

Contracting for Services

A National State Auditors Association Best Practices Document



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Best Practices in Contracting for Services

Purpose

The Performance Audit Committee of the National State Auditors Association developed this document as a tool for audit organizations and government agencies to use in identifying and evaluating best practices in contracting for services. Although it was intended to address many of the best practices that could apply in these situations, it should not be considered all-inclusive. Further, the practices listed here may not be applicable in all situations, and other practices may accomplish the same things. However, this document can be extremely helpful as a starting point for both agency managers and auditors in deciding what types of practices are more likely to result in an efficient, effective, and accountable service procurement process.

Planning

Proper planning provides the foundation for contract awarding and monitoring. Planning identifies what services are needed and when, how they should be provided, and what provisions should be in the contract. Planning also helps ensure proper information is collected to effectively structure a request for proposal (RFP). As a public entity, the agency must know the state's bidding and contracting laws, other relevant state laws as well as any procedural guidelines the agency is obligated to follow. Timely planning is crucial in all procurements, but especially in procurements like RFP's that can take a lot of time to execute.

Decision to Contract

First, the agency needs to determine whether or not to contract for the service. To make this decision the agency should:

1. Analyze its business needs, goals, objectives, and services and determine whether or not the service is necessary.
2. Conduct a cost/benefit analysis and evaluate options, such as whether contracting is more or less expensive than using agency staff.
3. Determine whether state law either prohibits contracting for services or requires the agency to demonstrate its need to contract.

Performance Requirements

Once the decision to contract has been made, the agency should develop performance requirements that will hold vendors accountable for the delivery of quality services. Performance requirements should:

1. Clearly state the services expected.
2. Clearly define performance standards and measurable outcomes.
3. Identify how vendor performance will be evaluated.
4. Include positive or negative performance incentives.
5. Identify the staff that will be responsible for monitoring vendor performance. Ensure that sufficient staff resources are available to handle vendor/contract management properly.

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6. Clearly define the procedures to be followed if, during the course of performance of a service contract, unanticipated work arises that requires modification to the contract.

Request for Proposal Process

The decision to employ a Request for Proposal commits an agency to a formal process based on fair and open competition and equal access to information. This decision allows the agency to systematically define the acquisition process and the basis on which the proposals will be assessed. The RFP itself provides a standardized framework for vendor proposals and highlights the business, technical, and legal issues that must be included in the final contract.

The RFP should:

1. Clearly state the performance requirements and the scope of the services that are to be provided.
2. Include a statement of work that flows from the business needs analysis, and should present a logical plan to address the stated needs.
3. Identify constraints, schedules, deadlines, mandatory items, and allowable renewals.
4. Specify required deliverables, reporting obligations, and payment terms.
5. Clearly state pricing requirements and bid submission expectations, including closing time, date, and location. A standard bid price form is helpful to ensure an "apples to apples" cost comparison.
6. Clearly state the evaluation criteria and weighting factors for scoring proposals.
7. Allow sufficient time for vendors to prepare good proposals.
8. Avoid specifications that favor a particular bidder or brand.
9. Specify the qualifications for the company and/or personnel who would be assigned to the project.
10. Identify federal and state requirements that govern the contracting process and the delivery of services.
11. Outline all procurement communication devices to ensure all appropriate bidders or potential bidders have access to the same information, i.e. pre-bid conferences, Q&A's, whom to contact with questions, etc.

Award Process

Although evaluation methods vary, the contract award process should ensure vendor proposals are responsive to the agency's needs, consistently and objectively evaluated, and contracts are awarded fairly to responsible vendors. Without proper awarding practices, there is little assurance an agency is selecting the most qualified vendor at the best price. Furthermore, contracting decisions may not be defensible if challenged.

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Award Decision

When making an award decision, the agency should:

1. Have appropriate procedures for handling late or incomplete proposals.
2. Ensure that an adequate number of proposals were received.
3. Use an evaluation committee, comprised of individuals who are trained on how to score and evaluate the proposals and who are free of impairments to independence.
4. Use fixed, clearly defined, and consistent scoring scales to measure the proposal against the criteria specified in the RFP.
5. Carefully check vendor references.
6. Document the award decision and keep supporting materials.
7. Carefully control bids upon receipt to ensure that bids are not opened prematurely to give late bidding vendors confidential pricing information, bids are not accepted after the due date, inferior bids are not given extra opportunity to cure deficiencies, etc.

Contract Provisions

Contracts for the purchase of services must be formal, written documents. Contracts should (1) protect the interests of the agency, (2) identify the responsibilities of the parties to the contract, (3) define what is to be delivered, and (4) document the mutual agreement, the substance, and parameters of what was agreed upon. Specifically, the contract should:

1. Clearly state and define the scope of work, contract terms, allowable renewals, and procedures for any changes.
2. Provide for specific measurable deliverables and reporting requirements, including due dates.
3. Describe the methods of payment, payment schedules, and escalation factors if applicable.
4. Limit the state's liability for work performed either before or after the contract's scope.
5. Contain performance standards, performance incentives and/or clear penalties and corrective actions for non-performance, with a dispute resolution process. The contract also should include a requirement for a performance bond when appropriate.
6. Contain inspection and audit provisions.
7. Include provisions for contract termination.
8. Include provisions for contract renegotiation and/or price escalations if applicable.
9. Tie payments to the acceptance of deliverables or the final product, if possible.
10. Contain all standard or required clauses as published in the RFP. The contract may also incorporate the RFP itself. Order of precedence should be addressed in case of a discrepancy between the RFP and the body of the contract for example.
11. Contain appropriate signatures, approvals, acknowledgements, or witnesses.

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12. As necessary, allow for legal counsel's review of the legal requirements for forming the contract, which may include a review of the contracting process; legal sufficiency of the contract; the contract terms; etc.

Monitoring

Contract monitoring is an essential part of the contracting process. Monitoring should ensure that contactors comply with contract terms, performance expectations are achieved, and any problems are identified and resolved. Without a sound monitoring process, the contracting agency does not have adequate assurance it receives what it contracts for.

To properly monitor a contract, the agency should:

1. Assign a contract manager with the authority, resources, and time to monitor the project.
2. Ensure that the contract manager possesses adequate skills and has the necessary training to properly manage the contract.
3. Track budgets and compare invoices and charges to contract terms and conditions.
4. Ensure that deliverables are received on time and document the acceptance or rejection of deliverables.
5. Withhold payments to vendors until deliverables are received.
6. Retain documentation supporting charges against the contract.
7. After contract completion the agency evaluates the contractor's performance on this contract against a set of pre-established, standard criteria and retains this record of contract performance for future use. If agencies do maintain a record of contractor past performance, it has the potential use as an evaluation element under "Award Decision."