

Texas Workforce Commission

TWC-Vendor Communications

INTRODUCTION

The Texas Workforce Commission (TWC) establishes the TWC-Vendor Communication procedure to promote and guide collaboration between TWC employees and the vendor community on appropriate communications during the pre-solicitation phase of the procurement cycle.

The pre-solicitation phase is the phase before the solicitation document is drafted by TWC. Pre-solicitation vendor communication is written or verbal communication initiated by a vendor to introduce a product, service, or other innovative idea that is not in response to a solicitation. A TWC division may initiate a meeting with vendors as a part of pre-solicitation market research.

Guidelines for communication during the solicitation process are provided in this document to differentiate these communications from the pre-solicitation phase. See also the [State of Texas Procurement and Contract Management Guide](#) and [TWC Procurement and Contract Management Handbook](#). Communication between the TWC and a vendor post-award that pertains to a particular contract should be directed to the designated contract manager. If a vendor is under a current TWC contract and intends to submit a response to current TWC solicitation, communication regarding the current TWC solicitation must take place in accordance with that solicitation.

BACKGROUND

Texas law authorizes the exchange of information between a state agency and a vendor, including communications related to future solicitations. Vendors are often experts in their respective fields and can offer insight on potential purchases, such as current trends, industry practices, and available products or solutions. Vendor input may be obtained through the issuance of a Request for Information (RFI), holding a pre-solicitation meeting with the vendor community, attendance at industry days, or directly contacting DIR approved vendors, industry leaders, vendors listed under the applicable code on the Comptroller Certified Master Bidders List (CMBL). However, procurement specifications must never be tailored to benefit a particular vendor, as this limits competition. Care should be taken to avoid the appearance of favoritism toward certain vendors in the fact-gathering process and when possible, agencies should avoid consulting exclusively with the incumbents or a small number of vendors, which could give the appearance of favoritism.

Working with the vendor community and potential contractors early as a precursor to a procurement helps TWC gain better product or service information and improves the quality of market research efforts. Frequent and effective communication between TWC and private vendors helps TWC develop specifications and requirements that best meet agency business needs and assures best value to the state. The procedure outlined in this document aims to provide guidance and context for TWC staff and the vendor community alike.

PURPOSE

The objective of implementing this TWC-Vendor Communication Procedure is to improve the communication between the vendor community and TWC public procurement professionals. Education on vendor opportunities

(particularly in technology and other sectors experiencing rapid change), implementing new standards, and fully incorporating existing communication avenues will strengthen the communication and relationship between the two parties.

The strategies outlined in this procedure are designed to assist TWC to improve and streamline its communication with the vendor community. It also serves as guidance for the vendor community to conduct introductory communication with TWC, to identify the parameters within which public procurement professionals, specifically TWC procurement staff, are working, and to establish standards for positive relationship building.

FOR OUR VENDORS

TWC-Vendor Liaison

TWC has established a TWC-Vendor Liaison process to foster open communication with the vendor community whenever necessary, practicable, and appropriate. This process facilitates introductory agency-vendor communications and educates agency procurement staff about the potential for new goods or services that have been initiated by a vendor that is not in response to a solicitation.

A vendor that wants to reach out and provide TWC with information about its organization and the goods and services it offers may contact the TWC Vendor Liaison email address at: TWCVendorComms@twc.texas.gov.

A vendor is encouraged to provide the following information at initial contact. If this information is not immediately received, the TWC Vendor Liaison will contact the vendor to obtain this information:

- Vendor Name:
- Vendor Type of Business:
- Vendor Website:
- Vendor primary point of contact (name and title):
- Phone number:
- Email address:
- TIN, if applicable:
- Title and summary of the meeting:
- Objectives:
- Method of approach:
- Nature and extent of anticipated results:
- How the good/service will support the TWC's mission:
- Waiver of proprietary data, if applicable (confidential information should not be provided):
- Existing TWC Contract name(s)/number(s), if any:

Receipt of the email sent to TWCVendorComms@twc.texas.gov by the vendor will be acknowledged. Follow-up or further contact from TWC will occur within five (5) to ten (10) business days.

Note that this email address is not a mechanism for communicating with TWC regarding open solicitations. A vendor responding to an open solicitation must follow the requirements in the published solicitation.

DOING BUSINESS IN TEXAS

There are several actions a prospective vendor can take to improve opportunities to do business with the State of Texas and TWC, including:

Properly classify the goods and services offered. The State of Texas uses the NIGP (National Institute for Governmental Purchasing) commodity codes to categorize goods and services. These NIGP codes are divided into purchasing class and item codes (numeric) that best represent the goods and/or services offered. Properly identifying goods and/or services will help public procurement professionals accurately identify interested vendors in particular industries.

Register as a Texas Vendor. Vendors seeking contracting opportunities with the state should register for the Centralized Master Bidders List (CMBL). The CMBL is a database used by state of Texas procurement professionals to develop a mailing list for vendors to receive bid opportunities based on the goods or services that they can provide to the state <https://comptroller.texas.gov/purchasing/vendor/cmb/>.

Obtain Historically Underutilized Business (HUB) certification, if eligible. The Statewide HUB Program at the Texas Comptroller of Public Accounts certifies qualified small businesses as Historically Underutilized Businesses (HUBs). To qualify, an applicant owner must own 51% or more of the business and control day-to-day operations, and must be economically disadvantaged either as a woman business owner, minority business owner, or service-disabled veteran business owner <https://comptroller.texas.gov/purchasing/vendor/hub/certification-process.php>.

Regularly Search the Electronic State Business Daily (ESBD). State and local governments post solicitations on the Electronic State Business Daily (ESBD), the state's search engine for its most valuable contract

opportunities. Vendors can search by government agency or by class and item number to find current contract opportunities statewide <http://www.txsmartbuy.com/esbd>.

Check Qualifications. Vendors must be in good standing with state and federal entities. Prospective vendors are encouraged to confirm if their business entity is subject to Texas franchise tax and determine if they are in good standing or “active”. Public procurement professionals will also ensure that potential vendors are in good standing with the federal government by checking federal databases, such as SAM.gov. In addition, vendors must comply with any additional prohibitions that are prescribed in statute. These prohibitions are identified in the [State of Texas Procurement and Contract Management Guide](#).

MEETING GUIDELINES

Vendor Meetings Encouraged

TWC encourages meetings with vendors to learn more about the goods, services, and resources that are available. Meetings can be in person or virtual but must follow the procedures identified in this document.

At the beginning of any vendor interaction, TWC staff should inform vendor representatives that if at any point during vendor communications or during the vendor meeting agency staff believes communications are inappropriate, unethical, or can in any way compromise a current or potential solicitation, the communications and or meeting must be immediately stopped.

Solicitation “Quiet Period”

Once TWC has begun the actual solicitation-drafting process,

communications with vendors related to or with an appearance of being related to the subject matter of the solicitation must cease except in accordance with the requirements posted in the TWC's solicitation. The time period encompassing solicitation-drafting, open solicitation (posting), and contract negotiation is considered the "Quiet Period." No meetings other than those within the specific procurement process should occur.

The TWC solicitation document will identify a TWC Procurement and Contract Services (PCS) Point of Contact for the duration of this Quiet Period. Communication by a vendor must be addressed to that Point of Contact. Other agency staff contacted by a vendor regarding an open solicitation must immediately refer the vendor to the TWC Point of Contact. Failure of a vendor to adhere to the guidelines regarding vendor communication posted in the TWC solicitation subjects the vendor's proposal to disqualification. The Quiet Period ends once a fully executed contract is issued.

Discussions that occur during an open procurement, especially during oral presentations or best and final offer discussions, continue to be a part of the Quiet Period. Discussions between the TWC and a potential awardee may occur, for example, during contract negotiations. Vendors are discouraged from having discussions outside of this process so that the transparency and competition in the procurement process is not compromised.

TWC staff is encouraged to contact PCS prior to scheduling a vendor meeting to ensure the subject matter to be discussed is not subject to the Quiet Period.

Vendors Under Active TWC Contract (Current Contractor)

Meeting with a vendor under an active TWC contract (Current Contractor) is an expected part of the contractual relationship. These meetings are an essential element of proper management and delivery on an executed contract. In addition, meetings may be necessary to introduce contract

personnel, discuss current contract performance, or to seek guidance on service adjustments being provided within the scope of the Current Contractor's executed contract. TWCVendorComms@twc.texas.gov

Interactions must be restricted to the scope of the executed contract and care should be taken to not create the perception of favoritism to any Current Contractor for work outside the scope of the contract. TWC staff should use caution to avoid providing the Current Contractor an unfair competitive advantage by sharing future business requirements, information about systems or internal processes, or protocols outside the scope of the current contract that the Current Contractor may be able to use in the proposal development phase of a future solicitation. When in doubt, TWC staff should consult with PCS or the Office of General Counsel.

Any other type of meeting, such as meetings outside of the scope of the current or existing contract, should be conducted in the same manner as a general vendor meeting with a vendor that is not currently under contract.

Vendor Meetings with Vendors Not Currently Under Contract

Requests for general vendor meetings are not unusual and are a valuable way to stay ahead of market, technology, service, and resource trends and capabilities. These meetings may be requested by the vendor or TWC staff to introduce key personnel, capabilities, or to seek guidance on the market, product, or service strategies and trends. In some cases, these meetings may involve a request directly from the vendor to TWC staff to discuss possible contracting opportunities within TWC.

TWC staff may not be aware of a planned or active solicitation and therefore must check with PCS before agreeing to any vendor meeting. TWC staff should use caution to avoid providing a vendor a future unfair competitive advantage by sharing information not otherwise publicly available about

systems, future business requirements, internal processes, or protocols the vendor may be able to use in proposal development for a future solicitation.

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 the Texas Public Information Act. For questions regarding the Texas Public Information Act, contact TWC's Office of General Counsel.

External Events

TWC staff should be mindful of any vendor communication that may occur while attending an external event such as an expo, conference, or other event outside of the normal day-to-day business setting. Casual communications in such settings could be perceived as inappropriate by the public, other state employees, and other vendors. TWC staff should avoid any situation or communication that would create even the appearance of impropriety.

TWC staff should contact the Office of General Counsel with legal or ethical concerns.

When TWC Must Decline a Vendor Meeting

If a vendor requests to meet about an open procurement, TWC staff should decline the meeting and refer the vendor to the PCS contact identified in the solicitation document.

TWC staff is encouraged to contact PCS with any questions regarding meeting with a vendor. TWC staff should contact the Office of General Counsel with legal or ethical concerns.

TWC PCS Resource at Vendor Meetings

PCS staff interacts with the vendor community on a regular basis as a part of their duties. As public procurement professionals, the PCS team is an experienced resource regarding vendor interactions. TWC staff may request that a member of the PCS team is included during vendor communications or meetings by sending a request to Procurement and HUB Services.

During a Pre-Solicitation Vendor Meeting

In-person or virtual meetings. Whether a pre-solicitation meeting is in-person or virtually, TWC staff must maintain impartiality and not provide any information that would give any vendor a competitive edge over another. TWC staff must review the following guidance to ensure in-person or virtual meetings are conducted with utmost care for the competitive process:

- Emphasize that the primary purpose of the meeting is for TWC to learn about the industry and marketplace. Ask questions and gain an understanding of the advantages and issues associated with a particular approach or business practice. Ask the vendor clarifying questions but avoid expressing opinions or preferences. The meeting should not be the basis for further action and should not unintentionally solicit a proposal.
- Avoid unauthorized commitments (i.e., an agreement that is not binding because the agency representative making the agreement lacks the proper authority to enter into that agreement on behalf of the agency). Each communication or meeting with a vendor regarding a vendor meeting for the purpose of fact or information gathering should include a statement similar to: "Nothing discussed in a meeting between the vendor and TWC authorizes the vendor to work, start work, or bill for work. Any understanding on the part of the vendor to the contrary is not valid."

- Treat all vendors and potential vendors fairly and impartially. Do not give or accept any preferential treatment.
- Conduct business with integrity, fairness, and openness. Not only must the procurement process have integrity, but the actions of each individual involved in a public procurement must reflect integrity, fairness, and openness. Avoid organizational conflicts of interest or even the appearance of a conflict.
- Understand ethical responsibilities, and notify your manager or supervisor, legal counsel, or other agency leadership, as applicable, of any concerns.
- Control the meeting and its agenda. Always prepare and follow a meeting agenda. Before the meeting, identify specific information that the vendor should address.
- Always make the information provided to one vendor the same as provided to all vendors. Provide a standard information package to all vendors that provides up-to-date and accurate information about the TWC mission and requirements. Do not provide nonpublic information.
- Do not accept gifts or donations.
- Do not commit to accepting, or plan to accept, products or services.
- Do not guarantee or imply that a solicitation may result from a meeting.
- Do not discuss active procurement projects or provide specifications or information about potential, future procurements.

- Document the facts and results of the meeting but be mindful this may become public information. Documenting the results and findings of a meeting is a critical part of the market research effort. Record the date, place, and meeting participants, including company affiliations and contact information. Avoid documenting feelings, assumptions, perceptions, etc.

FREQUENTLY ASKED QUESTIONS AND ANSWERS

To foster competition within the state and increase transparency in the procurement process, Texas has enacted several laws and administrative rules that require state agencies to take or avoid certain actions. The vendor community is encouraged to review current legislation and other adopted policies, starting with the [State of Texas Procurement and Contract Management Guide](#).

The following frequently asked questions aim to help strengthen communication and close existing communication gaps:

Question: “Are state agencies able to meet one-on-one with potential vendors?”

Answer: Agency personnel can meet one-on-one with potential vendors as long as no vendor receives preferential treatment. Agency personnel must remain mindful that one-on-one communications with vendors occurring outside of the procurement process are subject to enhanced scrutiny due to the importance of maintaining an equal playing field among all eligible vendors during competitive procurements. Agency personnel should contact the Office of General Counsel with any questions or concerns.

Question: “Can state agencies accept vendor pitches before a solicitation?”

Answer: Yes, there are acceptable informal methods for vendors to introduce pitches as detailed in this document. Note that the information provided through a vendor pitch will not directly result in a contract award. TWC PCS can assist with any questions related to an acceptable format for a vendor pitch.

Question: “Can state agencies review vendor pitches that have been made in person, virtually, by phone, or over email?”

Answer: Yes, during the pre-solicitation phase, market research is critical and reviewing vendor pitches is a potential component of an agency’s market research. This communication can happen via phone, in person or over email.

Question: “Do state agencies typically believe they are best served by continuing to work with an incumbent vendor?”

Answer: While there can be implementation efficiencies and cost reasons to continue with an incumbent vendor or product, state agencies are generally open to consider a new vendor. The government may lose by limiting procurement opportunities to those vendors it already works with. In fact, it is in the best interest of the state to stay abreast of current market trends, latest industry standards, and cutting-edge products and services. Agencies must seek “best value” regardless of the source.

Question: “Why does it seem as though the government is slow and resistant to change?”

Answer: The government has stakeholders at every level of the process and must be sure to follow federal and state laws (if applicable) as well as instituted agency policies. The state must weigh every risk, bearing in mind the variety of laws and its inherent ability to affect the state’s population

directly and indirectly through its use of taxpayer money. These laws, policies and risks are designed to address the following:

Reliability and consistency are critical (in lieu of risk);

Errors, misjudgments, and unethical behaviors are amplified, and the effects are long-lasting.

Even the appearance of impropriety can have negative ramifications; and

Erosion of public trust can be swift, and rebuilding trust in public institutions can be slow.

Question: "If a vendor is compensated by an agency for its assistance in drafting specifications or scope of work, can the vendor bid on the solicitation?"

Answer: No, the vendor is not eligible under Texas law to bid on the resulting contract.