

STATE OF NEBRASKA
PROCUREMENT
MANUAL

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This guidance document generally outlines the procurement process that will be used for Nebraska’s Agencies, Boards, and Commissions. Because the procurement process is, by its very nature, factually and circumstantially unique, Nebraska Statutes give flexibility and discretion to the Director of DAS and others to ensure the fairness of the procurement process. As such, it is important to note that the processes outlined in this document may be diverted from as permitted by law, as warranted by the circumstances, and in some cases, in the discretion of the Agency, Board, or Commission.

1. PURPOSE AND APPLICATION

The purpose of this guide is to assist agencies when procuring goods or services pursuant Statutes This guidance manual is provided pursuant to Neb. Rev. Stat. § 73-504(2), but may be deviated from at the discretion of the Director of Administrative Services as circumstances warrant. Other statutes may also allow deviation under certain circumstances. As such, this manual should be read to promote the statutory purpose of establishing standardized open, fair and efficient contracting and procurement and should not be strictly construed if doing so violates the purpose of State law.

1.1. Procurement Fundamentals

1.1.1. What is Procurement?

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring goods or services. The term also includes all functions that pertain to the obtaining goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration, [Nebraska Statutes](#), and [Rules and Regulations](#). Ultimately, it is the act of utilizing taxpayer funds to meet the needs of government in a fair, transparent and efficient way in order to uphold the people’s trust.

The Nebraska Procurement Model, illustrated below, organizes the procurement process into a series of steps from the time a state agency, board, or commission (agency) first identifies a need for goods or services, through contract award, contract administration and contract closeout.

It is important to understand that this model is not rigid and may be deviated from to support the purposes of public procurement. It is also important to recognize that the government/state/city organization has fundamental inherent government functions that

cannot be delegated to a contractor. If these inherent functions are delegated, it implies the contractor is now acting as an employee of the government (i.e. providing a personal service).

In order to engage in lawful procurement, it is important to understand that only certain individuals within government have been granted authority to spend public money appropriated by the Legislature. The procurement officials are the only ones who can “bind” the state and anyone doing business with the State should rely only on the appropriate procurement official when making business decisions.

1.1.2. Procurement Structure

Procurement in the State of Nebraska is authorized and guided by state statutes. These statutes may grant discretion to certain procurement officials to ensure a fair procurement process. Procurement personnel are advised to include any agency specific requirements and/or applicable State, Federal and other law required to be included in the contract.

1.1.3. Ethics

State of Nebraska personnel involved in the procurement of goods, and services have the responsibility to uphold Nebraska procurement laws and act in good faith to serve the best interests of the State of Nebraska and its taxpayers. All public officers and state employees, not just procurement professionals, are expected to read and understand these key statutes prescribing proper conduct. [Neb. Rev. Stat. § 81-161.05](#) prohibits AS Materiel Division employees from accepting gifts, or anything of value, from vendors.

1.1.4. What is a Contract?

A legally enforceable contract is an agreement between parties that consists of the following elements:

OFFER: A solicitation to provide something of value (generally a good or service) in exchange for agreed upon consideration.

ACCEPTANCE: An affirmative agreement to accept the solicitation in the offer in exchange for consideration requested.

CONSIDERATION: Anything of value exchanged pursuant to the offer and acceptance.

LAWFUL PURPOSE: A valid contract must have a legal purpose. For example, a “contract” to commit a crime would be not be enforceable in court.

CAPACITY: The lawful authority to enter into the contract. In public procurement only certain individuals have the capacity to obligate taxpayer money and promises made by others cannot be enforced.

1.1.5. Procurement Forms

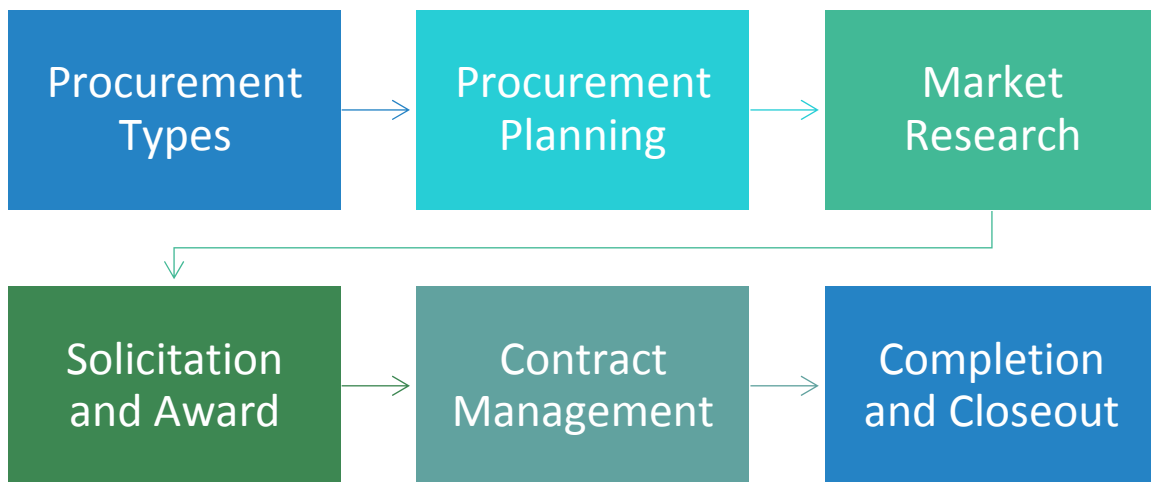
State Purchasing Bureau (SPB) maintains a list of forms needed to conduct and document a procurement on the “Information and Forms” link on the SPB website. Additionally, the website maintains the latest version of each form and should be accessed before initiating a new procurement to ensure that the most current form is used and to avoid delaying the process.

http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html

1.2. Nebraska Procurement Model

The organization of this Procurement Guide is based upon the Nebraska Procurement Model, outlined below, with individual sections dedicated to each of the five stages of the model.

A general overview of the tasks associated with that model phase and provides links to tools and templates identified in the section. Following this overview, each section provides guidance and direction on how to properly execute the tasks associated with that phase of the model and continue workflow through the remaining phases.



2. PROCUREMENT TYPES

Due to the statutory differences in the procurement of goods and services, along with the different statutory authority of state agencies, there are different processes that must be followed when making a purchase for services as compared to purchases for goods or commodities.

2.1. Established Source Check

Prior to contracting for goods and services agencies must determine if the state provides the good or services through another state agency, or another state agency is statutorily responsible for providing the goods and services. Agencies must also look for existing contracts entered into by other agencies for the required goods or services.

2.1.1. Items on Existing Contracts

Items for which contracts have been established by the AS Materiel Division, State Purchasing Bureau, **cannot** be purchased from other sources without written approval from State Purchasing. Agencies must check the State Contracts Website to look for established contracts that will meet their need. **If there is an available contract the agency must use the contract and generate a purchase order in the Payroll and Financial Center.** Purchase orders are to be completed prior to placing the order with the contractor. Purchase orders clearly state the product(s) the contractor is to provide, the quantity and the product price(s). The purchase order protects the State with terms and conditions for the purchase. Purchase orders must have an authorized signature prior to sending order to the vendor in order for the purchase order to be valid.

2.1.2. Cornhusker State Industries (CSI)

By statute, Agencies must purchase goods through CSI if they are available through CSI rather than purchase through the open market. ([Refer to § 83-145, Cornhusker State Industries \(CSI\)](#))

[Neb. Rev. Stat. §§ 83-144 through 83-152](#) requires all State agencies, boards, and commissions which are supported in whole or in part by taxation to purchase items produced or manufactured by Cornhusker State Industries unless such articles of equal quality and materials could be purchased from another supplier at a lesser cost. Administrative Services may create an exception from the mandatory provisions of the referenced statutes when the article produced or manufactured does not meet the reasonable requirements of the agency, board or commission. Further, an exception exists for the Department of Correctional Services in any case where the requisition made cannot be completely complied with on account of an insufficient supply of the article or supplies required. Any exception under the statutes must be applied in good faith and no agency, board or commission shall engage in any action, however slight, for the purpose of evading the intent and meaning of the applicable statutes when articles produced by CSI can be reasonably adapted to the actual need of the agency, board or commission. The following categories of items are available from Cornhusker State Industries:

- Chairs and Seating
- Panels Systems
- Furniture, including tables, filing cabinets, library fixtures, student desks, wood bench seating

- Modular Office Furniture
- Janitorial Supplies
- Signs and Awards
- Outdoor/Metal, including metal benches, park grill grates, bunk units, metal picnic tables, footlockers, bicycle racks, recycled plastic picnic tables, handicap assessable picnic tables, etc.
- Braille Products
- Dry Goods
- Custom Work

For additional information regarding products available from Cornhusker State Industries, see their website at: <https://www.nebraska.gov/apps-csi/> or contact the Sales & Marketing Manager at 402-471-1244.

Exception: If the agency is ordering products manufactured or produced by CSI, but are requesting to purchase these products from another source, the ordering agency must submit a requisition to SPB for processing. A justification, from the Agency Director, for not utilizing CSI for these purchases must be attached to the requisition. SPB will not process any requisition without the requesting Agency Director’s justification.

2.1.3. Print Shop

All printing requests **must** be processed through the AS Materiel Division, Printing Services. Printing Services will determine how the request will be processed to ensure the request is completed in the most cost effective manner that meets the needs of the agency. Please contact Printing Services at 402-471-2826 for assistance.

Printing Services is responsible for the purchasing and placement of leased or purchased agency copiers. Please contact Copy Services at 402-471-2901 for assistance.

2.1.4. Mail Center

Mail Equipment, Postage Meters, Postage, and Scales, etc. – **must** be processed through AS Materiel Division, Mail Center with the exception of Department of Corrections for canteens for inmates. Please call the Mail Center at 402-471-2293 for assistance.

2.1.5. IT/Communication Related

The Office of the Chief Information Officer (“OCIO”), Division of Communications, is responsible for the acquisition, coordination and consolidation of all telecommunications equipment and services to include:

- Telephone equipment, and services;

- Data communications equipment, and services to include switches, routers, and hubs;
- Radio equipment; and
- Fax machines - Requests for fax machines should be sent to OCIO. If the request is \$10,000 or more, it will be forwarded by AS Communications to AS Materiel Division, State Purchasing for processing.

As defined in [Neb. Rev. Stat. § 81-1117](#), the OCIO must approve the acquisition of any information management item prior to any purchase. This includes computer equipment, peripheral devices, software, maintenance and professional services for any IT project.

The Nebraska Information Technology Commission has adopted a policy that enables the OCIO to maintain a list of preapproved items for purchase by agencies. A copy of this policy, the criteria used in conducting reviews of information management purchases and the list of preapproved items are available at <http://nitc.ne.gov/standards/1-204.html>.

Agencies must provide sufficient information that allows the OCIO to determine what is being purchased, the purpose, total cost, and a contact for additional information. This information can be provided as either a text note or an attachment to the header in the Payroll and Financial Center. See instructions at http://das.nebraska.gov/nis/training_manuals/proc/index.html.

Requests for routine purchases, such as PCs, laptops, printers and small dollar items are typically acted upon within one work day.

If the request is \$10,000 or over and not on contract, the request will route to DAS Materiel Division, State Purchasing Bureau for processing after OCIO approval

2.2. Procurement Thresholds

State statute establishes whether an agency may complete a procurement or whether the procurement must be centrally managed by the SPB. The threshold is based on whether the item is a good or service and the dollar amount of the contract including any renewals. The following charts illustrate these thresholds:

GOODS

Agencies must check established sources (See Section 2.1) prior to contracting.	
< \$2000.00	Agency Level Decision (Direct pay to Account Payable or purchase with P-card); 3 bids are highly recommended. A purchase order is required if item is on contract. P-card may not be used for contract purchases.
=> \$2000.00 but < \$25,000.00	Agency has unrestricted open market authority to make a purchase. The purchase must be entered in EnterpriseOne and paid with using a purchase order.
=> \$25,000 but <\$50,000	Purchase must be informally bid through AS Materiel, SPB
=> \$50,000.00	Purchase must be formally bid through AS Materiel, SPB
Fixed Asset > \$1500	Purchase Order must be entered in EnterpriseOne.
Exceptions	Please refer to Section 2.5

For a detailed description of the processes related to completing the Competitive Sealed Bid method of procurement for goods, refer to [Section 5](#).

SERVICES

Agencies must check established sources (See Section 2.1) prior to contracting.	
< \$50,000	Agency Level Decision (3 documented bids highly recommended)
=> \$50,000.000 and Deviation (Sole Source)	All Sole Source Service procurements in excess of \$50,000 must be reviewed and approved by AS Materiel, SPB. Agencies must use the Deviation from Contractual Services Process. Deviation from Contractual Service Form and Deviation PowerPoint
=> \$50,000.00	Procurements greater than \$50,000 can be bid out by the Agency or SPB, but must be bid in the manner described by AS Materiel, SPB. Any changes from original documents to contract must be reviewed by SPB prior to contract signing.

Agencies shall not artificially or intentionally split purchases for the same, like, or related items of goods or services into several purchases or smaller quantities, in order to utilize the small purchase process and avoid statutory competitive requirements.

For a detailed description of the processes related to completing the Competitive Sealed Proposal method of procurement of services, refer to [Section 5](#).

2.3. Sealed Bidding (Formal)

This method is used when it is determined that award to the lowest responsive, responsible bidder is desired. For services, once the cost of a contract reaches \$50,000 it must be adhere to the formal sealed bidding process, for goods, the threshold is \$50,000. The value of the contract is determined by the value of the initial contract while also including the value of all available renewal options. The sealed bidding method allows the purchasing agency to; evaluate technical, corporate, cost, and other criteria, rank bidders, have discussions, and conduct other procedures to identify the lowest, responsive and responsible bidder.

In this process, bids are submitted in a sealed envelope.

If this is **Cost Only** contract the bidder would only submit a cost proposal and the other criteria listed above would not be considered or evaluated.

The Sealed Bidding Process is outlined in the graphic below, and detailed in the following sections.

INSERT SMART ART

2.4. Informal Bids (Sealed or Direct Contact)

Informal bids are used for contracts under \$50,000 for services and under \$50,000 for goods. The agency may contact the bidders from the bidders list or other potential bidders in writing or by phone. Agencies are encouraged to solicit bids from a minimum of three (3) bidders. The bidders are provided a copy of the RFP/ITB or a copy of the specifications and required to submit a bid by a specified date. There is no formal bid opening.

2.5. Unrestricted Open Market Purchase Authority

Unrestricted Open Market Purchase Authority is granted on an annual basis by DAS to agencies who have requested the authority. The authority is for purchases under \$25,000, unless specific authority has been granted at a higher dollar amount for a specific purchase.

See [Unrestricted Open Market Purchase Authority Letter](#)

2.6. Sole Source

2.6.1. Goods

Sole source purchases are used for the procurement of commodities/goods available from only one source due to the unique nature of the requirement, compatibility, its supplier, proprietary product, or market conditions. (This may also apply to the request to procure used equipment, due to the difficulty of evaluating used equipment on an item-by-item basis).

Sole Source Justification Form for Commodities

2.6.2. Services

Sole source services are defined as services “of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service.

Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or the sole availability at the location required.”

[Deviation from Contractual Services Contract Process Form](#)

[Deviation Requests from Contractual Services & Emergency Contracts Process PowerPoint](#)

2.7. Emergency

2.7.1. Goods

The emergency procurement process is used for situations which endanger lives, property, public safety, or the continuation of a vital program which can be rectified only by immediate on-the-spot purchases or rental of equipment, supplies, or materials.

Agencies have direct purchase authority for emergency purchase for commodities/goods under \$25,000.00 (refer to Unrestricted Open Market Purchase Process section of this manual).

However, when the emergency purchase for commodities/goods is valued at \$25,000.00 and over, it must be processed by SPB. When the emergency purchase for commodities/goods is valued at \$50,000 and over, the purchase must be approved by the Governor. Upon approval, the agency must notify SPB.

2.7.2. Services

An emergency service procurement is defined as one that is “necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk.”

[Deviation from Contractual Services Contract Process Form](#)

[Deviation Requests from Contractual Services & Emergency Contracts Process PowerPoint](#)

2.8. GSA

2.8.1. Goods

All items based on GSA like Pricing \$25,000 and over must be processed through and approved by the AS Materiel Division, State Purchasing Bureau as per State Statute §81-153 (7). Agencies must provide a copy of the GSA contract along with the requisition. State Purchasing will make the final determination on whether GSA like pricing is in the best interest of the State.

2.8.2. Services

To purchase services through GSA like pricing a deviation must be submitted to DAS Materiel Division. ([Refer to Section 2.6.2.](#))

2.9. Restrictive (Goods Only)

Restrictive is defined as “a specification or purchase description that limits competition.” This method of procurement is utilized when only one product is suitable for the agency’s needs, but it is sold through distributors/resellers.

2.10. Specialized Goods

- **Micrographic Equipment** – Requests for this type of equipment **must** be submitted to SPB.

- **Motor Vehicles** – All contract purchases of passenger vehicles are processed using a purchase order and requires the approval of the AS Transportation Services Bureau with the exception of those motor vehicles indicated in State Statute §81-1-11. Once the purchase order has been approved by AS Transportation Services Bureau, the agency is responsible for e-mailing the purchase order to the contractor.

Exceptions to Neb. Rev. Stat. § 81-1-11 still require the issuance of a purchase order. The agency is responsible for e-mailing the purchase order to the contractor.

If the purchase involves a trade-in, these orders must be submitted to State Surplus Property and approved by the Materiel Division Administrator prior to ordering. There are no exceptions to this process.

If an agency needs a vehicle that is not on contract, the agency is responsible for submitting a requisition to State Purchasing.

- **Weapons/Firearms** – All weapons/firearms must be processed through AS Materiel Division, State Purchasing Bureau.

2.11. Cooperative Contracts

A cooperative contract involves a master contract entered into by another state or political subdivision. The agency utilizes the master contract with or without a participating addendum to the master contract. The use of a cooperative contract must be authorized by statute and processed by State Purchasing Bureau. Agencies must utilize the deviation process when requesting the use of a cooperative contract for services but only an email is necessary to request the use of a cooperative contract for goods.

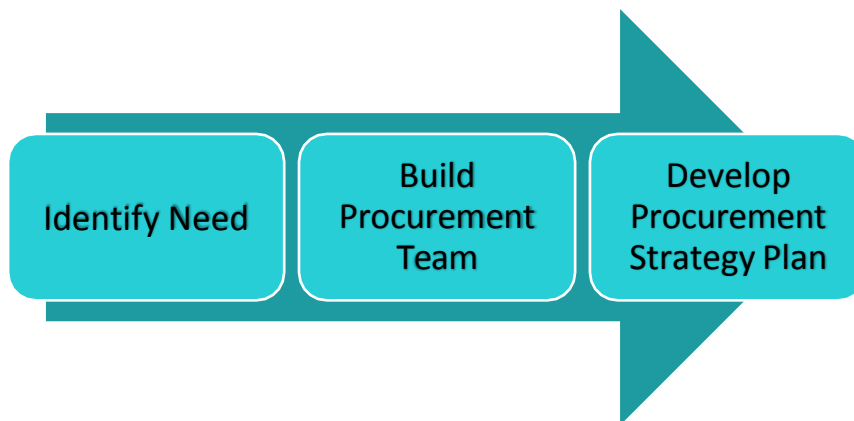
3. PROCUREMENT PLANNING

Procurement Planning is a key aspect of the overall procurement process. With good planning, your agency will receive better results from the solicitation. Obviously, the ability and extent of planning is a function of time, and under ideal circumstances, the following represent best practices regarding the planning phase. Each of the recommendations below can be modified to meet the requirements of the individual procurement.

3.1. Planning Phase Process Flow

The Procurement Planning phase encompasses several key processes in the procurement model. From identifying and defining a need, to determining the most appropriate acquisition method that addresses that need, the planning phase frames the procurement approach and strategy. Key activities include conducting research and analysis, documenting results, evaluating alternatives, and deciding on an approach.

The following are the major steps in the process flow for the Procurement Planning phase:



3.2. Identify Need

The procurement process begins by identifying the agency's needs and requirements. There are many ways needs are identified, from a program executing on a major budgeted project, to a program seeking specific needs to fulfill its mission, to the SPB identifying a need for a statewide contract to meet state-wide needs.

Once the agency identifies the need, the agency should first determine whether there is an existing contract that can be utilized. This can be found on the SPB website:

http://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php

Agencies can further search for another state's contract, University of Nebraska contracts, and cooperative contracts through the following organizations:

NJPA: <http://www.njpacoop.org/cooperative-purchasing/become-vendor/current-pending-solicitations/>

NASPO ValuePoint: <http://www.naspovaluepoint.com/#/Info-for-Vendors>

UNL Contracts: <https://procurement.unl.edu/>

Once an agency determines a new contract is required, the agency must prioritize the needs. An agency will need to review its priorities and select and schedule the procurements that are aligned with those priorities and budgetary constraints. SPB will compile these needs for all state agencies in an effort to consolidate contracts. In addition, an agency should comprehensively review its purchasing needs to determine where consolidation or combining purchases within the agency may be possible. In this way, the state and agencies can improve purchasing efficiency and potentially drive improved pricing through economies of scale.

3.3. Build Procurement Team

Once the purchasing agency has defined and prioritized the requirement, it is important for the agency's director to identify a team of stakeholders that will participate in the procurement. Stakeholders are individuals who have an interest in the needed goods or services. These individuals

provide a significant contribution to the effort based on their subject matter expertise in elements of the project scope or deliverables. Working with the stakeholders, the agency staff will define and document the project scope and functional requirements. During the Solicitation and Award phase, the Procurement Team will develop the solicitation and evaluate responses.

A Declaration Concerning Conflict of Interest and Confidential Information **should** be signed and turned in by each member of the Team.

3.4. Develop Procurement Strategy Plan

The Team should meet to develop a procurement strategy. The procurement strategy meeting is an important step in the planning process as it gives the team an opportunity to brainstorm and discuss the market research, once gathered. From this discussion, the Procurement Team will make decisions that drive the effective execution and management of the procurement through the remainder of the procurement model.

Some of the key topics that should be discussed at the strategy meeting include:

- Project Scope and/or specifications
- Project deliverables
- Critical business requirements
- Method of procurement
- Agency or SPB solicitation (Services Only)
- Estimated schedule
- Estimated cost/budget
- Anticipated benefits
- Performance measures (if applicable)
- Alternatives
- Key considerations
- Constraints and Risks
- Team assignments and procurement deadlines

Key elements of the Procurement Strategy Plan are described in this section. Some elements of the plan will be informed and refined as a result of the [Market Research phase](#) of the Procurement Model. The Team should document the outcomes from the meeting in the Procurement Strategy Plan and provide the document to the Procurement Team for review.

3.4.1. Define Scope

A purchasing “need” must be fully understood in order to properly define the scope of the procurement. By defining the features and functions of the desired goods or services, the agency begins to establish the scope of the procurement. The Team must work to identify the scope by consulting with identified stakeholders as well as reviewing the state agency’s historical purchases or usage of the identified goods or services. Without a clear scope, the agency will have difficulty in developing the detailed functional specifications for the requirement. After contract award, the agency project manager will be responsible to manage the defined requirement to the defined scope thus preventing an increase in contract scope or quantities, or the addition of functions or features not originally contemplated, or proposed.

A scope of work, sometimes called a statement of work or scope of services, is a description of the services required to be performed. The scope of work may include material requirements to perform the needed services. A scope of work should contain the following information:

- Background of the procurement
- Objectives to be achieved
- Contractor’s tasks
- Deliverables
- Schedule
- Department responsibilities
- Other identified requirements may be added

3.4.2. Identify Critical Business Requirements

The Team must facilitate an open dialogue with the procurement stakeholders to define the critical business requirements. Critical business requirements are those essential functions that must be met by the provided goods or services. The Team must encourage discussion and ask sufficient and pertinent questions to ensure the Team fully understands the critical business requirements.

Examples of the types of questions the Team should consider include:

- Why are the goods/services needed?
- Who/what area is impacted by this procurement?
- What are the key functions the needed goods/services must meet?
- What factors will impact this purchase?
- What is the estimated/approved budget?

- When are the goods/services needed?
- Where will goods be delivered and/or services performed?
- How must services be provided?
- What key approvals are necessary and who must provide this approval?
- What specific quality or quantity needs must be considered?
- What issues arose with previous procurements and how can they be addressed?

Identifying the critical business requirements will improve the Team's results in conducting market analysis.

3.4.3. Determine the Method of Procurement

The choice of procurement method is a critical decision in purchasing goods or services. In some cases the purchasing agency may be able to utilize an existing price list or vendor list contract to meet their need, refer to [Section 2.2](#). In other situations the purchasing agency may be required to consider their requirement and determine which method of procurement method best fits their need.

3.4.3.1. *Neb. Consultants' Competitive Negotiations Act*

For a detailed description of the processes related to the Nebraska Consultants' Competitive Negotiations Act, [refer to Neb. Rev. Stat. § 81-1701](#)

3.4.3.2. *Sole Source Procurements*

3.4.3.2.1. Goods

Sole source purchases are used for the procurement of commodities/goods available from only one source due to the unique nature of the requirement, compatibility, its supplier, proprietary product, or market conditions. (This may also apply to the request to procure used equipment, due to the difficulty of evaluating used equipment on an item-by-item basis).

3.4.3.2.2. Services

Sole source services are defined as services "of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or the sole availability at the location required."

3.4.3.3. *Emergency Procurements*

3.4.3.3.1. Goods

The emergency procurement process is used for situations which endanger lives, property, public safety, or the continuation of a vital program which can be rectified only by immediate on-the-spot purchases or rental of equipment, supplies, or materials.

Agencies have direct purchase authority for emergency purchase for commodities/goods under \$25,000.00 (refer to Unrestricted Open Market Purchase Process section of this manual).

However, when the purchase for commodities/goods is \$25,000.00 and over, it must be processed by SPB. When the purchase for commodities/goods is \$50,000 and over, the purchase must be approved by the Governor. Upon approval, the agency must notify SPB.

3.4.3.3.2. Services

An emergency service procurement is defined as one that is “necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk.”

Emergency service procurements will use the deviation process once their service reaches the \$50,000 threshold. Prior approval by AS – Materiel Division is not necessary for emergency contracts, but the agency will need to complete a [Deviation from Contractual Services Form](#) and include an explanation of the emergency, when they submit their requisition. The agency must also have the approval of the Agency Director, along with a copy of the signed contract. AS – Materiel Division shall be notified of the emergency procurement within three working days of contract signatures.

4. MARKET RESEARCH

4.1. Perform Market Research

Once the Team has completed the initial Procurement Strategy Plan in collaboration with the Procurement Team, the process of market research should begin. Market research refers to examining available sources of information to find available goods, services, construction and

sources of supply, which may meet identified critical business requirements. The level of effort put into market research should be commensurate with the size and complexity of the procurement.

[Market Research PowerPoint](#)

4.1.1. Market Research

What is Market Research and why is it necessary?

- Provides important information to identify and analyze the market
- Able to determine market size
- Determine available competition (supply and demand)
- Able to determining which products and services are available (trends)

When is Market Research Conducted?

- Before developing specifications
- Before soliciting bids
- When adequate information is not available
- The extent of market research and analysis varies depending upon the urgency, value, and complexity.

Prior to Beginning Market Research Identify the purpose of the market research

- Identify a minimum of three (3) goals
- Identify the State's buying policy (bidding thresholds)
- Identify the role of research within the acquisition period
- Include potential suppliers, advertise on SPB website, newspapers (other periodicals)
- Conduct spend analysis
- Identify how your goals align to market research cycle
- Identify how the market research applies to your agency/project

Five resources or actions necessary to complete your market research plan

- Understanding the Department's goals
- Subject Matter Experts, possibly a consultant to review current processes and structure with recommendations on changes necessary for the department to be successful

- Conduct a risk analysis to determine implications if your agency decides not to do the project
- Financial Analysis to determine availability of funds
- Determining limitations within the agency or supplier market

What data should be included in Market Research?

- Availability of a commercial item able to meet the State's needs as is, or with minor modifications
- Common Practices – Warranties, maintenance, packaging, etc.
- Availability of items that are recycled or energy efficient
- Distribution and support capabilities of potential vendors
- Size and status of potential sources
- Customary practices regarding customizing, modifying or tailoring items to meet customer needs and associated costs
- Market Data

Market information is needed for cost and price analysis in:

- Determining whether the requirement can be met by a commercial item, and can be procured, and
- Reviewing proposed requirements to ensure they include all acceptable products/services available in the market
- Determining when the best time to buy the product/service and establishing delivery schedule(s)
- Potential Sources available
- Determining whether it's best to buy or lease
- Are there price break points?

Sources for Conducting Market Research

- Request for Information process
- Reviewing acquisition history
- Trade and professional associations
- Testing Labs

- Technical Personnel, including in-house experts
- Catalogs
- On-line research
- Contacting Other State's

While an exhaustive review of sources of supply may not be feasible or practical, the goal of market research is to identify a variety of potential sources of supply. By identifying the potential sources of supply, the Team is able to analyze various goods or services. Studying various offerings is essential to developing a solicitation that is not biased in favor of a single source of supply or otherwise reducing the pool of suppliers capable of meeting the state's critical business requirements.

Although the Team may have knowledge of certain specific goods, services, or suppliers, the Team should not rely exclusively on stakeholders' knowledge. Instead, the Team must actively engage in market research by accessing informational resources such as the Internet, industry organizations, consultant reviews, advertisements, cooperative procurement entities, or industrial publications. The Team should also consult with other public entity teams with similar purchasing needs, both within and outside of Nebraska.

As potential sources of supply are identified, the Team may contact potential suppliers directly to request information. The Team's contact with potential suppliers may occur informally, such as by telephone or email. The Team may determine a more formal method of gathering information from suppliers, such as the Request for Information discussed below.

4.2. Request for Information (RFI)

A Request for Information (RFI) is a method for requesting information from suppliers who have knowledge or information about an industry, goods or services. The Team should use the RFI method when it is considered impractical to initially prepare a definitive purchase description, or when informal discussions with vendors are not productive.

The RFI method is not a competitive solicitation method and, as a result, does not satisfy the requirement for competitive bidding. The RFI method is no more than an information gathering tool, and such information gathered may or may not be used by the state agency to develop a competitive solicitation.

The RFI should detail the objective of the procurement and include, but not be limited to:

- A description of the information requested of vendors;
- A method for receiving the requested information;
- A statement that the response is to provide the purchasing agency with recommendations that will serve to accomplish the work required by the procurement;

- A statement that the purchasing agency reserves the right to incorporate in a solicitation, if issued, any recommendations presented in the response to the request for information; and
- A statement that neither the purchasing agency nor the supplier responding has any obligation under the request for information.

If the Procurement Team has developed an initial specification or statement of work, it can provide this in the RFI and ask that vendors validate the requirements and provide feedback and comments that will help the State reach its procurement objectives.

While an RFI can be useful, it should only be used when truly seeking input from the vendor community for the solicitation. If the Team does not intend to incorporate the information and/or feedback it receives then it should not utilize the RFI method. Also, teams are strongly cautioned against using an RFI as a method to restrict future competition on the resulting solicitation. Teams need to be careful not to incorporate information from vendors that may narrow specifications and limit competition. This can occur when in the team incorporates only the proposed delivery model or other unique features of a single bidder in the final scope or specifications. Vendors are not required to respond to an RFI and a vendor's failure to respond to an RFI will not prohibit the vendor from responding to any competitive solicitation that may result from the RFI.

4.3. Draft RFP

A draft RFP is a general invitation to vendors to provide comments, express concerns, or provide information on new technology or alternative concepts that may be available which may be of benefit to the State. After comments and/or information is provided, the State may elect to revise the RFP based on information provided or release the final RFP for competitive proposals. This may be processed through SPB or the agency may release a Draft RFP on its own. A draft RFP may be beneficial to the State as vendors may be able to identify potential problems with the draft RFP as written, and may reduce the number of protests received after an RFP is evaluated and awarded.

5. RFP/ITB DEVELOPMENT

5.1. Finalize Specifications/Statement of Work

5.1.1. Develop Detailed Specifications/Scope of Work

A specification is any description of the physical or functional characteristics, or of the nature of a goods or services item. The term includes descriptions of any requirement for inspecting, testing, or preparing a goods or services item for delivery. A specification should describe the features and functions of a product or service an agency seeks to procure along with a description of what a vendor must offer to be considered for an award. Specifications are the primary means of communicating agency requirements to the vendor community.

Specifications determine and control the:

- Minimum quality level of the product or service;
- Suitability of the product or service for the job to be done; and
- Method of evaluation used in making an award and determining the best value proposal for the purchase.

The Team should develop specifications that meet the following characteristics:

- **SIMPLE:** Avoid unnecessary detail, but provide sufficient information to ensure that requirements will satisfy their intended purpose.
- **CLEAR:** Use terminology that is understandable to the agency and proposers. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese, specialized language and jargon whenever possible.
- **ACCURATE:** Use units of measure compatible with industry standards. All quantities and packing requirements should be clearly identified.
- **COMPETITIVE:** Identify at least three (3) 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 inflexible specifications that prevent the consideration or acceptance of a proposal, which 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, they should be within 10% unless otherwise stated in the solicitation document.

The end product of a well-written specification should be expressed as SMART:

Specific – clearly states what is required

Measurable – to confirm when it has been met

Achievable – can be done, is technically possible

Realistic – is reasonable, is not cost prohibitive

Timely – achievable within an acceptable timeframe

The scope of work should incorporate the needs and critical business requirements identified in [Section 2.4.2](#). A scope of work should contain the following information:

- Background of the procurement
- Objectives to be achieved
- Contractor’s tasks

- Deliverables
- Schedule (performance, deliverables and payment)
- Department responsibilities
- Other identified requirements may be added

5.1.2. Contract Development – Use of Outside Contractors

Outside contractors may be utilized to prepare specifications and work statements in the development of a solicitation, if necessary. Contractors involved in the procurement are **not allowed to bid** on or receive a contract because they participated in the development of the solicitation package or resulting contract.

5.1.3. Bid Bonds, Performance Bonds, and Payment Bonds

The purchasing agency may request bid bonds, performance bonds, and payment bonds from bidders. The following is a description of each:

- **Bid Bonds:** Protects the State against the failure or refusal of an offeror to honor their bid. The bond helps to defray the costs the agency would incur or any increase in prices caused by bidder not honoring their bid.
- **Performance Bonds:** Ensures the timely performance of a contract upon default by a bidder.
- **Payment Bonds:** Ensures payment of sub-contractors and material suppliers.

All documentation related to the bonds provided to the purchasing agency shall contain the original signatures, signed in ink.

Performance and payment bonds shall be delivered by the Contractor to the State executed on the same date or later than the date the contract is executed. If the contractor fails to deliver the required performance and payment bonds, the contractor's award may be cancelled, the contractor may be subject to a claim by the State for all resulting damages, its bid security shall be enforced, and award of the contract may be made to another bidder.

It is important to remember that while bonds offer protection, they will also increase the cost of a project as the cost of the bond is likely to be passed through to the state. Determining bond requirements should be a deliberative process.

Acceptable bid security and contract performance and payment bonds include:

- Surety bond underwritten by a company licensed to issue bonds in this State; or,
- A certified check with a stated expiration date issued by a bank.

5.1.4. Develop RFP Evaluation Strategy

Proposal evaluation, particularly in a RFP, consists of an evaluation of mandatory requirements including any other broad categories that the agency deems necessary, evaluation criteria and cost/price. The evaluation criteria used to assess proposals consist of the factors and sub-factors that reflect the areas of importance to an agency in its selection decision. Through the evaluation factors, the agency is able to assess the similarities and differences and strengths and weaknesses of competing proposals and, ultimately, use that assessment in making a sound selection decision. These evaluation criteria and their cumulative point value shall be evaluated **only on the basis** of those criteria.

In general, evaluation criteria should be tailored to each procurement and include only those factors which will have an impact on contractor selection. The nature, weighting, and types of evaluation criteria to be used for an acquisition are within the broad discretion of the agency. In order to determine the point allocation for the price /cost factor please refer to the formula discussed below.

Non-cost factors address the evaluation areas associated with technical and corporate overview aspects of the proposal. Examples of non-cost factors include technical and corporate overview concerns such as technical approach and understanding, capabilities and key personnel, transition plans, management plan, management risk, past performance, and corporate resources. The level of quality needed by the agency in performance of the contract is an important consideration in structuring non-cost factors.

There are two types of mandatory requirements. The first level of mandatory requirements are those that are necessary for the bid to be responsive. Failure to meet these requirements will result in the bid being rejected and not evaluated. The second type of mandatory requirements are requirements an offeror must meet to demonstrate during the evaluation process that they are legally or otherwise authorized or capable of performing the work described in the RFP. This may include such things as business and/or contractor licensing or board certifications, proof of insurance, bonding requirements, etc.

The RFP will state the broad categories (e.g. corporate overview) that will be evaluated and their cumulative point value. The specific criteria and point values will not be included in the RFP and will be published with the Intent to Award.

5.1.5. Develop ITB Evaluation Strategy

The initial evaluation should look at whether the bid meets the technical specifications of the ITB. If a bid fails to meet the technical specifications it is a non-responsive bid, and should not be evaluated further.

An ITB evaluation strategy focuses mainly on finding one or more responsible and economical bidders. When considering responsibility the evaluator(s) may consider, but are not limited to, those criteria established in [Neb. Rev. Stat. § 81-161](#).

Evaluators are free to give more weight to a bidder's perceived ability to perform the contract, or cost, whichever is in the best interest of the state.

5.1.6. Evaluation Process - Services

The evaluation process is typically divided into multiple phases. The evaluation phases are:

- Evaluation of Mandatory Requirements
- Evaluation of the proposal in relation to the RFP requirements
- Ranking
- Clarifications and [Best and Final Offer](#)
- Other discretionary processes deemed necessary by the agency as required by law

The steps and processes the Team will utilize in each step in the evaluation process should be documented generally in an evaluation plan, if appropriate. This ensures that at the time of evaluation there is a description of the process for how the solicitation responses were evaluated.

5.1.7. Evaluation Team Guidance

When practicable evaluation team should identify all evaluation factors and their relative importance prior to RFP development. Factors not specified in the RFP shall not be used for evaluating the proposals.

Next, the Team can begin making a detailed list of the most important aspects of the goods or services required. Each item on the list is a potential evaluation criterion. From this list, the Team may group the criteria into categories, referred to as evaluation factors, and arrange the list in sequence of most important. This process will help to determine the most appropriate weighting (see below) and aid in assigning a point value to each factor based on its relative importance. The most important items will naturally be evaluated heavier and have more points available.

Evaluation factors should be individually tailored to each RFP. For criteria to be effective, they may have the following characteristics:

- Clear: not subject to multiple interpretations, not ambiguous
- Relative: all key elements of the project requirements must relate to the requirement definition and be covered by evaluation criteria
- Differentiating: separate best, average and weaker proposals
- Non-discriminatory: fair and reasonable
- Realistic: given the nature or value of the contract

- Measurable: must have distinguishing importance
- Economical: use of the criteria should not consume an unreasonable amount of time or resources
- Justifiable: make sense and can be justified on common sense, technical and legal basis; mandatory and heavily weighted criteria must be justified

5.1.8. Weighting Factors

Weights reflect the relative importance of each of the evaluation criteria to the agency. The value of each factor is completely subjective to the Agency based upon its own perception of the need.

The following is an example of evaluation factors used in an RFP with a weighted 60/40 split between cost and technical/managerial merit.

Evaluation Criteria	Possible Points
Part 1 — Corporate Overview	600
Part 2 — Technical Approach	1,000
Part 3 — Cost Proposal Points	500
Total Points without Oral Interviews	2,100
Oral Interviews, (if required)	200
Total Points with Oral Interviews	2,300

5.1.9. Evaluation Committee

Prior to writing an RFP or Competitive Procurement of Services, the purchasing agency must determine whether the solicitation responses will be evaluated by the Team exclusively, or by an evaluation committee. The following details the suggested make-up for an evaluation committee.

5.1.9.1. RFP Evaluation Committee

Evaluation Committee - Technical

The agency will establish the evaluation committee(s) and project leader for the Request for Proposal. The technical evaluation committees recommended size is five (5) members with the appropriate expertise to conduct such proposal evaluations, but could be more for some projects.

Evaluation Committee – Cost

The cost evaluation committees recommended size is two (2) members. One member will complete the cost proposal calculations per the RFP formula; the other member will verify all cost calculations for accuracy.

Evaluation Committee Meeting

The initial step of the evaluation process will be for the agency project leader to schedule a meeting with all members of the evaluation committee. During this meeting the agency project leader will brief all evaluators on the RFP activities to date, provide instructions about the evaluation process and provide an evaluation schedule.

If SPB processed - The agency project leader is responsible for coordinating the evaluation committee's activities with the State Purchasing Bureau.

If agency processed - The agency project leader is responsible for coordinating the evaluation committee's activities.

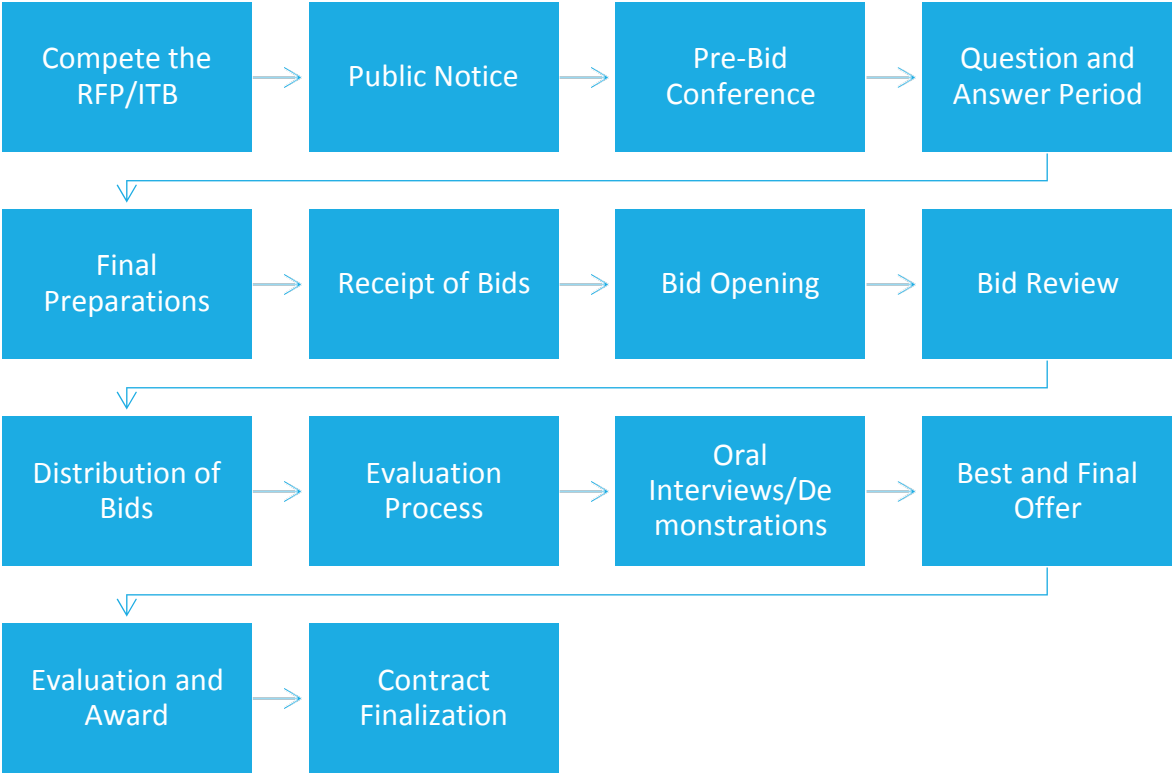
Evaluation committee members will be required to sign and submit to agency project leader the [“Declaration Concerning Conflict of Interest and Confidential Information” Exhibit 31a](#).

Private consultants may also serve (without vote) on the committee provided that they have the relevant knowledge, do not have a conflict of interest, agree to keep the evaluation and all information they view confidential, and agree to their name being made public upon the award of the contract. See [Section 4.5.4](#) for guidance on how to evaluate proposals.

The specifications/scope of work and evaluation criteria developed by the agency are submitted to State Purchasing to be formatted as an RFP/ITB.

6. SOLICITATION PROCESS – GOODS AND SERVICES

Once it has been decided in the planning process that a contract is necessary, the process below shall be followed. The Competitive Bidding process is outlined in the graphic below, and detailed in the following sections. (Note: Only State Purchasing has the statutory authority to contract for goods) Agencies must follow the processes established by SPB.



6.1. Completing the RFP/ITB Boilerplate

Once the purchasing agency has developed a detailed specification or statement of work it should incorporate this information in a solicitation document, known as a Request for Proposal (RFP) for services or an Invitation to Bid ITB for goods. These documents are what will be relied upon by vendors and should include the following:

GENERAL INFORMATION: Provide an overview of the procurement, including a brief statement about the intended procurement, a background providing important facts about the present procurement need, the procurement schedule, and information on submitting solicitation inquiries, the pre-proposal conference, and other administrative information related to the procurement.

SPECIFICATIONS/STATEMENT OF WORK: Describe, in general terms, the goods or services to be purchased. For more information on how to develop a Specification or Statement of Work, see

PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS: Inform an offeror how to structure a proposal along with where to submit the proposal. This should include specific instructions on

organization, the number of copies, signature requirements, page limitations, required attachments, bonding, etc.

PROPOSAL EVALUATION AND AWARD CRITERIA: Provide a clear understanding of how the proposal will be evaluated and the procedures for awarding the contract including all evaluation criteria and point value for each.

EXHIBITS, ATTACHMENTS AND TERMS AND CONDITIONS: Provide required forms to be completed by an offeror, additional informational reference documents, and the State's required terms and conditions.

The RFP and ITB Boilerplates contain directions to complete the documents that are highlighted in green. Items in the documents that need to be filled out are highlighted in yellow. Clauses that are used for vending contracts are highlighted in purple. Clauses that are used for cost only bids are highlighted in blue. If the agency is soliciting the contract themselves, they will complete the RFP/ITB. If State Purchasing Bureau is soliciting the contract, SPB will complete the RFP/ITB with input from the requesting agency.

The RFP/ITB document may require internal agency reviews and approvals prior to posting the Public Notice or releasing the RFP/ITB. Services contracts over \$50,000 solicited by the agency must be reviewed by SPB prior to the solicitation being posted.

The Buyer should determine whether they have a conflict of interest regarding an assigned RFP/ITB prior to beginning any work. If a conflict of interest exists, or arises, the Buyer should notify their supervisor immediately.

6.2. Public Notice

Once approved, the solicitation must be advertised to potential bidders through a public notice on the Materiel Website. For services, you must advertise in a newspaper with statewide publication.

A public notice must include the following information:

- A brief description of the goods or services required,
- Where and when the solicitation will be available and a phone number or e-mail address where interested parties may request or obtain a copy,
- The deadline for the responses to the solicitation, and
- Other appropriate information (e.g., the time, date, and location of the pre-bid conference).

All bid opportunities are required to be published for a **minimum of fifteen (15) calendar days** between the first posting date and the date set for receipt and opening of bids. During the advertisement period, prospective bidders may **only** contact the purchasing agency for inquiries and clarifications in accordance with the solicitation requirements. Only written responses are binding on the agency, and shall be made available to all potential bidders on the SPB website. The Team

shall post a written addendum to the RFP/ITB that details any changes to the RFP/ITB on the website.

Addenda are typically used to communicate material changes to the RFP/ITB, and correct minor defects. If the purchasing agency must amend the RFP/ITB, it may need to consider the impact to the potential bidder and determine if additional time should be given for submission of bids.

6.3. Pre-Bid Conference

A pre-bid conference is conducted to explain the procurement requirements to potential bidders and allow potential bidders to ask questions. Pre-Bid Conferences may be mandatory or optional at the discretion of the agency. Responses to questions during the Pre-Bid Conference are not binding on the State unless answered in writing, and posted to the SPB website.

6.4. Question and Answer Period

Vendors may be provided an opportunity to submit written questions concerning the RFP/ITB at least once (some RFP/ITBs will have multiple question and answer periods). A specific deadline for the submission of questions is set out in the Schedule of Events. Subsequent to any Question and Answer Period, if a vendor has additional questions, the vendor may contact the buyer. The State reserves the right to consider additional questions and provide written responses. Questions are submitted in writing to the SPB Buyer, who then forwards them to the agency contact once the submission deadline has passed. Sometimes, however, questions are forwarded as they are received due to complexity and/or time constraints. The agency prepares the answers and submits them to SPB for review and approval. The Buyer works with the agency to make sure all questions are answered as well as possible, and prepares an Addendum to the RFP/ITB for posting on SPB's website.

6.5. Final Preparations/Receipt of Bids

Prior to the opening date, the agency contact may meet with the RFP evaluation committee to make the final preparations for the evaluation process, which may include scheduling any necessary meetings, evaluator preparation, and answer evaluator questions.

All proposals must be received by SPB, or the agency, by the date and hour indicated on the RFP/ITB form. **Late bids will not be accepted, regardless of cause.** Late bids will be considered invalid and returned to the bidder unopened at their expense upon request.

Upon receipt by the purchasing agency, bid documents shall be date and time stamped but not opened. Bids shall be stored in a secure place until the time and date set for bid opening. At the time, date and place designated in the RFP/ITB for bid opening, the Team and at least one witness shall publicly open all bids received. The names of the bidders and the amounts of their bids shall be read aloud.

6.6. Mistakes in a Bid

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the purchasing agency of intent to withdraw the bid for modification or to withdraw the bid completely. Changes in a bid after opening are acceptable only if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, **unit price shall govern**. This policy prevents bidders from claiming a mistake to gain a competitive advantage after bid opening.

6.7. Bid Opening

Anyone may attend the opening. It is considered a public. The Buyer will read the names of the bidders and the cost bid. A List of Respondents will be posted to the SPB website.

The bids will **NOT** be available for public viewing at the opening. Bids available for public viewing upon posting of the Intent to Award. The public posting will have all confidential/proprietary information withheld if the bidder has submitted the information in accordance with the RFP/ITB and per state statute. If the state determines that it must release the information in accordance with the [Public Records Act](#), the bidder will be notified of the release.

6.8. Bid Review

The bids should be inspected to ensure they are signed by the bidder, and remove any documents designated by the bidder to be proprietary or confidential.

The bids should also be checked for compliance with the mandatory requirements, including mandatory terms and conditions. Copies or CD's are made for the evaluators as instructed by the agency.

6.9. Distribution of Bids

The bids will be distributed to the evaluation committee after:

- The Buyer has reviewed all submissions for confidential/proprietary information.
- The proposals have been scanned to CD or copied per agency's instructions.

The evaluation committee will receive its required copies, including the confidential/proprietary information. The Buyer should discuss the proper procedure for handling such information with the agency contact.

A [Declaration Concerning Conflict of Interest and Confidential Information](#) **should** be signed and turned in by each member of the evaluation committee. Agencies may choose to have those involved in other actions related to the RFP, including but not limited to, research, RFI, development of RFP requirements, evaluation criteria provide the Declaration as well.

If there are any questions about a potential conflict of interest, legal counsel should be consulted.

If confidential/proprietary materials are received as part of a bid, the form advises the evaluation committee members that they must maintain the confidentiality of these documents during and after the RFP evaluation process. The ability to maintain confidentiality of any portion of a bid may be subject to the Public Records Laws and questions in this area should involve legal counsel.

Release of confidential/proprietary information could lead to disciplinary action or monetary damages against any individual who fails to keep the information confidential.

This form must be signed, collected, and returned to the agency contact, along with completed evaluation documents and submitted to SPB.

6.10. Evaluation Process

Prior to scoring each proposal, the evaluation committee may meet to discuss the evaluation process so that each member of the committee has a clear understanding of the scoring process and how points are assigned based on the evaluation criteria.

Scoring should be done on an individual and independent basis. Scoring is generally based upon the response to the RFP requirements and thus proposals are usually scored independently from each other. That does not mean that an evaluator can't exercise discretion to change scores for purposes of ensuring that they have evaluated each proposal fairly on its merits. Fairness to each bidder independent of the other bidders is the key and should be the evaluator's ultimate guide.

Evaluators should not discuss the scoring amongst themselves or with anyone else until after the score sheets have been turned in.

Any evaluator questions that arise during the scoring period should be directed to the Buyer via the agency contact person. Questions and answers will be provided in writing to all the evaluators.

An evaluator may request clarification of an RFP, or a bidder response to an RFP from the Buyer. Clarifications will be provided in writing to all evaluators.

A clarification allows the state to remove confusion regarding a vendor response for the purpose of evaluation, and happens prior to scoring. Vendor cannot change substance of response and cannot alter cost to the State. Information provided by vendor for the purpose of clarification, if relied upon by the State for the purposes of an award, is binding upon the vendor.

The score sheets are collected by an agency representative and entered into the [Final Evaluation Document](#) and checked for accuracy prior to submission to SPB.

This document along with the individual score sheets are then submitted to SPB for verification of the scoring by the Buyer.

6.11. Oral Interviews/Demonstrations – OPTIONAL

The Evaluation Committee may request oral presentations and/or demonstrations to the Committee.

The agency notifies the Buyer(s) in writing of the request for Oral Interviews/Demonstrations.

Buyer works with agency to select the appropriate version of the Oral Interview Letter (see [version one \(1\)](#), [version two \(2\)](#), [version \(3\)](#)). Questions to be asked at the Oral Interview may be sent to the bidder(s) with the Oral Interview Letter. Agencies may request that the bidder(s) respond to the questions in writing as well as during the presentation.

Agency may develop a scoring worksheet for the Oral Interviews.

Buyers may conduct the Oral Interviews, including managing presentation and question and answer time limits. No informal conversations between the bidder and evaluators and/or state staff are permitted. Only evaluators may ask questions, submitted in writing, through the Buyer. The State discourages the presence of other state personnel who are not evaluators.

The Evaluation Committee turns in the score sheets to the Buyer after each presentation.

6.12. References – OPTIONAL

The Agency may decide to do reference checks on any/all of the bidders. The state may use a third party vendor for reference checks.

See [Reference Check Worksheet](#)

The State has the right to disqualify a bidder based on references.

6.13. Best and Final Offer (BAFO) – OPTIONAL

A BAFO is used to elicit a Best and Final Cost to the State. Time permitting, agencies should consider utilizing a BAFO. A BAFO is a function of cost only and non-cost portions of a bid may not be altered during the BAFO process.

Buyer works with agency to develop BAFO letter. This letter establishes an opening date and time for the BAFO. The BAFO is conducted like a Bid Opening, and may contain a Question and Answer Period in order to respond to questions that BAFO participants may have regarding the BAFO Instructions or content. BAFO instructions should indicate a response must be returned by the vendor by the date and time indicated in the BAFO instructions, even if there are no changes to the vendor's bid response. Failure to return a BAFO response may be cause to reject vendor's bid and disqualify from further evaluation and consideration or BAFO instructions should indicate that if a vendor does not respond to the BAFO the vendor's original bid will be utilized for evaluating the BAFO response.

A submitted BAFO will be evaluated, scored, and ranked by the Evaluation Committee and replaces the original cost score of each vendor requested to submit a BAFO.

6.14. Evaluation and Award

6.14.1. Cost Only Service/Goods

After bid opening, award is not automatic and the initial information obtained during the bid opening results in only an apparent low bidder. The apparent low bidder may or may not be

awarded the contract. Bid award shall be made to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the RFP – Cost Only/ITB. As such, after the bids are opened they must be evaluated to determine compliance with all RFP – Cost Only/ITB requirements, specifications and ability of the bidders to perform the contract. The Team responsible for the procurement will examine the bid for compliance with all mandatory requirements and substantial conformity with the requirements contained in the RFP – Cost Only/ITB.

Bids are evaluated to determine which bid offers the lowest cost to the state in accordance with the RFP Cost Only/ITB, then all applicable preferences are considered. See discussion below on determining fair and reasonable prices via cost and/or price analysis.

If less than three bids are received, statute states that the award may be made to the single bidder if:

- State purchasing will review the specifications with the using agency
- If it is determined the specifications are well written, bids may be accepted from fewer than three bidders and the approval of the Governor or his/her designee is required

The bid may also be rejected and either a new solicitation may be advertised, the procurement may be canceled, or the goods or services may be procured using an alternate procurement method.

If bids are received that are identical in price, meet all of the requirements established in the solicitation, and the application of any applicable preference does not result in an award, award may be made in any permissible manner that will resolve the tie bid in the RFP - Cost Only/ITB.

Two examples of tie-breakers are:

- Drawing of lots
- Best and Final Offer

Of course, this is a non-exclusive list and any fair and reasonable method is appropriate. A written record of all bids must be maintained with the procurement file. It is also recommended, but not required, that a justification for the tie-breaker method be included for transparency.

6.14.2. Services

6.14.3. Responsive and Responsible

A contract may only be awarded to a responsive and responsible bidder. A responsive bid is one that complies with the solicitation in all acceptability and material respects and contains no material defects. A material defect is one that affects price, quality, quantity, or delivery terms. Material deficiencies affecting responsiveness may not be corrected. Non-responsive bids are those that do not comply with the mandatory terms of the RFP/ITB.

Responsibility relates to the capability of the vendor to actually perform the work or provide the items the state is seeking. Responsibility may include a vendor's ability to secure bonding, obtain insurance, or hire sufficient staff. Matters of responsibility may sometimes be addressed or corrected before contract award.

Considerations for determining responsibility may include but are not limited to, the following ([Refer to Neb. Rev. Stat. § 81-161](#)):

- The ability, capacity, and skill of the bidder to perform the contract required;
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- Whether the bidder can perform the contract within the time specified;
- The quality of performance of the previous contracts;
- The previous and existing compliance by the bidder with laws relating to the contract.

Responsibility determinations require due diligence on the part of the Team. There is a wide body of judicial rulings that further define and refine the limits of responsiveness and responsibility. Therefore, when faced with a matter of either responsiveness or responsibility during your bid evaluation, SPB highly suggests you coordinate with your attorney general or agency counsel to ensure your interpretation and any resulting determination comports with the most recent judicial rulings on these matters.

6.15. Preferences

The State of Nebraska has several statutory preferences an agency must consider when awarding a contract. If the bids are equivalent the preferences shall be applied. The preferences include:

- Recycled products ([Neb. Rev. Stat. § 81-15,159](#))
- Reciprocal preference ([Neb. Rev. Stat. § 73-101.01](#))
- Persons with blind and visually impaired ([Neb. Rev. Stat. § 71-8611](#))
- Veterans ([Neb. Rev. Stat. § 73-107](#))
- Enterprise Zones ([Neb. Rev. Stat. § 73-107](#))

6.16. Final Evaluation Document

The Final Evaluation Document is completed. If Oral Interviews were held, those scores are added. If a BAFO was requested and submitted by a bidder, those scores are used in place of the original Cost Proposal scores.

The score sheets are collected by an agency representative and entered into the [Final Evaluation Document](#) and checked for accuracy prior to submission to SPB.

The agency must submit Final Evaluation Document, Individual Evaluator Worksheets, and recommendation for award to the Buyer for verification *prior* to the posting of the Letter of Intent to Award.

6.17. Letter of Intent to Award

Once the Buyer has verified the scores and confirmed the selection with the agency, the Letter of Intent to Award is prepared.

The Letter of Intent to Award, Final Evaluation Document, and bids are posted to SPB's website.

6.18. Contract Finalization

The Buyer sends a letter to the selected bidder(s) with instructions concerning the required documentation.

- If the selected bidder(s) took any exception(s) to any of the Terms and Conditions, the Buyer works with the bidder(s) and DAS General Counsel to reach terms acceptable to both parties. Negotiations cannot increase cost to the state, nor can it materially alter the RFP specifications or broaden the RFP beyond its original intent and scope.
- Nebraska Secretary of State Registration – any bidder awarded a contract must be registered and in good standing with the Nebraska Secretary of State, and must submit a Letter or Certificate of Good Standing dated within 90 days.
- If the vendor is an individual or sole proprietorship, the vendor must complete the United States Citizenship Attestation form. The vendor should submit this form with their Request for Proposal response.
- Performance Bond – if a performance bond was required by the RFP, the selected contractor will submit the bond at this time.
- Certificate of Insurance (COI) – a current, compliant COI must be received by SPB before the bidder may begin performance.
- The bidder may not begin work until the contract is executed and all required documents have been accepted.

If State is unable to finalize terms and conditions of the contract through negotiations, the State reserves the right to reject a bidder's bid; to withdraw the intent to award and to award to another bidder or reject all proposals.

6.19. Protest

Bidders must submit protests in writing **within ten (10) business days** of the posting of the Intent to Award. The protest must be specific enough for DAS to understand the error that is being alleged and the relief that is being sought. The Materiel Division Administrator will attempt to issue a written decision within 10 business days. If the Bidder is not satisfied with the decision the

protestor may make a written request for a meeting with the Materiel Division Administrator and the Director of Administrative Services, or a designee of the Director's choosing within 10 business days of the decision. The meeting request must state the specific issues to be presented at the meeting and the specific relief sought. A written final decision will be sent to the Bidder, generally within ten (10) business days, unless additional time is necessary to fully examine the issues presented. The Bidders may opt to protest simultaneously to the Materiel Division Administrator and the Director of Administrative Services. (See [Protest Letter](#))

If a protest is sustained the State, at its discretion, may resolve the protest in the best interest of the State, which includes, but is not limited to:

- Cancellation of the RFP/ITB
- Rebid the RFP/ITB
- Amend the RFP/ITB with or without allowing amendment of proposals
- Take reasonable corrective action to remedy errors in procedures, or other acts or omissions
- Ratify the Award if there is no prejudice to the other bidders
- Terminate the contract if it has been executed, with or without an alternate award, or take such other actions as outlined above

Any error or omission jeopardizing the integrity of the procurement process identified by the State must be corrected to protect the integrity of the bid regardless of whether a protest is received.

The receipt of a protest does not prohibit the execution of the contract, but the decision to execute the contract while a protest is pending should only be made after discussion with SPB, the agency, and legal counsel.

7. CONTRACT MANAGEMENT

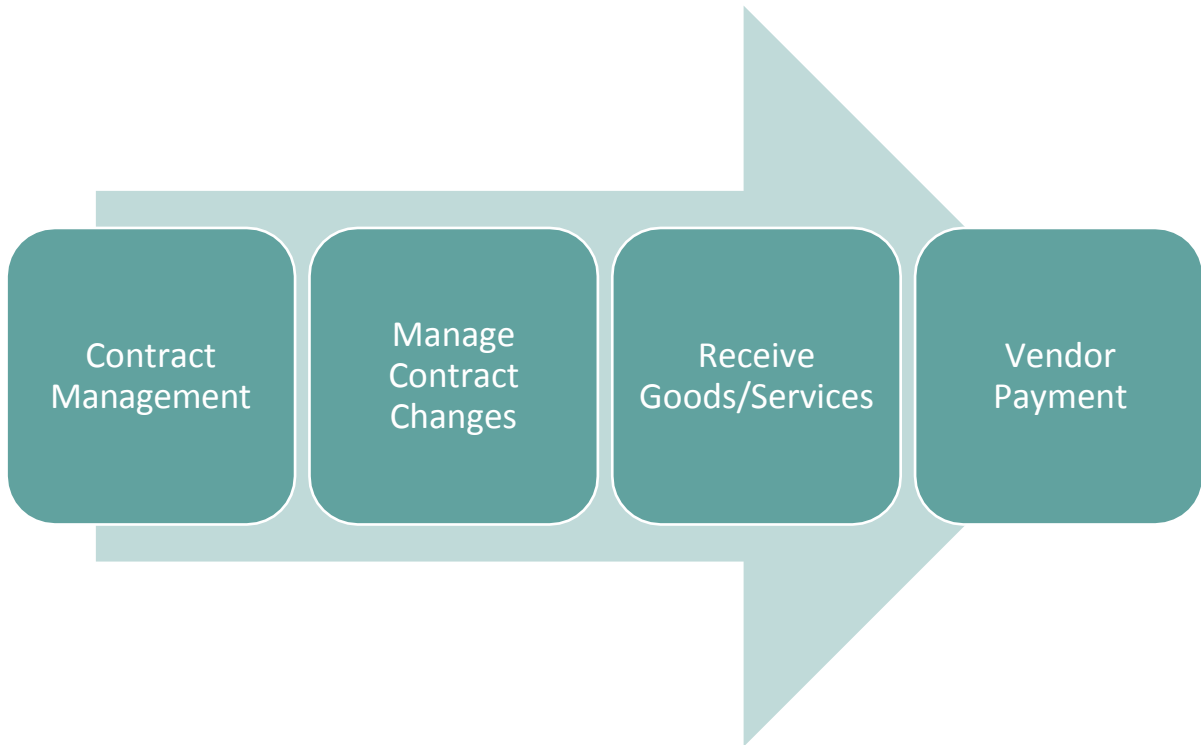
Contract management and oversight is not solely the responsibility of a single individual, but is instead a team effort, including; program, procurement and contract management professionals.

7.1. Contract Manager Responsibilities

The Contract Manager is the agency representative designated to manage the contract to ensure the contractor's performance is in accordance with the contractual commitments and obligations.

The Contract Manager is the primary person handling the daily administration of the performance-related aspects of the contract and documenting actions related to the contract. With few exceptions, the Contract Manager should be the only person having direct contact with the contractor or their representative. However, managing a contract requires assistance from others to address issues that may arise during contract performance. For example, the Contract Manager may

identify the need to make a change to the contract. To accomplish this, the Contract Manager will require the assistance of State Purchasing Bureau to formally execute a [change to the contract](#).



7.1.1. Vendor Relations

A good State-vendor relationship is a partnership that should result in a win-win situation over the long run. A vendor who is treated with courtesy, honesty, and fairness is more likely to deliver a quality product at the best price, will provide good service, and will be responsive to emergency situations and special requests when they arise.

The following are some basic guidelines to utilize in interactions with vendors to ensure successful vendor relations:

- Know the contract.
- Set expectations early.
- Be fair, honest and ethical.
- Be reasonable.
- Build relationships.
- Communicate regularly.
- Document everything.
- Pay promptly.

7.1.2. Develop Contract Administration Plan (CAP)

Contract monitoring should be specified in the Contract Administration Plan (CAP) which the Contract Manager should create as early as possible after contract has been awarded. The CAP Plan defines how the contract will be administered. The CAP provides a mechanism to reconcile the various contract documents and the order of precedence into a management tool that can be used to focus and govern implementation activities.

The plan itself will vary based on the complexity, risk, and scope along with the requirements of each contract. In many cases a CAP should only be developed for high-risk or highly complex procurements. The frame of the plan should focus on the Who, What, When, Where, and How of contract administration. CAPs generally address a common set of topics, with particular emphasis on process, output and outcome. In government contract management, there may be less emphasis on the “process” the contractor uses to achieve the goals of the contract than of the achievement of the expected outputs and outcomes.

While Contract Administration Plans generally share a similar structure, the inclusion of each topic into the CAP should be chosen based on necessity rather than out of formality. The CAP should include a copy of the contract and all pertinent documents so the Contract Manager has everything for immediate reference. Other actions and topics may include:

- Project description
- Period of performance
- Schedule, critical milestones and/or delivery dates
- Critical path tasks and deliverables
- Roles and responsibilities (agency and bidder)
- Data and reporting (agency and bidder)
- Inspection and acceptance
- Testing
- Personnel requirements
- Warranty provisions
- Watch list items
- Special terms and conditions
- Insurance/Bonds
- Process for managing change and issue resolution
- A Contract Log:

- To track and record what monitored actions occurred and by whom

Once the necessary actions and relevant topics have been identified they must be acted upon within the CAP. For each action or topic anticipated by the CAP, the Contract Manager should identify:

- What actions and topics, if any, must be monitored
- How the actions and topics will be monitored
- When or how often the actions and topics will be monitored
- A plan to gather data on the monitored actions and topics
- A method and plan to analyze the data
- A plan to deal with contract performance issues

As referenced above, a [simple contract log](#) can be a useful tool in managing current contracts and planning future procurements. An efficient contract log will allow the contract manager (or anyone else) to identify what has been completed, what is pending completion, and any other trackable tasks or timelines that can be monitored. Failure to maintain such a contract log results in lapsing contracts, contractors working at risk, and potential violations of the procurement code.

[Contract Administration Plan](#)

7.1.3. Contract / Project Kickoff Meeting

Depending on the size, complexity, level of work to be performed and the level of coordination required, it is a best practice to hold a kick-off meeting prior to beginning performance. The kick-off meeting is a method to formally notify all project team members, the contractor, and stakeholders that the project has begun and ensure everyone has a common understanding of the project requirements and each party's roles and responsibilities. This is an ideal time to discuss how the parties will interact and exchange information, how change will be managed during the performance of the contract, and a process for issue identification, notification and resolution. Many of the contract and project management concepts discussed below are subjects that can inform the agenda of a kick-off meeting. The nature of the meeting should be guided by the nature and complexity of the work but should address not only the agencies needs and requirements but also provide key information for contractors, for example, the payment process. **THE TERMS AND CONDITIONS OF THE CONTRACT CONTROL ALL OF THE TOPICS OF THE MEETING AND THE CONTRACT TERMS CANNOT BE MODIFIED VERBALLY OR IN WRITING AT THIS MEETING.**

7.2. Managing Contract Change Orders

The goal of the Contract Manager is to manage change effectively, and in accordance with the contract, to limit impact on the contract and project scope, schedule and budget. Fortunately, the terms and conditions and any special provisions contained in the contract documents will govern the way the parties deal with this change. Complying with and enforcing the provisions of the contract results in a disciplined, transparent, effective and legally binding process for managing change.

Over the course of a contract it may become necessary to make changes to the contract. The changes may be minor, administrative changes or they can be substantial, affecting obligations, cost and/or period of performance. It is during post-award administration of a contract that the contract type selected during the [market research phase](#) becomes of critical importance. Contract Managers need to manage these based on not only the contract clauses but also the contract type.

Understanding how these two elements work together makes contract management more effective. For example, it is only under extraordinary circumstances that a price adjustment would ever be warranted in a firm-fixed price contract. A request for price adjustment does not automatically entitle the contractor to more money or more time, as the contractor must demonstrate there actually is a change and that change was not the fault of the contractor and has resulted in increased cost and/or schedule slippage before relief is provided.

There are 2 main types of modifications that may occur in a contract relationship:

- Unilateral Modifications
- Bilateral Modifications

The following sections provide details of these methods of contract modifications and changes.

7.2.1. Unilateral Change Order

A unilateral change order, is one issued by the contracting officer without requiring consent or signature of the contractor. It generally occurs for two reasons:

- The right to unilaterally modify the contract has been given to the State contracting agency in the contract itself,
- The change order is for an inconsequential change, or
- Changes that are required by law.

The agency's right to make unilateral changes is pursuant to the Change Order clause of contract, unless mandated by law. The agency must stay within its contractual rights of the language prescribed in the term and conditions allowed in the contracts. Common types of unilateral change orders include:

- Making administrative changes

- Addressing minor clerical errors
- Exercising options in a contract
- Issuing suspension, work/stop or termination notices

7.2.2. Bilateral Change Orders

A bilateral change order, also referred to as a contract amendment, requires the written approval of all parties. Generally when used in public purchasing, contract amendment is the term used for a change to specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract made within the scope of the contract.

Bilateral change order are typically prepared by the State agency and forwarded to the contractor for negotiation or approval. Bilateral change order generally alter one or more substantive terms of the contract and generally utilize existing contract clauses as the basis for the change order. In all cases, the contract manager should reference the specific language of their contract in the change order.

7.2.2.1. *Price Adjustments*

The clauses contained in the contract are very protective of the government's interests and, if enforced, can keep a project on time and on budget. Ensure you are familiar with the contract clauses governing price adjustments to protect the project from unwarranted or frivolous claims. When warranted, the clauses will provide the appropriate procedure and different methods allowed to be used in pricing the adjustment.

7.2.2.2. *Extensions to the Period of Performance*

The contract period of performance is usually a very firm date wherein performance or delivery must be completed. In certain circumstances an extension to period of performance may be warranted, if permitted by the contract.

7.2.3. Issue Tracking and Escalation

When issues arise in a contract, a Contract Manager must act to address them. Some issues are simple and can be dealt with directly by the Contract Manager. Other issues may be more complicated and require that the issue be escalated. Some issues that may arise during contract performance are characterized by disagreement leading to disputes between the contracted parties.

The key to effectively managing issues is establishing a clear issues tracking and escalation process, understanding the triggers that drive issue escalation and knowing what mechanism are available to effectively deal with issues as they progress through the issue escalation process.

The primary goal of the issue escalation process is not to be punitive and/or penalize the vendor when an issue arises. Rather, it is meant to get the project performance back on track to

effectively deliver the goods or services in the contract, while maintaining a positive vendor relationship.

If issues remain unsolved, the Contract Manager working with Purchaser and Legal should initiate steps toward Contract Termination as described in section 5.5.6 below.

7.2.4. Contract Disputes

Some issues that arise during contract performance are difficult to resolve. Formal legal action is always an option, however, there are many reasons both parties may be hesitant about pursuing formal proceedings. Formal legal proceedings can be expensive, lengthy, there is uncertainty of outcome, and it can damage the business relationship.

If the dispute cannot be resolved through discussions, the agency can use the vendor performance report to seek a resolution to the dispute. The vendor performance report has an [informal and formal process](#) to deal with disputes. ([Vendor Performance Report Form](#)) The vendor performance report will outline the basis of the dispute, establish a plan to resolve the dispute, and a plan to monitor the resolution of the dispute.

If a contractor has a dispute with the State that cannot be resolved through any of the contractual processes the contractor may submit a claim in accordance with the Contract Claims Act. ([Neb. Rev. Stat. § 81-8,302 et seq.](#))

7.2.5. Right to Audit Vendor Records

Another method of addressing issues and/or disputes that arise during contract performance is to perform an audit, which allows the purchasing agency the right to audit the books and records of a contractor or subcontractor under contract.

7.2.6. Contract Termination

It may sometimes be necessary to end a contract before the contractual period of performance has ended. The premature ending of a contract is referred to as “termination” and generally takes on one of the following forms:

Termination for Convenience: The State has the unilateral right to terminate all or part of the contract when it is in the best interests of the State. The need to terminate a contract may arise for many reasons but generally occurs from changes in government priorities, public policy, or other unanticipated events.

Termination for Default: Also referred to as Termination for Cause, is a standard term of any public contract allowing the State agency to terminate the contract due to the contractor’s violation of the terms of the contract.

Termination Due to Loss of Funding: Based on the Nebraska Constitution, only the Legislature may authorize and appropriate funds for spending. **If** funding for a contract is

withdrawn or funding is not appropriated for additional contract terms, the contract may be terminated because it would be illegal to perform.

Termination by Mutual Agreement: Occurs when the parties agree to terminate the contract.

Termination should begin only after sufficient consideration and consultation, as the consequences for both parties are extreme, and may require future litigation.

7.2.7. Suspension or Removal from Bidder List

Any vendor whose performance has been unsatisfactory may be removed from a bidders list or suspended from bidding for a specified period of time. The vendor shall be given written notification of removal or suspension action and its duration. Conditions which may warrant removal or suspension include, but are not limited to:

- Failure to respond to three consecutive bid invitations (NOTE: a reply of “no bid” is an acceptable response);
- Late delivery;
- Failure to deliver;
- Unauthorized substitution of goods other than specified;
- Defective products or products damaged other than in shipment;
- Service deficiencies; or
- Billing errors.

7.3. Receive Goods or Services

The purchasing agency is responsible for ensuring prompt receipt, inspection, and acceptance of all goods and services procured by the agency, unless otherwise specified in the contract. For each delivery, an agency must designate appropriate personnel to certify that the goods or services were received, that quantities were as stated, that the goods or services met specified requirements, and that condition was satisfactory or noted otherwise upon receipt.

7.4. Vendor Payment

Another critical function of contract management is invoice approval and vendor payment.

To receive payment, vendors must submit invoices to the ordering entity with the required detail as outlined in the contract.

Invoices must be approved by the appropriate staff – review should include:

- Vendor is invoicing only for goods or services received.

- Goods or services have been received and accepted.
- Invoice is correct and complies with terms and conditions of contract.
- Total payments do not exceed the contract limits.

8. CONTRACT COMPLETION AND CLOSEOUT

The Contract Completion and Closeout phase of the procurement lifecycle is defined as the procedural and administrative tasks required to change the status of a contract from “active” to “expired”.

8.1. Verify Final Receipt/Contract Completion

For contracts where all obligations have been met, including the finalization of all legal, administrative, and managerial tasks, the contract is considered to be complete.

It is helpful to have a contract closeout checklist prior to providing final acceptance of the contract.

Tasks that support contract completion include:

- Verifying all contractual obligations have been completed
- Verifying all contractor invoices have been submitted and paid (except final invoice)
- All testing reports received and analyzed
- All inspections completed and accepted
- Any government-furnished property has been returned
- Closing subcontracts by the seller
- Classified materials, security badges/keys returned/accounted for
- Agreeing that no claims, issues, or unresolved matters exist on the contract
- All required contract audits have been completed
- Out-brief with contractor’s personnel/management
- Contractor performance evaluation completed by contract administrative team
- Obtaining all warranties or other final deliverables
- Signing a formal notice of contract completion
- Complete punch list items
- Certificates of substantial/final completion, as applicable
- Any other administrative or jurisdictional requirements

8.2. Document Final Acceptance

As applicable, acceptance is a formal acknowledgement that the contractor's performance was in total agreement with the promises made in the contract; that all requirements were met; all deliverables/goods have been received and accepted; and, all invoices have been received and paid with exception of final payment.

Contract acceptance can be formalized in a letter or other communication to the contractor stating that the contract has been accepted and is complete.

8.3. Issue Final Payment

Final payment can only be released to business entities who are compliant with the laws governing firms conducting business in the State of Nebraska. Final payment are to be made in accordance with guidance provided in this Procurement Manual. The invoice for final payment may be submitted by the contractor at any point toward the completion of the contract; however, the contract manager should not approve payment of the invoice until they formally accepted the goods or services delivered in accordance with the contract terms and that all items on the [Closeout Checklist](#).

The Contract Manager should ensure that any deficiencies or issues found prior to acceptance of the goods or services.

8.4. Contract Files

Each State agency will maintain records necessary to support each purchasing and contracting transaction. All contracts, regardless of complexity or dollar value, must be properly documented with a complete record of all contracting activities. At a minimum, procurement files shall be retained in accordance with the document retention requirements set forth in their Agency's Retention Schedule.

8.5. Lessons Learned Review

It is a best practice to conduct a review of lessons learned, that is, learning from experience and identifying the successes and the areas for improvement and how these can translate into improved contract management and project delivery in the future. The lessons learned review should be focused on facilitating a forum for discussion amongst contract parties with input from key stakeholders.

The principal objectives of the review are to:

- Identify learning opportunities for application in the supplier's execution of future contracts;
- Identify areas for improvement in client contract documentation and processes; and
- Identify learning opportunities for improvement across State and agency contracts.

A lessons learned review should be performed for all major contract at contract closeout. The Buyer should meet with the Team to discuss the contract and project, identifying what went well and not so well and how these findings can improve contractor and State execution of future contracts and projects. The Buyer should then draft a report of the findings and provide it to the stakeholders interviewed for review and comment. Once comments have been incorporated, the report should be included in the contract file, and a copy provided to the State Procurement Manager.