Evaluation Team at this time. The Buyer will score Cost Proposal scores separately since cost/price is an objective criterion that should be calculated through predetermined formulas outlined in a spreadsheet. The Buyer will not disclose those until

the proper time after all Technical Proposals scores are finalized.

Depending on the size and number of proposals, **evaluations may occur at the time that the proposals are distributed, or the evaluation team may be sent with the proposals to review independently before returning at a later date to complete the scoring.** This may facilitate questions by team members to the Buyer or the technical experts. It is also possible to have evaluation members working from their respective workspaces. If so, the Buyer and technical experts need to be available to answer technical questions regarding responses. For example, if a proposal recommends the use of a software product one of the team members is not familiar with, the team member should present the questions to the Buyer, who may seek out the answers to such questions. Evaluation team members should only ask questions in the areas related to the evaluation criteria presented in the solicitation document. **Consideration of outside information regarding any proposal/proposer is not allowed.**

Once the technical proposal evaluations are complete, the Buyer will collect all evaluation score sheets and responses. The Buyer totals the score sheets and verifies the accuracy of calculations for input into the final evaluation formula.

If it is apparent that one or more team members' evaluations differ significantly from the majority, the Buyer should conduct a meeting with all team members to discuss the situation to ensure the criteria was clear to all team members and that information was not overlooked or misunderstood. If after this discussion, a team member feels that he/she did not understand the criteria, the requirement, or missed information that was included in the response, the evaluator, at his/her own discretion, may revise his/her evaluation score. Under no circumstances should any team member attempt to pressure other members to change evaluation scores.

It is normal and recommended that the cost or price information be scored by the Buyer since cost/price is an objective criterion that should be calculated through predetermined formulas outlined in a spreadsheet.

References

If references were requested, the Buyer will verify any references included in the proposal and conduct any other checks deemed appropriate. The Buyer would contact all references and attempt to receive answers to questions developed by the evaluation team.

All reference checks must be documented in writing. The same script or format of questions must be used when conducting reference checks so that the results are consistent and fair to all respondents.

Oral Presentations/Discussions - (Allowed for RFPs only)

Oral presentations or discussions are conducted at the option of the agency. If conducted, the solicitation document must state when oral presentations or discussions will occur. Oral presentations and discussions provide an opportunity for respondents to highlight the strengths and unique aspects of their response and to provide answers to questions the agency may have regarding the response. Demonstrations of product functionality are recommended when appropriate, such as information technology procurements or solution based procurements.

Oral presentations and demonstrations can be scheduled for all respondents or limited to those deemed “eligible for award” as per [200 KAR 5:307, Section 5](#). Oral presentations and demonstrations should be fair to all parties. The time allowed and the format should be the same for all presenters. A prepared script will ensure consistency. Since some presenters believe there is an advantage to the order in which they present, it is preferable to go alphabetically or to draw names for the presentation order. This will ensure impartiality of the process.

Invitations to oral presentations must be sent to each vendor in such a way that all vendors have the same amount of time to prepare, thus preventing any from having an advantage over others. These invitations are sent as separate emails to each vendor so that no vendor knows about any others being invited. Typically, the buyer will request a list of all attendees that will be representing the vendor and what their roles/positions are within the company. Buyers normally do not provide any information regarding any of the staff who will be representing the Commonwealth.

Best and Final Offers – (Allowed for RFPs only)

If oral presentations and discussions are held, the respondents may subsequently be given the opportunity to submit revisions to their proposals. Revisions of proposals are normally accomplished by formally requesting Best and Final Offers (BAFOs) at the conclusion of discussions with a deadline set for receipt of BAFOs. This includes instructions as to exactly what should be submitted in response to the BAFO. After consideration of all BAFO responses, the evaluation team may move into negotiations with the highest scoring vendor.

An important difference between BAFOs and Negotiations is that BAFOs may affect the scores due to rescoring whereas negotiations are held to work out final details and sticking points. Negotiations normally do not affect rankings unless a vendor insists on a term or terms unacceptable to the state, which would result in

the vendor not being eligible for award.

Negotiations - (Allowed for RFPs only)

State agencies may negotiate terms and conditions in some solicitations and not in others. Unless specifically authorized by statute, state agencies are not allowed to negotiate the price, specifications, terms or conditions when using the Request for Bid (RFB) method. On the other hand, the competitive sealed proposal (RFP) method does allow negotiations. The RFP process has been established to expect and allow a certain amount of negotiation. The best practice is to read the requirements of the applicable procurement procedure to verify whether negotiation is permissible or not.

Note: A request for a respondent to clarify an offer is not the same as negotiation of the specifications or terms and conditions so long as the request to clarify does not allow the respondent to change their submission or does not afford one respondent an advantage over another.

The RFB and RFP solicitation boilerplate templates contain certain terms and conditions that are required by Kentucky law and therefore are not able to be negotiated. Responders will frequently take exception to some terms and conditions and ask that they be modified. Agencies should be knowledgeable of those that are non-negotiable and must remain in the solicitation and contract documents according to Kentucky statutes and regulations. Please be sure to consult with your legal staff regarding any requests to change boilerplate or template terms and conditions.

Negotiations are never to include or allow the disclosing of any information regarding if any other proposals were received, how many were received, which companies submitted them, any preliminary standings information, and/or any information (technical, cost, or other information) contained within any of the proposals.

Even in competitive proposal or qualification processes, care should be taken to avoid inadvertently changing the stated contracting objectives. If the contracting objectives are changed through the negotiation process, the members of the pool of contractors who may have been interested in submitting an offer will no longer be on an equal level. Additional pool members may have competed had the changed objectives been in the original solicitation. Whenever it appears that contracting objectives may have been changed, legal counsel must be consulted before proceeding further.

Negotiation Strategies – (Allowed for RFPs only)

Negotiation is based on the willingness of each party to compromise. In any agreement, there are usually terms/conditions or requirements (items) that each party may be willing to relinquish. Agencies must internally identify those items that are essential, desirable, and those that are subject to negotiation or relinquishment.

Like other parts of the contract management process, planning is essential to conducting successful negotiations. Planning allows the agency to know which items are essential and which are negotiable. The best practice is to meet with members of the contracting team and stakeholders to identify the items that are essential to the agreement. These are the terms/conditions or requirements on which the agency is either unable or unwilling to compromise. Then identify and prioritize the items that are desirable but not essential to the agreement, and then which the agency is willing to compromise or relinquish.

Negotiation Techniques - (Allowed for RFPs only)

There is not a single approach to negotiation and the following discussion is just one method to facilitate a successful negotiation effort.

Designate a lead negotiator to establish an organized and controlled negotiating environment that ensures the contract management team's effort is efficient, coordinated, and unified. The lead negotiator should control the meeting and ensure everyone is hearing and discussing the same issue. Side discussions are distracting and may inadvertently provide information to the vendor to the disadvantage of the entire contract management team. If available, provide a private side room for the negotiation team to use for private conversations or to "caucus" during negotiations.

The agency may provide a general list of items to be discussed in negotiations to the vendor. Be prepared to explain why a particular item is essential or objectionable and place the burden on the vendor to identify an alternative solution that meets agency needs. Do not feel pressured to agree or disagree to a single item without considering the impact of the entire group of negotiated items within the context of a final agreement. When the entire group of negotiated items is completed, consider any new risks, costs, or benefits. Take frequent breaks to discuss suggestions, options, or alternatives outside of the presence of the vendor. Write down or use a laptop to record the exact language of any proposed or alternative items, so that the team evaluates the exact language that will be included in the contract.

Negotiations can reach an impasse over conflicting terms thought to be essential to

each party. The three-question approach used to assist an agency in identifying the contracting objectives may be useful to assist the parties in clarifying and harmonizing potentially divergent objectives and interests. The three questions are:

1. What does your agency want, *specifically*?
2. What will having what your agency wants, *specifically*, do for your agency?
3. How will your agency know, *specifically*, when your agency has received what it wants?

The second question, “What will having what your agency wants, *specifically*, do for your agency?” may provide common ground to explore options to meet the needs of both parties. If an agreement cannot be reached, consider beginning negotiations with the next respondent or re-soliciting the opportunity.

Determination and Finding (Award Justification)

All files for procurements that are the result of the 3-quote process, RFB, or RFP should contain an award justification in the form of a Determination and Finding (D&F) document for the official procurement file. This document officially explains the award decision for the procurement and should do the below.

- State the procurement name and number, the buyer, the issuance date, and the closing date.
- List the submissions received by company name and indicates those that were deemed non-responsive and/or unable to be considered along with the reason for that determination.
- Explain the evaluation process:
 - For an RFB, lists scoring or had bid tab attached that identifies the winning bidder.
 - For an RFP, states that it was evaluated and scored by an evaluation team based on the criteria set forth in the RFP (list the section). Refer to the evaluation document for details.
 - Indicate if Best and Final Offers were requested.
 - Indicate if Oral Presentations were held.
 - Identify the vendor(s) with whom negotiations were held and all vendors awarded contracts. (Do not discuss negotiation

details in D&F unless negotiations were not successful.)

- Identify all preferences that were applied and scored. If not applicable, explain that preferences were considered but were not a factor in any award.
- Identify all awardees.

A sample Determination and Finding is available as an Appendix.

Contract Formation

Written contracts serve the purpose of documenting the terms of an agreement to prevent any future misunderstandings and conflict regarding the requirements and performance. These contracts are legal binding documents that establish and memorialize the obligations for both parties for the life of the contract. It is critical that the contract is clear, precise, and thorough since neither party can make any changes without consent of the other.

In most cases, state agency contracts will be created using a template of terms and conditions as the basis of the contract. This template is normally the same as the terms and conditions from the originating solicitation but with all solicitation process language removed. Using this format ensures that all terms and conditions that governed the solicitation also govern the resulting contract. An exception to this would be if some language in the terms and conditions, scope of work, or other requirements were changed during negotiations. These changes would be included in the appropriate places in the contract document exactly as agreed upon in negotiations.

*If the contract was identified in Phase I as one for which DCM will provide assistance and monitoring, DCM will likely request that the agency complete a new Risk Self-Assessment (RSA) at this time to reflect the risks identified in the final contract, which may be different than those anticipated and listed at the beginning of the project.

After award of the contract, DCM will continue its relationship with agencies regarding contract management assistance as appropriate based on the complexity of the contract, the risk levels of various factors, and other critical components of the contract.

Binding Signatures

Original signatures by those with authority to bind their entity to a contract are the usually accepted norm through which a contract becomes binding. Signed

documents delivered via email are acceptable. Digital signature software systems (DocuSign, etc.) are currently being used widely and provide expedited routing of documents for signatures in a secure environment.

Contract Award

State agencies shall award a contract for the purchase of goods and services that provide the best value for the state. Awarded contracts are entered in the enhanced Management Administrative Reporting System (eMARS) with all required supporting documents attached. This entry into the system provides the public notification required by law and announces the award. In the event eMARS does not post a notification online, the Buyer should notify all participating vendors of the award. In this case, the Buyer should print (or electronically save) all sent emails of award notification in the official file. This notification starts the protest period as per [KRS 45A.285\(2\)](#).

Protests

A formal protest may be filed by an aggrieved party against any active solicitation or any award from a solicitation.

As per [KRS 45A.285](#), any “actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the secretary of the Finance and Administration Cabinet.” This protest must be “filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto.” All protests or notices of other controversies must be in writing. The secretary of the Finance and Administration Cabinet will issue a decision in writing and will notify the filer of the protest. This decision is final and conclusive.

An aggrieved party may file a protest of the specifications or scope of work in a solicitation, or an aggrieved party may file a protest of an award to a solicitation.

In either event, the solicitation or performance of the awarded contract will halt until a determination has been issued. Upon notice of a protest, the agency must provide a written response to the Finance and Administration Cabinet’s Office of General Counsel outlining its response to each of the assertions made by the protesting party.

Please see [200 KAR 5:380](#) for additional information.

Contract Administration

Phase 3: Contract Administration

While creation of solicitations and administration of contract awards are essential, ongoing contract administration is equally important to ensure that the contractor and the Commonwealth are working together to fulfill the requirements of a contract.

Possible Actions

During this phase the DCM will be working with the high-risk, in-flight projects they have identified in the previous phases of work.

The possible actions at this point in the process include:

1. **Review Contract Management Plan (CMP)** – The DCM should ensure that the agency has submitted their CMP to the office upon contract award and should work with the agency to refine the CMP prior to the Project Kickoff Meeting.

2. **Attend Project Kickoff Meeting** – The DCM may work with the agency to support them in the planning and execution of a project kickoff meeting. The purpose of the project kickoff meeting is to review the CMP with the vendor to ensure that there is a common understanding of the contract requirements, and roles and responsibilities of all parties to the contract, prior to work beginning on the contract.

3. **Host Meet & Confer Meetings** – The DCM should schedule and host Meet & Confer meetings in accordance with the agreed upon schedule. These meetings should be used to review the CMP (if one is required), and to receive project updates from the agency. The DCM should document the meetings and any action items or outcomes of the meetings. Meeting minutes will be kept in a file for the project at OPS and shared with the agency.

4. **Support Agency Project Management** – During the life of the project, DCM should work with the OPS Buyer and the agency to address any issues that may arise. These may include support in issue escalation with the vendor, attending meetings with the agency and vendor, drafting correspondence, or drafting contract documents. Throughout the process though, the agency will be responsible for required actions while DCM provides guidance and support. The role of the DCM is not to manage the project, it is to support management of the project to a positive outcome.

- 5. Crisis Management** – Although the DCM should never directly manage an agency project, in certain instances management of FAC, OPS, DCM or the agency may request that the DCM take full project management control of a project. The DCM should only take control of the project if the project is truly in crisis. If it is not, the DCM should communicate with all parties that it will do what is necessary to address the problems that have arisen, but that the management of the project should remain with the agency. If it is indeed in crisis, the DCM should work with FAC and OPS management to host a meeting with the agency to make the formal request for transition of project management to the DCM.

Contract Administration

The primary tasks of contract administration are to:

- Verify contractor performance as per contract requirements for purposes of payment.
- Identify material breach of contract by assessing the difference between contract performance and material non-performance.
- Determine if corrective action is necessary and take such action, if required.
- Develop completion plan for exit requirements for acceptance, final payment, and contract closure.

The goal of contract administration is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. Effective contract administration minimizes or eliminates problems, potential claims, and disputes.

Good communication is critical to administering any contract. All contract administrators must understand the provisions of the contract document, have the ability to communicate precise contract responsibilities to all parties involved, and be able to maintain control over the contract performance.

Contract managers must have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract. All guidance provided to a contractor must be within the scope of the contract.

Agencies must be careful to not impose additional requirements upon the contractor or manage the contractor's operations to the extent that the contractor

is relieved of their responsibility to perform.

The extent of contract administration will not be the same for all contracts. The level of contract administration necessary should be consistent with the complexity and level of risk of the contract, its term, and dollar value.

Contract Manager Responsibilities

The primary responsibilities of the agency contract manager are:

- Participating in developing the solicitation and writing the draft documents. Contract administration **must be** considered during this process.
- Consulting with legal counsel to address any legal concerns and/or issues.
- During solicitation development, determine if the contractor's compensation structure is appropriate for the work.
- Serving as the point of contact for disseminating the instructions regarding the work to the contractor/vendor.
- Receiving and responding to communications between the agency and the contractor.
- Managing, approving, and documenting any changes to the contract.
- Managing any state property used in contract performance, e.g., computers, telephones, identification badges, etc.
- Identify and resolve disputes with contractor in a timely manner.
- Implementing a quality control/assurance process.
- Maintaining appropriate records.
- Documenting significant events.
- Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements.
- Exercising state remedies, as appropriate, when a contractor's performance is deficient.
- Inspecting and approving the final product/services by submitting a written document accepting the deliverables.
- Monitoring the budgeting/accounting process to ensure sufficient funds are available
- Verify accuracy of invoices and authorize payments consistent with the

contract terms.

- Performing contract closeout process ensuring the contract file contains all necessary contract documentation, formal acceptance documented, and document lessons learned.

The number of participants in the contract administration process will vary in number from one to many depending on the size, level of risk, and complexity of the contract. Early in the procurement process, identify staff to participate in contract management. Identify a single contract manager and others to assist the contract manager. Assign roles and responsibilities which may include:

- Determining the sequence of activities, dependencies, required or desired outcomes, and acceptable performance levels.
- Developing a timetable and start and end date for each performance component. Include milestones with accompanying timeframes, and monitoring and reporting requirements.
- Monitoring and documenting contractor activity on a specified frequency to identify problem areas.
- Meeting with the contractor on a regular basis to review progress, discuss problems and consider necessary changes.
- Providing access to state facilities, equipment, data, staff, materials, and information.
- Contacting other staff as necessary to provide equipment and data.
- Establishing scope of authority, clear lines of communication and reporting, and specific individuals who will interact directly with the contractor.
- Establishing control of correspondence, data and reports.
- Identifying potential problems and solutions.
- Defining terms or conditions of default.
- Establishing a procedure, identifying a responsible person, and establishing a timeframe for handling non-compliance.
- Establishing a procedure, identifying a responsible person, and establishing a timeline for making necessary contract decisions, modifications, and changes.

Contract managers are NOT authorized to:

- Instruct the contractor to start work before the contract is fully executed.
- Modify the scope of the contract without doing so through the formal contract amendment process.
- Direct the contractor to perform work that is not specifically described in and funded by the Contract.
- Extend the time period of the contract without execution of an approved amendment.
- Allow the contractor to incur any additional costs over the limit set by the contract.

Planning

After the contract is created and signed, the planning activities should focus on general administrative activities such as management of contract amendments through documentation of any changes to the contract scope, schedule and payment. It will also be important to schedule and monitor the resources that will be assigned to assist in the contract administration processes.

The contract manager must ensure that he/she thoroughly understands all of the components of the solicitation and contract in order to properly perform the administration of the contract.

Examples of these components would be:

- Expected outcome measures – includes staging of deliverables, if applicable. Significant deliverables should be tied to the payment schedule.
- Costs – The total cost, including any indirect cost allocation of the goods and services to be performed.
- Risk – Identifying any new potential risks as well as monitoring and managing existing risks.
- Contract Performance - When, where, and how the goods and services are to be delivered.
- Acceptance/Rejection Terms – The agency's right to inspect and accept or reject the goods and services and the conditions of acceptance or rejection.
- Contract Dates - The effective date, completion date, renewal terms, and

any additional dates necessary to monitor contract performance.

- Complete addresses – Where correspondence is to be sent, where payments are to be made, etc.

Post Award Conference / Kick-Off Meeting

After award but before any services are provided or goods are delivered, a meeting with the contractor and the principals responsible for administering the contract should take place. This is to meet the vendor and discuss the contract to ensure a clear and mutual understanding of all terms and conditions as well as the responsibilities of all parties. This meeting serves as an excellent opportunity to clarify and resolve any potential misunderstandings at the beginning.

It is not necessary to have formal meetings for all contracts but it is highly encouraged to have some form of conversation with the vendor to identify the performance requirements and the administrative procedures that apply to the contract. The post award conference should NEVER be used to change any terms of the contract.

Agency personnel should decide if a post award conference is necessary. For less complex, low risk, low- dollar value contracts, a telephone call to the contractor may be sufficient. During the telephone conversation, the agency should review the major points of the contract with the contractor (e.g.; amount of contract, major performance milestones, deliverables, reports, meetings) and time and place of delivery. Factors used to determine the need for a post award conference include:

- Type of contract;
- Level of risk associated with the contract;
- Contract value and complexity;
- Length of contract, period of performance and/or delivery requirements;
- Procurement history of the supplies or services required and expertise of the contractor;
- Urgency of delivery schedule;
- Agency's prior experience with the contractor;
- Any special or unusual contract requirements; and
- Any special or unusual payment requirements.

Post Award Conference Agenda

It should be clearly communicated at the beginning of the conference that the purpose of the meeting is to explain or clarify contract requirements and not to make changes to the contract or re-negotiate the contract terms. The post award conference agenda should cover the following:

1. **Introduction.** Introduce all participants and identify agency and contractor key personnel.
2. **Scope.** Discuss the scope of the contract (i.e., what the agency is buying). Although this may seem overly simplistic, a total and complete meeting of the minds on this point will avoid problems during the life of the contract.
3. **Terms.** Summarize contract terms and conditions, particularly any special contract provisions. This can avoid any misunderstandings later on, and allows the contractor to gain a better understanding of the terms prior to beginning work.
4. **Requirements.** Discuss the technical and reporting requirements of the contract. The technical requirements may be discussed as part of the Scope, above. It is vital that the contractor and the agency have a meeting of the minds regarding technical requirements. The contractor must understand the importance of any reports required under the contract and the importance of submitting them in accordance with contract requirements.
5. **Administration.** Applicable contract administration procedures, including contract monitoring and progress measurement should be discussed.
6. **Rights.** The rights and obligations of both parties and the contractor performance evaluation procedures should be summarized. The agency should explain that contractor will be evaluated on their performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts.
7. **Potential Problems.** Potential contract problem areas and possible solutions should be addressed. Discuss any issues or contract areas that the agency believes may lead to a problem later on or may be subject to differing interpretations.
8. **Payment.** Invoicing requirements and payment procedures should be discussed, especially if the payment will be made according to milestones achieved by the contractor.

9. Authority. The roles and responsibilities of the parties' contract managers, contract administrators, project managers, key personnel leads, and any other key staff should be identified. Agency personnel should explain the limits of their authority and obtain the same information regarding contractor personnel.

After the conference, the contract manager shall prepare a summary of the meeting for the contract file, which details the topics covered. The summary shall include areas requiring resolution, a list of participants, and in particular, those individuals assigned responsibilities for further action and the due dates for those actions.

*Copies of the meeting summary must be distributed to all conference participants to ensure that all parties have written documentation of items discussed.

Monitoring Performance

Monitoring the performance of the contractor is a key function of proper contract administration. The purpose of this function is to ensure that the contractor is performing all duties in accordance with the contract and for the agency to be aware of and address any developing problems or issues.

Small dollar value or less complex contracts normally require little, if any, monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed necessary by the agency. Large dollar contracts may need little monitoring if the items or services purchased are not complex and the agency is comfortable with the contractor's performance and the level of risk associated with the contract.

Contract monitoring may be viewed as:

- A preventive function.
- An opportunity to determine the contractor's need for technical assistance.
- A valuable source of information concerning the effectiveness and quality of services being provided.

The important areas of contract monitoring are:

1. Determining what to monitor
2. Types of monitoring
3. How to use the results of monitoring reviews

1. Determining what to monitor.

Consider the following questions when determining what to monitor:

How will the agency know it is receiving what it paid for?

How will the agency know that the contractor is complying with the terms of the contract?

How will the agency know the contract is complete and determine closure?

Review the statement of work and other contract terms, including contractor compliance requirements. All of these requirements are deliverables that the contractor agreed to when the contract was executed or the purchase order was issued. Create a **monitoring program** that focuses on items that are most important. Generally, this means to focus the monitoring on the outcomes that result from the contract.

2. Types of monitoring

The below explains how to establish expectations so all parties to the contract (those responsible for contract monitoring and the contractors) understand what will be monitored and the criteria used to evaluate contractor performance.

There are various types of performance/contract monitoring but two types that are used frequently are Site Visits and Desk Reviews.

Site Visits

More complex contracts and those that the agency perceives as having a higher degree of risk may require both reviews and visits to the contractor's facilities to ensure progress is in line with the contract schedule. Site visits can be used to verify either the actual performance or reported performance of scheduled items/tasks. These visits can help to ensure the contractor is dedicating sufficient resources and appropriate personnel to the contract. Site visits reinforce the importance of the contract to the contractor, as well as provide the opportunity to enhance communications with the contractor.

To ensure that a Site Visit is effective and productive, the agency should:

- A. Develop a comprehensive and objective site monitoring checklist which:

- Focuses on the outcomes, but also includes compliance requirements. Site monitoring criteria should reference the applicable contract requirement. **(This would include any insurance coverage required to remain active, any required trade or other certifications that must remain valid and active, and any other non-performance requirements of the contract. These must also be monitored if they are required parts of the contract.)**
- Assesses contractor performance the same way. Are any errors considered minor or inconsequential? If so, these must be outlined up front so that the contract is monitored consistently. Clarify areas where monitors may exercise judgment.
- Specify the sample size to be reviewed, but do not disclose specifics to the contractor. For example, an agency may state it will review case documents for the month of January but should not disclose the specific cases or documents to be reviewed.

Full scope site visits are typically scheduled visits to the contractor's place of business. They are based on risk assessment and cover a broad range of contract compliance and performance issues.

Limited scope site visits typically focus on a particular problem.

Examples of some typical reasons for considering a limited scope site visit would be:

- Other contractors have experienced problems in a specific area and there is an indication this contractor might be experiencing the same problem.
- Contractor has provided a corrective action plan for a problem, but the agency is not certain the proposed solution will resolve the problem.

B. Have certain documentation requirements in place:

- Allow space on the checklist (or on a separate document) to document the results of the site visit. For example, the documentation should include the identification of the files monitored, e.g. the case number, the staff members tested for

salary allocations, the expenditures reviewed.

- Describe the documentation required for the site monitor to bypass an area, i.e. “No problems identified last year with the compliance requirement - not monitored this year.” This allows agencies more time to review higher risk areas.

C. Tailor the site monitoring checklist for each contractor. While there will be standard items the agency will review for all contractors, each contract/contractor should be reviewed for specific site monitoring requirements unique to that contract/contractor. In addition, consider the following:

- Review specific contract requirements to determine if these merit site monitoring.
- Look for items that fall just below an amount requiring additional approval.
- Consider problems the contractor has had in the past or what is likely to cause problems for this contractor. Are parts of the contract new to the contractor? For example, the contractor may be providing the same services but to a different population during this contract.
- What types of items do not need to be monitored and why? For example, if the contractor uses an information database the agency has tested under previous contracts, then the risk is low in this area and the database may not need to be reviewed.
- Has another agency or another part of the same agency conducted a review? For example, if the agency provides home delivered meals to people with disabilities, and another agency provides the same services, both agencies could coordinate the reviews of shared contractors.

D. Site Monitoring Reports. The report of the site visit should stand by itself and serve as a record of the site monitoring work. A copy of the report should be sent to the contractor and any others who may benefit from the report.

Even if the contractor corrects a problem in front of the site monitor, the site monitor is obligated to include the problem in the report. This will serve as

an indicator to follow up on the problem on future visits to ensure it was corrected.

Include what has been learned during this site visit in the next Risk Assessment and in future contract requirements. If the site monitor recommends changes for the next contract, include the recommendations in the site monitoring reports. Also include any contractor recommendations for the next contract.

Desk Review

Typically, these are agency reviews of reports submitted by the contractor to the agency. Agencies should review the reports for the following:

- Compare the actual performance against the contract requirements. Is the contractor performing in accordance with the contract requirements?
- Compare actual expenditures to the approved budget. Is the contractor following their approved budget plan?
- Compare the current period to prior periods. Are there any unexplained trends? Is the contractor performing work significantly different from the last period or the last year?
- Compare what the current contractor is doing in comparison with other contractors performing similar work.
- Compare the relationships between key components of the report such as:
 - the cost per unit of service or the percentage of the fees charged to the program;
 - the change in variable costs compared to the units of service provided; and reported salaries match staffing plan.
- Compare the report with what is known about the contractor's operating environment. For example: Did a weather emergency in the area adversely affect the contractor's ability to perform?

Expenditure Document Review

These are reviews of contractor invoices and expenditure draw requests to determine if the rates and services are the same as allowed by the contract.

Determine if the supporting documents such as cost reports, third party receipts for expenses, detailed client information, etc. adequately support the request for payment. If the contractor consistently provides incorrect invoices and/or the supporting document is insufficient to support the request, then additional monitoring such as an on-site visit may be necessary.

Using monitoring review results

Monitoring reviews, audits, and investigations should be routinely followed up to:

- Ensure corrective actions have been taken;
- Identify common problem areas that might require training; and
- Improve future contracts.

Agencies should design a system that includes criteria and defined follow up actions. The goal of follow up should be to bring the contractor back into compliance with the contract requirements. Follow up is essential as the problem will not correct itself simply by identifying it and including it in the monitoring report.

Monitoring results should also be used to improve the contract requirements for future contracts. If there are unnecessary restrictions or insufficient restrictions, this is the time to make a note of the recommended changes so future contracts can incorporate the changes.

Reporting

There are generally two (2) categories of reports: *status reports* and *activity reports*. Both types of reporting serve useful functions:

- Status Reports – Describe the progress of the work. The content of the status report should be consistent with and track the organizational structure of the statement of work, i.e. phases, segments, deliverables and products. A status report should describe what work is complete and what work is pending and that status should be contrasted against the contract schedule. Only work that has been verified as completed or accepted should be categorized as complete. If there are any unresolved issues that the agency is contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested. If the scope of work has changed during the contract (by written contract amendment), insist that status reports track the original contract schedule,

not a revised contract schedule. If status is tracked against a revised schedule, there is a risk that the schedule will continually change and the status report will be rendered meaningless.

If the contract does not provide for periodic status reports, the agency should ensure that sufficient progress is being made by the contractor. This may be accomplished by requesting a status update from the contractor or a site visit to view the progress.

- Activity Reports – Describe any activity on the project. Project **activity** is not the same as a status report. A project may have a great deal of activity taking place without making substantive progress. For example, there may be a large number of tasks ongoing in performing the contract but none of the progress markers have been reached. In this case, the progress for the Status Report is zero but the activity items to be listed on the Activity Report are many.

On the other hand, activity reporting can be a core feature of contract management. For example, a contractor payment in an outsourcing contract may be based on the number of completed transactions. In this example, activity reporting is critical to contract administration as it directly identifies the progress or deliverables being completed.

Monitoring by Third Parties

In some instances, the obligation of monitoring the progress of a contract is assigned to another contracted vendor / consultant. This is also known as independent oversight. For example, consultant subject matter experts may perform monitoring services independently or in conjunction with agency staff for highly technical work.

Risk Management

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.

A new risk assessment (RSA) will be conducted upon award to make an initial determination about the risk level of the contract and the type and amount of management, oversight and resources required to plan and implement the contract from beginning to end.

The best approach to managing risk is to document the various risk factors, the level of risk for each of those, then identify and assign experienced staff resources

to assist in the contract management process.

The risk management process includes: 1) risk identification, 2) risk analysis, 3) risk evaluation, 4) risk treatment and contingency plan and 5) risk monitoring.

First, identify risk factors. Risk factors are indicators that assess the risk of the contract or project objectives not being achieved. Some factors will be common in many contracts while others may be unique to certain contracts.

After identifying the risk factors, analyze the severity of the risk by assigning weights to each factor. Weights will typically describe how significant each factor is in the success of the contract and the degree to which failure may affect the agency. However, weights can also be designed to ensure statutory or policy requirements.

With the results of the risk factors' analysis, the agency should next evaluate the options for mitigating each risk factor and determine the risk factors requiring the most attention.

Once the most important risk factors have been analyzed, the agency will need to develop a risk treatment plan to manage and, to the extent possible, mitigate those risk factors. This plan should be reasonable, attainable, and measurable. After having this plan in place, the agency will need to have a contingency plan...a "what if" alternative in case the risk treatment plan is upset by unforeseen issues or events.

The final initial step is to establish a risk monitoring process to keep track of all factors and activities associated with those throughout the life of the contract. Communication with internal staff assigned to contract management (and with DCM for those larger, complex contracts) is critical to keeping all parties advised of current conditions at any moment.

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.

As the contract progresses, periodic risk assessments should be conducted to identify and analyze any changing risk levels, identify any new or potentially new risks, evaluate any needed changes in staff and resources to manage all risks, and

determine if any changes are needed in oversight of the risks. 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.

Payment Approval

Invoices must be approved by program staff prior to payment. Payments must be made in accordance with FAP 120-05-00 Prompt Payment to Vendors. Penalties for late payments shall be determined in accordance with KRS 45.451 – KRS 45.458.

Payment is to be made only after receipt of the goods/services, after full inspection and acceptance of the goods/services, and after the appropriate approvals have been given for payment.

Invoices are to be compared to the contract to ensure proper billing. If the invoice does not match the contract, the agency should contact the Buyer on the contract to determine if the charges are correct or incorrect. If need be, the agency may also contact the vendor to question the charges based on the contract amounts.

Partial payments may be made if allowed by the contract. Any partial payment must be only for the goods or services already received, inspected, and accepted. Under no circumstances should an agency pay for goods or services that have not yet been received.

For contracts that require progress payments or scheduled payments for services, all invoices should be reviewed to ensure that the contractor's billing coincides with the contract's progress. This requires that the contractor's progress be measurable and closely monitored. Costs incurred or invoices submitted, in and of themselves, are not sufficient indicators of the contractor's progress.

If the agency believes that the requested payment exceeds the contractor's progress, an explanation should be requested from the contractor prior to approval of the invoice. Payment should be withheld pending agency satisfaction with the contractor's progress.

Client services contracts are unique in that acceptance of a good or service is not an indicator that an invoice should be paid. Problems with client services contracts generally surface after invoices are paid. Contract managers dealing with client services contracts should ensure mechanisms exist to implement remedies for poor performance and that future payments may be withheld until performance improves.

Withholding Payment

Agencies have the responsibility to protect the interests of the agency and under appropriate circumstances, it may be necessary to withhold payments from contractors. Circumstances where it may be necessary to withhold payment include, but are not limited to:

- There is a material breach of the contract by the contractor;
- Errors in the invoice;
- Unsupported or undocumented costs;
- To remedy previous overpayments on the same contract; and
- Contractor's performance is non-conforming or unacceptable.

Change Management

During the term of the contract, it may become necessary to make changes to the contract. These changes can be minor, administrative changes that do not alter the actual contract terms or they can be substantial changes that do alter the contract terms.

Agencies should have an effective change management process in place. Failure to manage and control changes can result in an unintentional modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls, and diminished contractor accountability.

An effective change management process includes but is not limited to:

- **Formal, written approval of all changes prior to the change taking place. Do not verbally authorize the vendor to begin working on a change before the change has been agreed upon by the authorized management staff on both sides, the contract has been modified to incorporate the changes, and both parties have received and reviewed the modified contract for approval.**
- Evaluation of the impact of each change to the contracting objective, the corresponding deliverables and/or products, the schedule, cost, and increase in agency overhead resulting from the change, impact to work in progress/completed work, standards, and acceptance criteria.
- If the contract contains a contingency allowance, develop a plan for how draws against this allowance will be requested and approved.
- Documentation of all changes, no matter how small and avoid any informal undocumented change orders.

- Establish a single point of contact to recommend or authorize any change. Document the change as approved or disapproved. If a change is approved, document the change and the impact to the scope of work through a contract amendment or purchase order change notice, whichever is applicable.

Contract Changes and Contract Scope

Whether or not a contract may be changed, depends upon certain principles. State law requires a competitive process in most situations. The specific method of competition depends upon the type of goods or services needed. If competitive, the resulting contract must be consistent with what was asked for during the competition, usually contained in the solicitation document. Not being consistent can violate the competitive process requirements.

If a change is needed to a contract, the change must be within the scope, or range, of what was provided in the solicitation. A significant difference would be a material or substantial change in the scope of services and would not be allowed because it had not been originally subject to fair competition. To permit such a change would go against the ideas of competition and a fair playing field for all vendors.

In order to determine what constitutes scope changes to advertised specifications, the significant question is whether the changes are material or substantial.

Material or substantial changes are measured by whether the extent of the changes would substantially alter the original specifications in such a way that other vendors may have been interested and/or able to participate in bidding had those changes been included in the original solicitation. If much is revised, then those changes will be treated as a new solicitation.

Materially changing solicitation specifications after receipt of responses denies an opportunity for others to participate in the solicitation. Therefore, any contract amendments are required to be within the scope of the original contract and the competitive process underlying the original contract.

It is important to remember that application of the above principles will depend upon your specific situation. Always consult with your legal staff members before proceeding.

Administrative Changes

These are changes that do not alter the scope of the contract and do not affect or alter the rights of the parties. These changes may not require written agreement by both parties. Examples of administrative changes include:

- Changes in billing instructions or address
- Corrections of typographical errors not affecting the substance of the contract
- Changes in agency personnel assigned to the contract

Directed Changes

These are contractual changes that affect the rights of both parties. Such changes generally require contract modifications (change orders) agreed upon in writing by both parties. **These changes are not officially part of the contract until the contract modification is fully completed and final in the eProcurement system.** Examples of directive changes include:

- Change in any price on the contract.
- Change in the delivery schedule.
- Change in the quantity.
- Change or nature of deliverables. (i.e. the specifications)
- Change of key personnel.
- Change of any terms and conditions.

Constructive Changes

If a contractor performs work beyond the contract requirements without a formal change order due to what he perceives was an order by the agency, the contractor may claim that the contract was “constructively” changed, and the contractor may be entitled to additional compensation for the changes. Generally, a constructive change will still require agreement in writing by both parties and a modification to the contract. Constructive changes may occur when agency personnel:

- Accelerate the delivery schedule;
- Direct the work to be performed differently;
- Change the sequencing of the work;
- Delay accepting or rejecting deliverables;
- Delay reviewing invoices and approving payment;
- Interfere with or hinders performance.

Vendor Complaints and Dispute Resolution

Vendor complaints and contract disputes are covered by FAP 111-42-00, KRS 45A.015, 200 KAR 5:312, and 200 KAR 5:315.

The goal of any dispute resolution process is to resolve all problems before they escalate to the next level. Effective and prompt communication with vendors is critical to avoiding escalation of problems. Agencies should take the following steps to address issues:

1. Identify the problem - many times what may appear to be a problem can be resolved by providing the contractor with information or clarification.
2. Research facts – the agency should obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
3. Evaluation – the agency should review all of the facts in conjunction with the requirements and terms and conditions of the contract. The agency should then determine the appropriate course of action.
4. Proper dispute resolution is a core skill of successful contract management. Identification of problems early in the performance period, effectively communicating and formalizing the process in writing via a cure notice procedure or less formal written procedure is essential. A contract termination is a failure by BOTH parties to a contract. Termination is the last resort and rarely needs to be done.

Termination

When a contract is terminated, the parties are relieved from further unperformed obligations in accordance with the agreed upon terms and conditions. A contract may be terminated under distinct processes: Termination for Default, Termination for Convenience, and Funding Out Provision. (See 200 KAR 5:312)

Termination for Default

A contract may be terminated for default when the agency concludes that the contractor has failed to perform its contractual duties. An agency is not required to terminate a contract even though the circumstances permit such action. Agencies may determine that it is in their best interest to pursue other alternatives. Examples of such would be extending the delivery or completion date, allowing the contractor to continue working or working with the contractor's surety to complete the outstanding work. See 200 KAR 5:312 Section 2 for all requirements for this method of contract termination.

Termination for Convenience

A termination for convenience, also known as no-fault termination, allows the

agency to terminate any contract, in whole or in part, at any time in its sole discretion, if it is determined that such termination is in the best interest of the agency. See 200 KAR 5:312 Section 3 for all requirements for both the agency and the contractor when using this method of contract termination.

Funding out provision

The Commonwealth may terminate a contract if funds are not appropriated to the contracting agency or are otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The contracting agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract. See 200 KAR 5:312 Section 4.

The Contract Administration File

Keeping one complete master contract administration file is critical. The file will provide a basis for settling claims and disputes should they arise in administrative or court actions. Throughout the life of the contract, the contract administration file should contain such things as:

- A copy of the current contract and all modifications
- A copy of all specifications, drawings or manuals incorporated into the contract by reference
- A reference list or a list of prior contracts with this specific vendor (if they offer valuable historical data)
- The solicitation document, the contractor's response, evaluation determination, and the notice of award document
- A list of contractor submittal requirements
- A list of government furnished property or services
- A list of all information furnished to the contractor
- A copy of the pre-award conference summary, if conducted
- A schedule of compliance review, internal correspondence, if applicable
- A copy of all general correspondence related to the contract
- The originals of all contractor data or report submittal
- A copy of all routine reports required by the contract such as sales reports, pricing schedules, approval requests, and inspection reports
- A copy of all notices to proceed, to stop work, to correct deficiencies, or

change orders

- A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules
- The records/minutes of all meetings, both internal and external. Include sign-in sheets and/or agendas
- A copy of all contractor invoices, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments
- A copy of all backup documentation for contractor payment or progress payment; and copies of any audits.

Agencies should maintain an original of all contracts on file in a central repository. This allows contract managers to reference past or current contracts for useful information relating to a current project.

Contract Close-Out

The contract close-out process is usually a simple but detailed administrative procedure. The purpose is to verify that both parties to the contract have fulfilled their contractual obligations and there are no responsibilities remaining. In addition, contract close-out is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all agency furnished equipment and material have been returned; and final payment has been made to the contractor.

To initiate the close-out process, the agency should first determine that the contractor has satisfactorily performed all required contractual obligations.

A contract is ready for close out when:

- All deliverables, including reports have been delivered and accepted by the agency. Contract managers should compare actual performance against performance measures, goals and objectives to determine whether all required work has been completed
- Final payment has been made
- All monitoring issues have been resolved

- All property inventory and ownership issues are resolved including disposition of any equipment or licenses purchased under the contract
- Final acceptance from the Project Manager has been received (if applicable)
- Contractor is aware of and in compliance with records retention requirements and a plan has been developed for contract file maintenance
- All parties have completed any required end of contract transition actions and processes
- Any deficiencies found as part of the closeout process are documented and communicated to all appropriate parties.

*A Sample Contract Close-Out Checklist is provided at the end of this Guide.

Preparations for Next Contract

Approximately one year prior to the final expiration date of a contract that contains goods and/or services that are still needed by the agency, consideration for a new solicitation will need to begin. The agency will need to pull the file for the current contract to use as a reference when developing the scope and requirements for the new solicitation. For complex contracts, the agency's actions on this must be well before the one-year mark. DCM recommends one and one-half to two years (1-1/2 to 2 years) before the contract final expiration date.

It is critical that agencies review the previous contract's file (RFP, vendor questions, negotiations, contract and all modifications, and all PE's) well before a new RQS is created for a new solicitation. Ample time must be allotted for analysis of the previous contract in order to know which requirements and needs remain the same and which need to be updated or changed.

At a minimum, the agency should be looking for the following items during this review:

Analysis of current contract. Which parts have been successful and which need revision?

Are all requirements still appropriate or do they need to be tightened or loosened?

Are the service levels still appropriate or do they need to be scaled up or down?

Will the new budget be sufficient to cover the same services?

What is the balance of risk between agency and vendor?

Does this balance need to be changed? (higher vendor risk can frequently mean

higher cost for the agency)

Is there a risk of damages such that the agency should consider requesting insurance coverage?

Is there risk such that the agency should consider a Performance or another type of bond?

What is the past and current quality level of service/goods delivered?

What, if any, problems have surfaced in the life of the contract?

What solutions were presented? Were these solutions successful?

Was the level of risk going forward reduced by the new solutions? If not, why not?

How was the risk of previous problems resurfacing mitigated?

How was that mitigation monitored?

What are the critical success factors for this contract going forward?

What are the possible risks to those success factors going forward?

Once the agency has completed the analysis of the current/last contract's life, the agency should start drafting the scope of work for the new solicitation.

If the goods/services fall outside of the agency's delegated authority, the RQS document will need to be submitted to OPS for solicitation. Depending on the complexity of the requested goods/services, the RQS document should be at OPS in ample time to allow all review processes, solicitation processes, and any implementation to occur prior to expiration of the current contract or required 'go-live' date. Normally, this RQS would be submitted at least one year before the expiration of the current contract and must be submitted with a full scope of work that includes all needs, requirements, and applicable attachments.

Attachments

This guide provides recommendations and information to assist agencies with all steps needed for a successful contract experience. In addition, various documents are included at the end of this guide as samples for review.

Electronic versions of the documents needed for submission to OPS can be found at <https://finance.ky.gov/eProcurement/Pages/Contract-Management.aspx>

Acronyms

APP: Annual Procurement Plan

CMG: Contract Management Guide

CO-OP: Cooperative Purchasing Program

DCM: Division of Contract Management at FAC OPS

eMARS: enhanced Management Administrative Reporting System

FAC: Finance and Administration Cabinet

GSA: General Services Administration (Federal)

NIGP: National Institute of Governmental Purchasing

OPS: Office of Procurement Services at FAC

RSA: Risk Self-Assessment

SOW: Scope of Work / Statement of Work

End of Document