

Section 2.7

Open Market Solicitations

An **open market** solicitation is used to purchase a good or service by soliciting from any available source. The **open market solicitation procedure** is authorized by Texas Government Code §§[2155.062\(a\)\(3\)](#) and [2156.061](#).

This section provides guidance on how to manage the competition in an open market solicitation. It does not dictate who administers the competitive process. To verify that your agency has the delegated authority to administer a particular open market solicitation, follow the instructions in *Section 2.4, Selecting a Procurement Method*.

The open market procedure always includes a competitive solicitation process to ensure a truly competitive process and to provide an appropriate balance between administrative costs and potential savings.

Most common solicitation processes include:

Invitation for Bid (IFB)

An **invitation for bid (IFB)** or **invitation to bid (ITB)** is an invitation to vendors to submit a proposal on a specific commodity or service through a bidding process. The IFB is generally the same thing as Request for Quote (RFQ) and is focused on pricing. The award is based upon the lowest bid meeting the minimum criteria for the specifications/requirements. Negotiations are *not* authorized when utilizing an Invitation for Bid (IFB) procurement method; however, if only one response is received, negotiations are allowed and encouraged.

Request for Proposals – Reference the Contract Management Guide

An RFP is a competitive solicitation that allows for negotiations. RFP evaluations may be based on factors other than cost and are typically associated with contracts for services, although the use of RFPs is encouraged for commodities as well. Additionally, the RFP method allows for Best and Final Offer (BAFO) negotiations prior to award.

Request for Qualifications.

A **request for qualifications (RFQ)** is a document often distributed before initiation of the RFP process. It is used to gather vendor information from multiple companies to generate a pool of prospects providing a short list of candidates who meet the desired qualifications.

Open-Market Blanket and Standing Purchase Orders

In addition to single-purchase orders (POs), TPASS or a state agency with delegated authority may establish open-market blanket POs and open-market standing POs. Each of these PO types may include renewal provisions. Guidelines for each of these POs follow.

Open-Market Blanket Purchase Orders

An **open-market blanket purchase order** is a purchase contract for a good or service for which an agency has a recurring need on an "as-needed" basis.

The advantages of this type of order include avoiding having to maintain large inventories and going to the administrative expense of processing frequent purchase orders.

A disadvantage of this type of order is that purchase quantities are not guaranteed, which may not result in the best prices.

With an open-market blanket PO, the contractor does not ship goods or perform services until an agency authorizes them to do so in writing (“Call Out” or “Release” document). A procedure must be established for recording blanket purchase order call outs/releases to assist an agency in meeting order inspection requirements. Purchase order call outs/releases may be used to purchase commodities and services only for the fiscal year in which the PO was issued. For example, you may not purchase consumables for the next fiscal year using a blanket PO established for the current fiscal year. When establishing an open-market blanket PO, include the following:

- The beginning and end of the period the blanket order covers.
- A statement noting that all deliveries are ordered on an "as required" basis.
- The estimated quantity.
- A statement limiting the maximum quantity that may be purchased.
- A statement that none of the quantities are guaranteed.

Open-Market Standing Purchase Orders

An **open-market standing purchase order** is a purchase contract for a good or service for which an agency has a recurring need and is able to predetermine purchase quantities and delivery times. These orders differ from open-market blanket POs in that the goods are delivered on a predetermined schedule instead of on an as-needed basis.

Renewing Open-Market Blanket and Standing Purchase Orders

To renew an open-market purchase order:

- There must be a provision in the original solicitation terms and conditions allowing for renewal. This provision may or may not require consent from the vendor.
- The renewal must be processed before the contract has expired.

Open Market Solicitation Procedures

The correct open market procedure depends on the estimated dollar amount of the procurement and whether or not an agency has been delegated the authority to make the purchase, as explained below:

- **Open Market Informal Solicitation** is used for agency-administered procurements of commodities or services greater than \$5,000 but not greater than \$25,000. This process could be used by an agency to purchase perishable goods.
- **Open Market Formal Solicitation** is used for agency administered procurements of commodities or services greater than \$25,000. For example, this process could be used to purchase fuel, oil or grease or for a service purchase in excess of \$100,000 that has been delegated to your agency.
- **TPASS Administered Open Market Purchase** is used for TPASS administered open market purchases of commodities in excess of \$25,000 or for services in excess of \$100,000 which have not been delegated to an agency.

Open Market Informal Solicitation

Procurements of commodities or services greater than \$5,000 but not greater than \$25,000.

The following provides instructions for performing an Open Market Informal Solicitation.

| STEP | PROCEDURE |
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| 1 | Collect the detailed specifications or scope of work for the required good or service. (See <i>Section 2.0, Identify Needs</i>) |
| 2 | Use the “ CMBL Only” search criteria and the applicable NIGP Class(es) and Item(s) to locate at least three (3) vendors in the appropriate county, city or district that provide the required good or service, two (2) of which must be HUB vendors. If an agency is unable to locate two HUBs, the agency must make a written notation in the purchase file of all reference sources used. |
| 3 | With written approval from your agency head or designee provided in the agency’s Procurement Plan, non-CMBL vendors (including HUBS) may be added to the final vendor list to enhance competition. If applicable, also attempt to solicit a response from the vendor who last held the contract for the required good or service. |
| 4 | Print the CMBL vendor list including the approved supplemented vendors to include in the procurement file. |
| 5 | Solicit a response from each vendor identified in the previous steps. Response prices are considered firm for acceptance for 30 days from the solicitation due date. The acceptable methods for receiving informal responses (greater than \$5,000 but not greater than \$25,000) are: <ul style="list-style-type: none"> • In person • Via direct mail • Over the telephone • Via facsimile transmission • Via electronic mail |
| 6 | Tabulate the responses and select the vendor that provides best value to the State. Include the following information in your tabulation: <ul style="list-style-type: none"> • CMBL vendors contacted, including those supplemented. • Corresponding response amounts • For HUBs, the ethnicity/gender of the TPASS Certified HUB • Awarded vendor • Statement of reasons for non-awards |
| 7 | Keep a record of all responses. Make tabulations available for public inspection and retain the tabulation for inspection during any audit. |
| 8 | Process the award through issuance of a PO and obtain the authorized signature of your agency's purchasing director or designee as reflected in your agency's Procurement Plan. |

Open Market Formal Solicitation

Open Market Formal Solicitation is used for agency-administered open market purchases of services greater than \$25,000 and for commodities if delegated by TPASS or through statutory authority specific to an agency.

| STEP | PROCEDURE |
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| 1 | Collect the detailed specification or statement of work for the required commodity or service. (<i>Section 2.0 Identify Needs</i>) |
| 2 | Commodities exceeding \$25,000 are required to be submitted to TPASS for processing by submitting an Open Market Requisition to open.market@cpa.texas.gov unless an agency has the statutory authority to proceed. |
| 3 | Using the specification or the statement of work, create a written Invitation for Bid (IFB) or Request for Proposal (RFP). See the Procurement Forms Library for a sample. |
| 4 | Post the solicitation information to the <i>Electronic State Business Daily</i> (ESBD) unless the purchase is specifically exempted under – Texas Government Code §2155.083 . |
| 5 | Using the CMBL Only search criteria and the applicable NIGP Class(es) and Item(s) to, locate all vendors who provide the required commodity or service and service the county, city or highway district. If the procurement is a service purchase in excess of \$100,000, do not limit the search to your highway district. Print the vendor list from the CMBL and include it in the procurement file. |
| 6 | With written approval from your agency head or designee provided in the agency’s Procurement Plan, non-CMBL vendors (including HUBS) may be added to the final vendor list to enhance competition. If applicable, also attempt to solicit a response from the vendor that last held the contract for the required good or service. |
| 7 | Print the CMBL vendor list including the approved supplemented vendors to include in the procurement file. |
| 8 | Solicit a response for the required commodity or service from each vendor identified in the previous steps. If applicable, also attempt to solicit a response from the vendor that last held the contract for the required commodity or service. The acceptable methods for receiving responses to formal solicitations (greater than \$25,000) are <ul style="list-style-type: none"> • direct mail • facsimile transmission • electronic mail |
| 9 | Response Due Date and Release of Respondent Information: <ul style="list-style-type: none"> • For the Invitation for Bid process, a public opening is typically conducted announcing the respondents and pricing. If a public opening is not in the best interest of the solicitation, the solicitation documentation should state that there will be no release of information until after award. • For the Requests for Proposal process, there should not be a public reading of the respondents in order to protect negotiations and to comply with statutory requirements. (Texas Government Code §§ 2156.123 – 2156.124) |
| 10 | Collect the responses. Proposed prices are considered firm for acceptance for 30 days or the number of days from the response due date indicated in the solicitation. |
| 11 | Tabulate the responses and select the vendor who provides best value to the state. Include the following information in your tabulation: <ul style="list-style-type: none"> • CMBL vendors contacted, including those supplemented. • Corresponding response amounts |

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| | <ul style="list-style-type: none"> • For HUBs, the ethnicity/gender of the TPASS Certified HUB • Awarded vendor • Statement of reasons for non-awards |
| 12 | Keep a record of all responses. Make tabulations available for public inspection and retain the tabulation for inspection by any auditor. |
| 13 | Process the award through issuance of a PO and obtain the authorized signature of your agency's purchasing director or designee as reflected in your agency's Procurement Plan. |

TPASS Administered Open Market Solicitations

| STEP | PROCEDURE |
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| 1 | The agency will complete an Open Market Requisition Form located in the Procurement Forms Library . Complete the form, provide authorized signature and forward to TPASS at open.market@cpa.texas.gov . Attach to the e-mail the specifications in Word format along with any other applicable attachments. |
| 2 | If a review of the responses is required before award, include that request on the Open Market Requisition. |
| 3 | The TPASS Technical Team Lead reviews the requisition and assigns the procurement to a purchaser. The purchaser will coordinate changes to the specifications and requirements with the agency contact provided on the requisition. |
| 4 | If the Open Market Requisition is for a service with an estimated value over \$100,000, the solicitation documentation must be submitted through the CATRAD system for delegation review. Upon receipt of the delegation letter with recommendations the agency may proceed with the procurement process for the service using the Open Market Formal Solicitation Process . The procurement file must contain the delegation documentation for audit purposes. |
| 5 | The TPASS Purchaser will process a Request for Proposal for the commodity(ies) and post the solicitation to the ESBD . Notification of the posting will be sent by e-mail to the contact provided on the requisition. It is recommended that the posted documents be reviewed promptly, with corrections submitted to the TPASS Purchaser in writing. These corrections will be integrated into an addendum which will be posted on the ESBD . |
| 6 | TPASS receives all responses. |
| 7 | TPASS support staff uploads the responses in the PeopleSoft system for tabulation. |
| 8 | If the agency has requested to review the responses, the TPASS Purchaser: <ul style="list-style-type: none"> • Completes and forwards a Referral Letter, reflecting the TPASS recommendation for award and fund inquiries, if applicable. • Included with the letter will be: <ol style="list-style-type: none"> a. A copy of the tabulation without pricing b. A copy of the respondent's specifications for verification by agency c. Indication if the proposed total pricing exceeds the agency estimate by 10% and request approval for the excess funding. • If the respondent the agency would select according to statutory interpretation of best value criteria is different from TPASS's best value recommendation for award, justification must be included with the response to the Referral Letter. TPASS shall consider, but is not bound by, an agency's recommendation in making the award. |

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| 9 | Agency returns the signed referral letter, with justification if recommendation for award is different than TPASS and if applicable, with approval for any excess funding. Note: If the funding cannot be approved, the solicitation will be cancelled without award. |
| 10 | TPASS Purchaser issues a Notice of Award |
| 11 | TPASS sends a copy of the Notice of Award to the agency and to the contractor. If for a One-Time Buy: The agency will issue an internal purchase order to the contractor upon receipt of the Notice of Award If for addition to a TxSmartBuy contract: The TPASS purchaser will have the items uploaded into the system and will notify the agency upon completion. If for addition to a Managed contract: The TPASS purchaser will have the contract placed on the Managed contracting listing on the Web site and forward notice to the agency. The agency will process an internal purchase order to the contractor. |