

Safeguards and Vendor Interaction

Texas Department of Information Resources (rev 8/2016)

The purpose of this narrative is to outline a set of acceptable business practices and ethical principles that will guide the interactions of all agency employees with vendors and vendor sales representatives. The goal of this is not to completely, or even materially, limit the ability of vendor representatives to enter agency facilities or to interact with individual agency employees. A separate agency policy should be in place that covers the physical access of an agency facility for vendor representatives. Ethical relationships between government professionals and vendor representatives can often be beneficial for all parties involved in that these relationships may be the basis of advances in training, education and emerging technology. The specific objective is simply to place boundaries and provide guidance on the actions of both parties.

In general, each employee is expected to use sound reason and his/her best judgement when interacting with vendor representatives. Employees should be familiar with the agency's Ethics Policy and, if at some point, an employee is faced with an ethical dilemma that is not addressed in the agency Ethics Policy, you are encouraged to consult with the agency's procurement office, your supervisor or the Ethics Officer for guidance.

Whatever is implemented in the way of vendor policies, such policies should be applied consistently to avoid the appearance of favoritism. For example, if it is a policy to always have more than one person in the meeting, it should be uniformly applied for every meeting.

Lobbyist Registration

Vendors will often engage with a lobbyist, or other type of compensated representative, in order to arrange meetings with agency staff. Representative agents who meet the Texas Ethics Commission's registration requirements must be registered with the Texas Ethics Commission. If a vendor representative solicits a meeting on behalf of a vendor, the agency should verify the representative's registration status with the Ethics Commission. If the representative meets the Ethic Commission's registration requirements and is not registered as a lobbyist, the agency should decline the meeting request. See: https://www.ethics.state.tx.us/guides/LOBBY_guide.htm.

Vendor meetings during an active solicitation

When a solicitation is active (i.e., made available to potential bidders), vendor interactions regarding the active procurement must be limited to the agency's point(s) of contact for the solicitation. Other agency employees cannot meet with vendors regarding the solicitation, including but not limited to, scope, schedule, budget, and procurement process. This can present unique challenges when the solicitation is a re-procurement of an existing active contract because the agency still has a general obligation to meet with the vendor to ensure the operations/service of the currently active contract are managed properly. In this circumstance, both the agency and the vendor should, prior to the solicitation, divide staff between the two functions, prohibiting contract administration from participating on the solicitation and, likewise, prohibiting solicitation staff from participating on contract administration. This can be challenging but essential to avoid the perception of impropriety which may ultimately lead to the removal of agency staff from the solicitation and or disqualification of the incumbent vendor from bidding on the procurement. To the extend this is not feasible due to limitation of agency resources or other constraints, interactions with the incumbent vendor should be logged in the contract file.

Vendor Meetings – with a contract in effect

Requests for vendor meetings from vendors under an active contract are the most common interactions agency staff will encounter. These meetings are an essential element of properly managing and delivering on an awarded contract and may be requested by the vendor or the agency. In addition, meetings may be necessary to introduce personnel, discuss current contract performance status or to seek guidance on service adjustments being provided within the scope of the vendor's awarded contract. Interactions should be restricted to the scope of the awarded contract and care should be given to not create the perception of favoritism to any vendor for work outside the scope of the contract in effect. Agency personnel should use caution to avoid providing the vendor a future unfair competitive advantage by sharing information about systems or internal processes or protocols, outside the scope of the current contract award that the vendor may be able to use in a future solicitation. When in doubt, please consult with your procurement office, your supervisor or the Ethics Officer for guidance.

Adding additional meeting attendees is advisable if there is potential for the meeting to create the perception of bias. If unsure, there should always be a second agency representative in attendance at a vendor meeting, generally the assigned contract manager.

Vendor Meetings – without a contract in effect

Requests for general vendor meetings are not unusual and are a valuable way to stay abreast of market and technology trends and capabilities. These meetings may be requested by the vendor or the agency to introduce key personnel, capabilities or to seek guidance on market and/or product strategies or trends. In some cases, these meetings may involve a request from the vendor to discuss possible contracting opportunities within the agency. Because agency staff may not be aware of a planned or active solicitation, employees should check with the agency's procurement office before agreeing to a vendor meeting. Agency personnel should use caution to avoid providing the vendor a future unfair competitive advantage by sharing information not otherwise publicly available about systems or internal processes or protocols the vendor may be able to use in a future solicitation. When in doubt, please consult with the procurement office, your supervisor or the Ethics Officer for guidance. In general, it is acceptable to receive information from the vendor but not to give information to the vendor that is not otherwise publicly available or disclosable under transparency policies or the Texas Open Records Act.

Adding additional attendees is advisable if there is potential for the meeting to create the perception of bias. In cases of question or doubt, there should always be a second agency representative in attendance at a vendor meeting.

Vendor interaction, when consistently applied in an unbiased, impartial manner allows for educational and information exchanges that can be useful for both parties. It is essential however to take care with sharing data, providing infrastructure details or having verbal communications and sharing non-public information not generally available through transparency policy or Open Records law as this may give the vendor, real or perceived, an advantage over other vendors, disqualify them from participating in future business opportunities, or take any action that amounts to an unauthorized commitment on the part of the agency. Agencies should consider logging key information about the vendor interaction, including the attendees and the nature of the meeting.

Donations

A donation is a gift typically given for charitable purposes and/or to benefit a cause. A donation may be offered in the form of goods, services or cash offering. Charitable gifts of goods or services are also called “gifts in kind”.

There may be instances where the agency determines that it is in the public interest to accept a donation that is offered which will result in a technology benefit such as education, assessment or innovation, however it is important to note donations should not be solicited from private parties, and donations may not be accepted or utilized without first following the guidelines that are established for the agency and gaining the appropriate approval for acceptance.

Product/Service Demonstrations

When vendor demonstrations and/or product or service displays are properly planned and authorized, and the activities do not provide the vendor an unfair competitive advantage, result in a procurement ratification action, or otherwise adversely impact the agency, they are a useful way to stay abreast of the types of products, technology and/or services available in the marketplace that may be useful to support agency operations and programs. If not properly conducted, they can pose an unacceptable risk to the agency. Providing ground rules to the vendor in advance is advisable in order to establish clarity of expectations.

During the demonstrations, it is essential that agency personnel avoid revealing advance procurement information or take any action that implies an unauthorized commitment. Where the commitment is invalid in its essence, or could be valid if properly reviewed and approved, such commitments can place procurements, and staff participation in those commitments, in jeopardy.

Vendor demonstrations, product displays or discussions should be conducted for the sole purpose of demonstrating the capability of particular item(s) or service(s) and not for fulfilling mission requirements for an interim timeframe. The examination, demonstration, or discussion of products(s) or service(s) should in no way, expressed, or implied, obligate the parties to purchase, lease, or otherwise acquire the products(s) or service(s) demonstrated. Employees should not demonstrate or endorse the vendor’s product.

Proof of Concept - Pilot

A proof of concept pilot project is an opportunity to demonstrate the capabilities of the vendor’s solution in a controlled manner under a service agreement. A pilot project can be an excellent risk mitigation strategy for agency planning purposes. It can also serve to inform or resolve an alternatives analysis for an agency during the investment planning phase. The pilot helps determine whether the vendor’s solution is appropriate for use by the agency and how easily it can be configured, providing hands-on experience for managers, information technology (IT) personnel, and users.

A pilot project can be the last major step before an agency commits to launching a solution for use agency-wide, allowing the agency to gauge whether the proposed solution meets the needs of the agency (as defined in its requirements analysis). A pilot may also be utilized in the final stages of a solicitation when multiple vendors are being evaluated before making a final award. It is the first opportunity to test the technical capabilities of a system and experience how it operates with an

agency's infrastructure, alongside other programs and systems, providing opportunities for agency staff to gain practical experience. Through this real-life operational implementation, staff can assess the agency's ability to utilize the system effectively. For instance:

- The pilot may reveal a need for additional technical staff and/or user training before enterprise-wide deployment.
- As a result of lessons learned through a pilot project, the agency may want to modify (or redesign) existing workflow processes to take full advantage of the capabilities of the technology

To be a useful guide for full-scale implementation, a pilot should be carefully designed and evaluated. If the scope of the pilot is too narrow, the pilot runs the risk of not having a sufficient amount of data to become useful to the users.

When considering the benefit and possible use of a pilot, the agency procurement and legal offices should be engaged in the earliest stages. They should work with agency subject matter experts and users to determine the best method to achieve the desired results as well as ensure the proper language is incorporated into the solicitation documents to identify who will move forward for consideration in a pilot, as well as creating language to evaluate and appropriately disentangle with the vendor at the completion of the engagement period. Generally, the awarded pilot vendor is not disqualified from a future solicitation as long as the agency evaluates the pilot results and does not allow the awarded pilot vendor to participate in the evaluation process, as that process informs the agency on a future solicitation for a permanent solution, AND the pilot agreement clearly stipulates the awarded pilot vendor is not excluded from a future solicitation.

Much like the demonstration process it is important to properly plan, coordinate and obtain appropriate authorization so that the activities do not provide any vendor an unfair competitive advantage, result in a vendor disqualification from future solicitations, or otherwise adversely impact the agency.

Field Testing of Products

Product Testing is the temporary and limited use of an item or items with no transfer of risk or ownership to the agency and should be for a specific timeframe determined prior to the onset of its use. As with other vendor interactions, it is important to note that while this is an effective way to stay abreast of the types of products, technology and/or services available in the marketplace that may be useful to support agency operations and programs, if not properly conducted they can pose an unacceptable risk to the agency. Consequently, collaborating with the legal office and the procurement office at the beginning of the process will assist agency staff in mitigating any unforeseen risk.

Product testing seeks to ensure the agency understands the capabilities and or limitations of the products and which products may demonstrate best value. Product testing is a strategy to increase agency protection by checking the claims made during marketing strategies such as advertising, which by their nature are in the interest of the vendor. Often an existing formal test method is used as a basis for testing. Other times it may be necessary to develop methods of test that are suited to the specific purpose.

Generally, the awarded field test vendor is not disqualified from a future solicitation as long as the agency evaluates the field test results and does not allow the awarded field test vendor to participate in the evaluation process, as that process informs the agency on a future solicitation for a permanent solution, AND the field test agreement clearly stipulates the awarded field test vendor is not excluded from a future solicitation.

Vendor meetings Do's and Don'ts

DO: Meet with vendors currently under contract as needed

- Have at least one additional agency representative participate
- Be current with agency ethics training
- Document the attendees and purpose for the meeting
- Document the meeting discussions and any action item
- Accept vendor materials related to the vendor's products or services

Don't:

- Share agency strategies that are not publicly known
- Share information about potential future solicitations
- Accept gifts or donations
- Commit to accept, or plan to accept, products or services
- Meet when the meeting may create the perception of favoritism
- Guarantee or imply that a solicitation may result from a meeting

Key Statutory provisions (new and old) to keep in mind:

1. A state employee who participates on a solicitation that results in the award of a contract to a vendor may not accept employment from that vendor for a period of two years after the state employee employment ceased.
2. All solicitation documents related to a contract award must be posted in CAPPs, including response evaluation criteria and award selection explanation (if applicable).
3. After a contract is complete or terminated, the vendor's performance must be reviewed and reported to the Comptroller, using the Comptroller's tracking system.
4. The Comptroller's vendor performance tracking must be used in evaluating vendor responses before award determination.
5. As per Texas Government Code, § 2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. In other words, a vendor that participates in drafting an RFO or SOW in most cases is not allowed to respond to the same SOW or RFO.