

Chapter 2 : PLANNING

The first steps in contract preparation involve defining your agency's need for what the contract will cover, making sure that you have authority to contract for it, and assuring approvals from or coordination with any outside agencies that have jurisdiction over what you are contracting for, particularly in regards to personnel issues with personal services contracts. The planning phase of contracting also involves developing a cost estimate and choosing the appropriate commitment document and contractor selection method. All these activities make it possible to develop a timeline to ensure that your contract is in place so the item or service you need is ready on time. This may seem like a useless bureaucratic exercise, but these simple steps can save time and needless work later in the contracting process.

Defining Need

The first step in the contracting process is to write a brief but clear, concise and complete description of what the contract will cover, i.e. the need the contract will fulfill.

Part of creating a quality contract depends upon your subject matter expertise to carefully define the nature of the relationship between the contractor and the State. This is also known as the *Work Description*. The other parts of a contract include general legal language to ensure that the contract is binding, and enforceable. The brief description written here is the basis of the longer *Work Description* which will be used in the bidding document and later in the contract. The brief work description is used in making decisions to determine if you have the authority to contract, if you need outside agency approvals, the type of commitment document and the type of solicitation method used.

In creating the brief work description in this step, describe the specific nature of the agreement between the State and the contractor. It should include the following categories of information:

1. Detailed description of the goods or services to be provided by the contractor, including technical specifications such as amount and definition of quality; and a breakdown of specific tasks to be completed,
2. Any activities performed by the State, such as reviewing reports and documents, providing data, etc.
3. Time frames such as beginning date, end date, and intermediate or benchmark dates for completion of elements of the contract;
4. Maximum dollars.

- You may also wish to skip ahead to read ***Writing the Statement of Work*** for some basic principles of writing contracts.
- In being detailed and specific in this step, you have begun writing the contract and the contractor selection specification for the invitation for bid or request for proposal.

Authority

Now that you have a good idea of the scope of your contract and have written a draft work description, the next step is to make sure that you have authority and funds before proceeding to the next phases of contracting. To save time later in the contracting process, take the time now to answer these simple questions:

1. Is the activity expressly permitted?

Check the initiating statutes to verify that your Division is authorized to contract for the services. Footnotes in the Long Bill are not generally considered legal authority to engage in any activity.

2. Are funds available?

Check the budget (see your budget analyst) to verify that funds are available and that you have the required spending authority to spend the funds. If funds are to become available at a later date (at the beginning of the fiscal year, for example), in many cases it is possible to complete contractor selection and some other steps of contract preparation before the funds are available. Talk with your agency purchasing and accounting sections to find out if their policies covering these situations.

3. Have the proper authorities approved the contract?

Check with the appropriate authority - i.e. your division director, or the appropriate board or commission - for approval. If the project is something which is part of an integrated departmental plan, a computer project for example, check with the section or group responsible for the plan. Check with the department director if there are any questions.

Interagency Coordination

As a practical matter, if the service you are purchasing is information or analysis, consider whether the service may have been purchased already by another department, which might be willing to provide you with the information. Don't neglect the colleges and universities in the State system. They undertake extensive research in many fields.

If the service is in one of the following areas, the appropriate division director's or delegate's approval in writing may be required:

Services	Department of Personnel (GSS)
Graphic Design	GSS, Division of Central Services
Printing/Photocopying	GSS, Division of Central Services
Legal Services	Department of Law
Collections	GSS, Division of Central Services
Accounting/Financial Management Services	GSS, State Controller's Office
Communication Devices/Services	GSS, Information Technologies Services
Computers (large orders)	GSS, Information Management Commission
Furniture (office)	Juniper Valley (Correctional Industries)
Microfilm, Microfiche	GSS, Division of Central Services
Photocopiers (metro area only)	GSS, Division of Central Services
Signs, Flags	Juniper Valley (Correctional Industries)
Vehicles (3/4 ton & under) (1 ton vans)	GSS, Division of Central Services
Leases (real estate) and Rights of Way	GSS, State Buildings Program
Capital Construction,	GSS, State Buildings Program
Controlled Maintenance, and	GSS, State Buildings Program
Related Emergency Projects	GSS, State Buildings Program

Personal Services Issues

This is also the time to consider the personal services issues discussed in Chapter 3. If you are contracting for a service you must consider now if the contract will pass the independent contractor test and if it is approved under the privatization rules (Personnel Director's Administrative Procedure, Chapter 13).

Cost Estimate

It is helpful during the planning phase of the contracting process to do a rough cost estimate. Even if your costs are fixed by a pre-determined budget amount, completing a rough cost estimate can give you an idea if your budget will allow you to complete the full range of services contemplated in the brief work description you have written.

Methods for cost estimating are many and varied. If you have some familiarity with the type of service you are contracting for, preparing a rough cost estimate will probably be a simple matter. If you are contracting for a service in an area outside your expertise, you may want to seek help from someone who has knowledge in the subject area. Otherwise, it is possible to complete a rough cost estimate by estimating the number of hours needed to complete each task (from the task list prepared in the brief description of work) and multiplying the total number of hours by an hourly rate appropriate for the trade.

Be sure to read *Chapter 5, Price Analysis*. Your purchasing, budget or accounting office may be able to help you in making a rough cost estimate.

Choose the Appropriate Commitment Document

Once you have the brief work description and a cost estimate, it is time to consider the type of commitment document that is appropriate. Read *Contract vs. Purchase Orders* in the Introduction and *Purchase Order or Contract -- Which One?* in Chapter 6. Knowing whether you are to use a Purchase Order or a Contract will help you plan your project schedule and the documentation required in your contractor selection process.

Determine the Procurement Method

Chapter 4 outlines the different procurement methods available for contractor selection. It is important to consider procurement in the planning phase because of the length of time needed for some procurements. The Request for Proposal process will require quite a bit more time than a sole source procurement, for example.

After you are familiar with the methods outlined in Chapter 4, contact your agency procurement office to discuss which procurement method is appropriate for the goods or service you plan to contract for. Your purchasing contact will want to review the brief description of work and cost estimate, as well as the type of commitment document, in determining the procurement method.

Lead Time Information

In order to assure that contracts and lease agreements are processed, and thus legally binding prior to their effective dates, each agency should establish minimum standards to control the work process and to ensure compliance with Colorado Statutes (Section 24-30-202(1), CRS) and State Fiscal Rules. When establishing these standards, the following tasks must be taken into consideration:

1. Drafting of the Request for Proposal or Invitation for Bid (including assistance by State Purchasing, if required). If the RFP or IFB is for services, you will need pre-approval from the Department of Personnel.
2. Time frames established by State Purchasing and your agency's procurement office and bidders/offeror.
3. As a reminder, bidders/offers must have the following minimum time to prepare their submissions:
 - Invitation for Bids (other than construction): Except as provided under emergency procurement procedures, the minimum time after placing solicitations in the U. S. Mail or by other transmittal methods, the bid opening date shall not be less than 14 calendar days. Reference R-24-103-202a-01(e) and section 24-103-203(3), CRS
 - Request for Proposals: Proposal preparation time shall be set to provide offerors a minimum of 30 calendar days to prepare and submit their proposals. Reference R-24-103-203-07 and section 24-103-203(3), CRS

- Invitation for Bids (Construction): Bidding time is the period of time between the date of the Advertisement for Bids and the date set for opening of bids. In each case bidding time will be set up to provide bidders a reasonable time to prepare their bids, but in no event shall this time be less than 14 days. Reference R-24-103-202b-02(d) and section CRS 24-103-202(3).

4. Final drafting and negotiation of the contract takes considerable time and thought.

- If your agency has a central contract administrator that reviews all contracts, sufficient time must be allowed for the central contract administrator's review and comments.
- Your bidder/offeror may request changes to your proposed contract to clarify ambiguities.
- You may need to ask the Attorney General's Office for assistance.

Each step may add time to the process for revisions and/or consultations. Each agency's procedures vary - be aware of the requirements and plan accordingly. Four weeks allowed for this portion of the process is realistic - simple contracts may only require a few days.

PLANNING LEAD-TIME TABLE

Time frames shown below are ESTIMATES! Agencies will likely set their own lead time requirements. You should plan your schedule, with milestones, and with enough time to accommodate unforeseen delays in the process, committee meetings, revisions and negotiations of contract language with the selected vendor. It makes sense that you determine the desired effective date of the agreement first and then work backwards to determine the start date for the applicable procurement process.

Task	Suggested Lead-time (calendar days)	Agency Lead-time
◇ Begin preparation of RFP, IFB (30 days before issuing RFP/IFB)	-180 days	
◇ Advertise & Issue Solicitation (30 days to receipt of proposals)	-150 days	
◇ Receipt of Bids/Proposals (allow 20 days evaluation/award)	-120 days	
◇ Contract Negotiations and Award (allow 30 days to prepare contract)	-90 days	
◇ Submit Contract for Internal Review (allow about one month for internal approvals/corrections)	-60 days	
◇ Route to Personnel, Purchasing/State Buildings (allow 12 days for review by Department of Personnel offices)	-24 days	
◇ Route to Attorney General's and Controller's Office (Allow 12 days for AG and Controller review/approval)	-12 days	
◇ Performance Begins (Effective Date)	0 days	

Establish Time Line and Responsibility Areas

Now that you have written the brief work description, considered authority and availability of funds, interagency coordination, the impact of personnel rules, chosen the appropriate commitment document and determined the procurement method, you have all the information needed to establish a time line for your contract. Use the information supplied in the *Planning Lead Time Table* to create the time line.

This is the appropriate time to divide areas of responsibility between members of the team, if there are more than one, and determine which tasks the program personnel will be completing and which are completed by contract and/or procurement office personnel in your agency. Find out which tasks the purchasing agent expects to complete and which must be completed by the program personnel or contract initiator. It is a good idea on complicated projects or projects with many team members to publish the timeline and areas of responsibilities to all team members, including those in your agency contracting and/or purchasing office who have responsibility areas.

Writing Statements Of Work (SoW) And Specifications

Writing the Statement of Work (SoW) is one of the most important steps in contract preparation. Not only is the SoW used in the procurement process, but it becomes a major part of the resulting contract. The SoW includes all aspects of what will be required of the contractor to adequately perform the contract work and the role the State will play in the contractor's performance. It is important to write a clear comprehensive SoW to avoid disputes with the contractor.

If you have written a brief work description, as described above, you have already started on this task. It is important to have a subject matter expert or someone with experience in the subject matter help in drafting the work description. The expert will know what information must be included, what sorts of established standards are common in the field, and what types of formats and information are typically found in work descriptions for this supply or service. For large procurements, it may be necessary to assemble a team of experts, and other players involved in the product or service, to identify required characteristics and deliverables.

If you have not already talked to the procurement and contracts section in your State agency, this is a good time to get them involved. They can review the brief description written in *Defining Need* and work with you to make specific decisions about the type of commitment document (Purchase Order or Contract) and procurement method that will be required. If there are specific formats for various types of procurement documents, find out from your agency contracts or procurement personnel. It will save you time to know the format up front before you begin writing the work description.

It may also be helpful to obtain some sample work descriptions from contracts, Invitations for Bid (IFBs) or Requests for Proposals (RFPs) from other agencies which have bought similar supplies or services in the recent past. Your purchasing contact or the Division of Purchasing may be able to help in obtaining sample work descriptions.

Establishing a Payment Relationship

The four essential elements of any contract are:

- Identification of the parties,
- Term or duration of the contract,
- Service or product to be provided, and
- Payment: rate, how much, when

Chapter 6, *Contract Formats and Essential Elements*, contains a detailed explanation of the essential elements to be included in all State contracts.

The service or product to be provided (and often the payment) are described in the SoW. Essentially, you are establishing a payment relationship by defining: what is expected of the contractor, how the State will measure or verify that the work is complete, and how much and when the State will pay. The method of payment you are planning to employ throughout the contract will have a bearing on the SoW (See Chapter 6, *Types of Contracts*).

Fixed-Price Contracts

In a firm, fixed-price contract, having a clear SoW is important, because the State's obligation to pay is fixed at the lump sum amount regardless of how much it costs the contractor to perform.

Cost-Type Contracts

By contrast, in a cost-type contract, clear statements of work or specifications may be impossible to write because there is uncertainty about the technical aspects of performance.

Performance vs. Method (Design) Specifications

Performance specifications describe a desired outcome, leaving the process used to arrive at that outcome to the contractor. Method specifications (also known as design specifications), while concerned with an outcome, specify exactly how a particular process is to be accomplished. Most contracts will either describe an outcome or specify a process. Contracts can include both performance specifications and method specifications, but it is usually not a good idea to mix the two types of specification in one task.

Performance Specifications

When writing performance specifications, focus on results, outcomes and accomplishments. What must the system do or the agency be able to accomplish when performance is complete? For example, what function must the software be able to perform, with what accuracy, how much data

must be handled in what time frame, what kinds of data, in what languages, and what compatibility is needed?

Method (Design) Specifications

Method (design) specifications are used when it is important to follow specific procedures to achieve a certain outcome. When using method specifications, each procedure and any materials required must be described in detail. Some examples where method specifications will be used include: construction contracts with detailed drawings and specifications, and constructing ground water monitoring wells, where certain testing methods are required.

Define the State's Role

Clearly define the role of your agency in the contract work and the specific contributions of your agency to the end result. Detail any background data or work already accomplished that the anticipated contract will build on, and make it available during the bidding phase of the contract. Specify whether the contractor is entitled to rely on the accuracy of any such background data or work or whether it is merely informational and the contractor is responsible to verify its accuracy to the extent necessary to perform the contract. Define the roles of the agency staff who will administer the contract and monitor the contractor's progress. Describe current conditions and how the contractor's actions will change them. Clearly spell out the resources the State will contribute.

Be Specific: define Quantity and Quality

When writing work descriptions and specifications, be as thorough and as specific as possible. A clear, comprehensive SoW can avoid disputes about what performance was required. If an aspect of performance is not in writing, it is not required of the contractor. The subject matter expert can be of help in identifying the level of specificity that is standard for the particular supply or service you are buying.

Quantity

Quantify the amount, frequency, and/or location required to meet performance, e.g. *The Contractor will provide low dusting in all offices daily and high dusting weekly.*

Quality

Identify the level of quality required for acceptable performance, e.g. *All dusting will be done so as to insure reasonable cleanliness of horizontal surfaces, as determined through customary visual and tactile inspection of the surfaces.*

Note: In defining quantity and quality, it may be helpful to refer to an established standard.

Refer to Established Standards

Again, the subject matter expert can be helpful in guiding you to established national or international standards and/or *brand name or equal* purchase descriptions for the field. These can be helpful in defining products, procedures, quantity and quality levels of performance, as well as testing and performance monitoring methods.

National and International Standards

American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), and International Organization for Standardization (ISO), publish standards for products, procedures, performance and testing. By using an established standard, you will save time, and also be relying on a standard set for the industry. Use national and international standards by incorporating the relevant portions by reference. For example, *Structural Steel shall conform to the requirements of ASTM A-36, all-purpose steel, which is hereby incorporated by reference.*

Brand Name or Equal

Use *Brand Name or Equal* purchase descriptions to supplement specifications for products. For example, *Anchor bars shall be anchored to a minimum depth of 8 inches into competent rock with Mold Parabond epoxy capsule or equivalent.* When using *brand name or equal* specifications, it is wise to specify the salient characteristics that will be used to evaluate *equal* products, for example: *the equivalency of proposed epoxy will be evaluated based on the documented characteristics of durability, strength, compatibility with anchored materials, performance in extreme temperatures and the terms of standard manufacturer warranties of performance.* It is important to establish the State as the judge of what is *equal*, and the contract should require the contractor to provide advance submittals describing key materials, require the contractor to identify how the substitute materials are equivalent to the specified brand name, and provide for State approval of the substitute materials before performance.

Deliverables

A deliverable is a work product that is delivered to the State as a result of the service performed in the contract. When specifying deliverables, include the content in descriptive terms similar to those found in the table of contents. Don't forget to specify the format for deliverables, for example a report, documents, data, or software, and the number of copies.

Allow for Monitoring and Final Acceptance

The contract must set up a method to determine if the contractor performed as specified in the SoW. In most contracts it is also advisable to set up some method of communicating with the contractor before the required due date to monitor progress.

Monitoring

Use the work description to establish a method to communicate with the contractor and monitor progress throughout the duration of the contract. Monitoring can include periodic written or verbal updates, meetings, or the submittal of deliverables at the completion of subtasks.

Even when using a performance specification, it is possible to determine subtasks which the contractor must accomplish in order to achieve the objective of the contract. Set a specific timetable for completion of tasks and a schedule for submittal of deliverables, required meetings, presentations or other activities.

Final Acceptance

The work description should clearly spell out the final product or end result of the contract, and how the State will determine that the contract has been completed as expected. Issues discussed above under **Be Specific: define Quantity and Quality** and **Refer to Established Standards** come into play here. In clearly establishing the supply or service of the contract, the work description also sets a standard for acceptance of the end product. The work description must also establish a procedure to receive the end product and accept or reject it based on specific factors.

Some Issues to Consider

The following list includes some, but certainly not all, issues that may come under consideration when writing your work description:

- Bilingual capability;
- Designation and qualification/experience/education of key management personnel;
- Minimum hours of performance;
- FTE minimums;
- Minimum requirements for management structure and supervisory presence;
- Employee dress and identifications;
- Employee security requirements;
- Employee education requirements for security and confidentiality;
- Rules for securing and safeguarding State property;
- Designated holidays where no work is performed;
- Quality control program requirements;
- Software delivery, data delivery, manual delivery, and other data requirements;
- Location of Performance;
- Responsibility for printing of reports--agency or contractor;
- Does the SoW pass the *news reporter test*: Does it answer who? what? when? where? how? and why?

Always bear in mind that the more input you have concerning the qualifications of the contractor's staff, the more you need to be concerned about maintaining the independent contractor relationship.

The following issues also should be clearly addressed in the contract because they significantly affect pricing by the contractor:

- Conflicts of interest/organizational restrictions;
- Agency internal reviews-submission and revision requirements;
- Existing State facilities or State property which may be used by the contractor;
- Personnel available, and their roles, who will work with contractor;
- Minority and women owned business participation;
- Travel and per diem rates to be included in the total cost, and/or those paid in addition to the total cost;
- Insurance requirements;
- Bond requirements.

Agency Supplement (Insert)

THIS SECTION IS RESERVED FOR AGENCY SUPPLEMENTARY MATERIAL OR POLICIES RELATED TO THIS CHAPTER, SUCH AS:

- **AGENCY LEAD TIME INFORMATION**
- **PRESOLICITATION REQUIREMENTS SUCH AS COORDINATION WITHIN THE AGENCY**
- **FORMAT FOR THE “STATEMENT OF NEED” OR OTHER PRESOLICITATION DOCUMENT USED IN THE AGENCY TO START THE PROCUREMENT/CONTRACTING PROCESS**
- **BUSINESS STRATEGY PLANNING AND MEETINGS REQUIREMENTS FOR COMPLEX PROCUREMENTS/CONTRACTS**