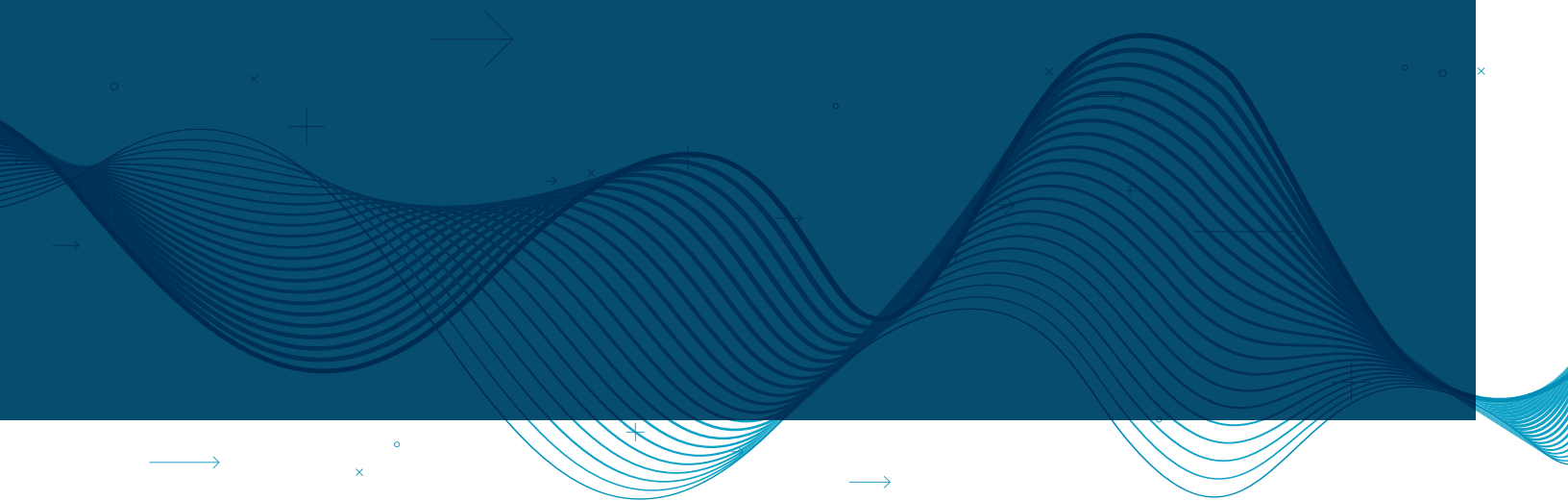


The Case for Procurement Reform: Achieving a Shared Vision



Contents

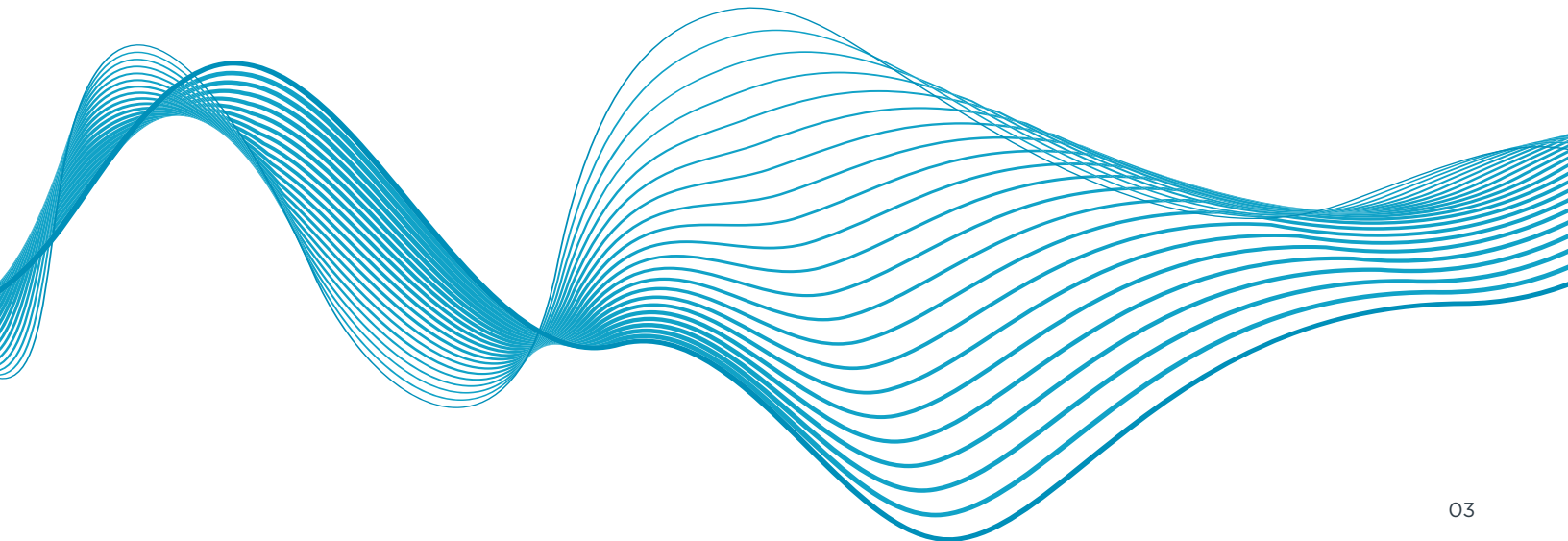
| | |
|----|-------------------------------|
| 3 | Introduction |
| 5 | Communications |
| 7 | State Procurement Methodology |
| 9 | Terms and Conditions |
| 13 | Requirements |
| 17 | Roles and Responsibilities |
| 18 | Budget |
| 20 | Evaluation |
| 22 | Conclusion |



Introduction

Even before the COVID-19 pandemic, buying and procuring technology products and services within the State Health and Human Services (SHHS) market had become increasingly challenging. States are constantly pressured with rapid changes in technology, ever-shrinking administrative budgets and federal policy directives mandating (or encouraging) modular, rather than monolithic, solutions to shorten the time to production and lessen reliance on a single vendor. These and other drivers are compelling states to make substantial changes in the ways they prepare for and procure products and services, often with less progressive or incompatible procurement laws or practices.

A shared vision by both the public and private sector is a clear desire for state procurement efforts to be successful, both in identifying through fair and open competition the right vendor as well as establishing a solid framework that supports a successful project outcome. To that end, CompTIA offers this White Paper that highlights challenges encountered in the procurement process with suggested solutions to improve the process. The White Paper explores these challenges and suggested changes within major process points of a procurement and offers key takeaways for each. Highlights of those key takeaways include:



Communications

- **Key Takeaway:** Keeping communication channels open between the vendor community and the State until an RFI/RFP is released leads to greater clarity on the requirements and goals for the project.

Procurement Methodology

- **Key Takeaway:** Innovative approaches in procurement can speed up the process and produce improved outcomes for states.

Terms and Conditions

- **Key Takeaway:** Modernizing and streamlining Terms and Conditions (Ts&Cs) can increase the number and quality of vendor responses to procurements. States should consider developing supplemental boilerplate contract language specific to technology contracting, allowing for extraction of Ts&Cs relevant to the services and solution being procured.

Requirements

- **Key Takeaway:** Technology solutions and the methods in which they are built have dramatically changed and it is essential that requirements take this into account and leave no ambiguity. Ensure requirements are aligned and do not conflict with your solution and approach. When possible, consider alternative requirements or methods that may provide more benefits and lead to better outcomes.

Roles and Responsibilities

- **Key Takeaway:** To maximize the chance of success, both the State and vendors should be clear on the roles and responsibilities the State can realistically fill, and on the roles and responsibilities vendors take on.

Budget

- **Key Takeaway:** Develop a budget for a new project as you might for a new car: be clear on what you really need, research the market to understand your options (including talking to vendors), and adjust your budget or your wish list accordingly.

Evaluations

- **Key Takeaway:** Evaluation criteria are a key point of many potential bidders' initial bid/no-bid decision and can drive components of the vendor response. Careful attention to the impact of evaluation criteria on potential responses can yield states more qualified responses from which to select a partner and help align the responses to meet the business needs driving the procurement.

Communications

Clear and open communication is critical to any procurement process and the follow-on project delivery. Our recommendation is that the communication channels remain open between the vendor community and the State until an RFI/RFP is released leading to greater clarity on the requirements and goals for the project.

To obtain systems that meet the needs of the State, open and ongoing communication between the State and vendor community is essential to better understand the State's requirements, areas of concern, and how current systems may not be meeting their needs. However, to provide an even, unbiased playing field, communication between the vendor community and the State is often eliminated a year or more prior to the release of a procurement. The idea that there might be a procurement of a new system or services causes many states to cease communication and rely strictly on the RFI and RFP process. While the vendor community respects and supports an unbiased procurement process, this lack of communication may cause some vendors not to pursue a procurement and can result in less competition, the very thing the State is trying to protect against. Limiting or completely restricting communication prior to an RFP can be a contributing factor in troubled projects and, ultimately, not getting the system envisioned.

Communication between the State and vendor community falls into three phases. First is the pre-RFI/RFP phase. Second is the actual RFP process. Third is the post-RFP period. It is recommended that the State, to the greatest degree possible, prioritize communication throughout these phases.

Pre-RFI/RFP Communication

During this first phase, we recommend the State keep an open dialogue with the vendor community. Attending industry conferences like the American Public Human Services Association Information Technology Solutions Management for Human Services (APHSA ISM) allows both the technical and business user communities to view demonstrations and presentations, ask questions, and share state issues with their existing systems and their vision for a new system. States should candidly talk with the vendor community about their goals, which may range from incremental modernization to the intended project methodology. In addition, they may solicit advice on trade-offs and benefits of their proposed approach. In return, vendors can demonstrate their solutions, which helps to create end-user buy-in. Vendors can also share their perspectives and lessons learned from previous projects with other states. Understanding the nuances of various alternatives helps a state to better understand the approach that best serves its specific needs.

Consider the analogy of purchasing a new home. In most cases, potential buyers spend a great deal of time researching a preferred neighborhood, size, cost, amenities, and choosing between a pre-existing or a new build before buying. Imagine if the search for a new home stopped up to two years before the purchase. Requirements for the new home may change over those two years and the market may well offer new or different features for the home that the family misses the opportunity to consider. The same applies to purchasing new technology.

RFP Communication

All parties understand how critical it is to maintain the integrity of the RFP process. States must follow official communication channels and not be influenced by the vendor community or pre-existing relationships. However, during the RFP process, questions regarding the procurement may surface and require a timely response. This is often handled through a one-way communication with states sending out answers to a long list of questions for vendors to digest and interpret.

The more questions that can be either eliminated or closed to interpretation by the vendor community, the more likely the State will procure the system which best addresses their needs and minimizes ongoing change orders. A best practice to consider is a virtual walkthrough of the vendor questions and state answers (public forum for interested bidders) with an opportunity for dialogue to mitigate potential misunderstandings. While this approach likely requires more upfront investment of resources for the State, the return on investment for receiving a more informed proposal from the vendor community could be significant.

Post-RFP Communication

Finally, in the post-RFP stage prior to contract execution, all parties must communicate clearly during contract and statement of work negotiations. Vendors should clearly articulate decisions that impact project risk and could be cost drivers impacting their ability to deliver at the proposed price. Both parties should openly communicate blocking issues. Some of these blocking issues are highlighted in the sections on terms and conditions, roles and responsibilities and budget in this paper. Clear and open communication between both parties throughout the negotiation process sets the tone for how the project lifecycle will be managed.

THE MORE QUESTIONS REGARDING THE PROCUREMENT THAT CAN BE EITHER ELIMINATED OR CLOSED TO INTERPRETATION BY THE VENDOR COMMUNITY, THE MORE LIKELY THE STATE WILL PROCURE THE SYSTEM WHICH BEST ADDRESSES THEIR NEEDS AND MINIMIZES ONGOING CHANGE ORDERS

State Procurement Methodology

Innovative approaches in procurements can speed up the process and produce improved outcomes for states.

No matter the size of the State or the type of system being developed—Integrated Eligibility, Child Welfare, Child Support, or Medicaid Management Information Systems—government technology projects have had their challenges over the years. SHHS agencies, vendors, and taxpayers have often seen results quite different from the State's initial goals. These decisions affect millions, and their impact can be profound.

In some locations—at least when adhering to “traditional” procurement methods—a new eligibility system can represent the largest information technology contract in a state's history. This more traditional approach generally entails a state preparing a detailed RFP with specific, and often voluminous, requirements and associated deliverables that can take a long time to complete and come with significant state risks and costs.

To address some of the challenges historically faced when procuring large systems and other major technology purchases, SHHS agencies are beginning to develop new and more creative ways to buy goods and services. This aligns with the recent demands of providing human services in this new fast-paced environment where consumer expectations for on-demand services continue to escalate. In response, states are employing innovative ways of organizing their staff, sharing data, making payments, and measuring and improving outcomes. A nimble, less challenged procurement process is front-and-center to meeting these business objectives.

Some possible considerations for states as they seek to update their procurement process:

Optimize RFP flexibility

- Offer vendors the option to ask for more information before they submit their proposals.
- Allow vendors to respond openly on RFP questions and project deliverables to better reflect their unique strengths and approaches that best meet the needs of the State.
- Consider evaluating criteria weighted to alignment with the stated business objectives.
- Request qualified vendors propose and design their own implementation time frames with accountability for meeting deadlines.
- Add incentives for early project completions.

Consider alternative solution approaches

- Request modular, service-based solutions—an approach that may produce more streamlined contracts with “quicker to market” implementations.
- Variations on traditional and modular approaches may lead to outcome-based procurements.

Use alternative procurement paths

- With separate, streamlined contracts there may also be the need to explore procurement options that facilitate flexible staffing calibrations (e.g. modular based solutions in the cloud that require different staffing needs than on premise stacks).
- Alternative procurement paths to better meet overall need to address potential anomalies (e.g. states may have procurement methods to buy a service that is cloud based, but that service does not include how to implement the solution).

Seek out best practices, including those from the commercial sector

- The National Association of State Procurement Officials (NASPO) has several [articles and issue briefs](#) on technology procurement, as well as a useful [guide](#) detailing some of the best practices for managing large government contracts. These are already showing some promising signs of progress. Additionally, they have published a book, *State and Local Government Procurement: A Practical Guide* which covers the full procurement process and has a chapter on IT procurement.
- The State of Minnesota introduced a new, creative procurement vehicle for its Department of Transportation (MnDOT), specifically designed to stimulate innovative technology submissions and accelerate the procurement process. This new, challenged-based procurement vehicle offers an open-ended solicitation where proposals can be submitted anytime, are reviewed every other month, and are scored against a broad set of goals, not a traditional list of requirements. Benefits include getting cutting edge technology implemented before it loses its “edge”—a real factor considering the speed at which technology evolves compared to procurement timelines. Additionally, the process for vendors has improved with a more simplistic submission process. There are no “quiet periods” prior to submission and vendors can meet with a customer to discuss whether their proposal is in line with the client’s need—potentially avoiding costly investments through more open communication. Likewise, with a review schedule every two months, feedback is returned more quickly, making the path forward much more transparent. While this was initially implemented for MnDOT, the Office of State Procurement developed this challenge-based approach, so it was transferable and with the stated intent to make it available to other State agencies. More information regarding this initiative can be found [here](#).

Create productive dialogue between vendors and the State

- Free-flowing discussions between the State and the vendor community regarding the business objectives promotes transparency and creates a better understanding of what specific solution the State is seeking.
- Revealing what features and functionality the State is looking for, to the degree that is known, along with the expected timeframe helps focus the discussion on potential solutions from the vendor.
- Frank discussions about available funding (even if those discussions must be curtailed to high-level ranges) can help set expectations and realistic understandings of what is doable within a certain budget.
- Vendor conferences prior to RFP issuance can offer bias-free opportunities to receive ideas from vendors and share the State’s vision and preferences for the project.

Engage third-party input on the RFP (not previously involved)

- Read the RFP for inconsistencies, unclear requirements, and instructions.
- Solicit input to provide a level of objectivity and a fresh approach to what is included and what should be included, added, removed, and amended.
- Identify sections that may lead to questions and proactively add clarifying language to potentially reduce the number of questions surfaced to the State.

As a result of COVID-19, state purchasing offices have been inundated with requests for purchasing that must be accomplished at lightning speed. While much of this activity is being satisfied via emergency procurement rules, there is an opportunity for states and vendors to leverage these temporary processes to identify value-added practices that can be adopted for use once a normal procurement environment returns.

Moreover, with such modernization comes the opportunity to extend the influence of purchasing offices to make a significant contribution to their states' efforts to further improve the well-being of their citizens. States are doing this by focusing on other factors that affect quality of life. Considerations include:

- Bringing together health and human services agencies, education departments, and workforce development bureaus to facilitate language in technology-related RFPs that specify that all these areas would share data and analytic capabilities.
- Lead the effort to work with state legal departments to craft language that would protect sensitive data and provide for the proper data access amid data sharing across agencies.
- Sharing these requirements across various state agencies for service-related RFPs.
- Using their expertise to suggest changes in purchasing policies and regulations that currently act as roadblocks to effective collaboration between agencies.

States across the country increasingly are talking about the reorganization of their assistance programs and processes to place their citizens at the center. Purchasing agents and procurement officers could serve as the much-needed catalyst—and become the innovators that link together likeminded but organizationally disparate agencies.

State IT contracts and procurement methodology will always involve some level of complexity, but there's ample reason to hope for a brighter, more efficient future.

Terms and Conditions

Modernizing and streamlining Terms and Conditions (Ts&Cs) to reflect the technology being procured can increase the number and quality of vendor responses to procurements, while decreasing the time required for negotiation between the State and vendors. It is recommended states consider developing supplemental boilerplate contract language specific to technology contracting, thus allowing for extraction of Ts&Cs relevant to the services or solution being procured.

Procurement agencies, as stewards of the taxpayer's money, must ensure the State is protected while at the same time be responsive to the needs of their business partners. States are actively trying creative methods to bridge the reaction time gap between procurement reform and technology advancements. Best practices include developing supplemental boilerplate contract language specific to technology contracting, thus allowing for extraction of Ts&Cs relevant to the services or solution being procured. This allows for flexibility and relevancy of terms.

While boilerplate language can be an accelerator, there are also some challenges with this approach that require monitoring. For example, information technology Ts&Cs are often very domain-specific and can unknowingly be integrated incorrectly, rendering some of the Ts&Cs irrelevant. This can be particularly impactful in several key areas. For example, as states migrate legacy applications to the cloud it becomes vital for procurements to take these changes into consideration, particularly around security issues.

Resources can seriously impede a state's effort to proactively keep their boilerplate language and procurement processes updated. If state resources cannot be hired to fulfill this role, this is an area where technology procurement consulting services can lend ongoing value.

In this section, we will review key areas of interest in rapidly changing technology and alignment with the evolution and purchasing practices of SHHS.

- **MSAs** - Master Services Agreements (MSAs or “State Term Contracts”) are established with a selection of vendors to assist agencies with the procurement of more common commodities and services, including management consulting, IT staff augmentation, and IT Disaster Recovery Testing services. While these contracts include competitively procured terms and pricing, sometimes these terms are replaced with boilerplate contracts that can include contradictory language. Negotiation of new terms among legal counsel is often required, impacting the speed of the procurement process.
- **Indemnification & Limits of Liability** - Indemnification terms rely on limitation of liability to protect both parties. When the terms disproportionately shift risk onto the vendor community with little to no limitation of liability, vendors are often forced to either mitigate the risk through increased prices for the State or walk away from bidding entirely. For the agencies, this loss of vendor representation translates to less competition and potentially less competitive pricing for the State and its taxpayers.
- **Intellectual Property** - Intellectual property should be identified, if possible, in the contract so there is no doubt what the vendor is expected to provide. Deliverables (solutions or outputs the agency pays a vendor to develop) belong to the client, but pre-existing solutions, products, or intellectual property is owned by the vendor unless otherwise agreed to in the contract.
- **Ownership/Licensing** - When contract terms allow for the client’s use of pre-existing materials, solutions, ideas, etc., the language should also clearly articulate the client does not have ownership rights. Moreover, caution must be exercised to ensure terms do not interfere with typical copyright clauses commonly used by states.
- **Termination** - State agencies typically include restrictive termination clauses, such as termination at will. These clauses are included to protect both parties in the instance that a contract is terminated. However, these terms can often be onerous with a lack of balance for the vendor. In the instance this risk cannot be mitigated during negotiations, this situation could lead to a no-bid. To shift risk more proportionally across both parties, states should consider language that offers a vendor a reasonable timeframe to respond and accommodate a state’s request. An example of mitigation might include the following:
 - o While the agency may not be able to avoid a “termination at will” clause, it is willing to recognize the time required for knowledge transfer and include a notification timeframe (typically 30, 60, or 90 days) to facilitate uninterrupted services.
- **Insurance** - Some state agency terms require vendors to provide copies of actual insurance certificates, but vendors often face legal issues complying due to privacy or terms within their insurance agreements. This is an area that may consume an inordinate amount of time in negotiations. States may want to explore flexibility for this requirement to determine if certificates confirming coverage can suffice, saving what might be weeks of negotiation.

- **Required Performance Bond** - It is not atypical to see required standardized performance bonds for 10 to 20% of the total contract value to protect the State should the contract be terminated before the work is completed. However, this flat percentage may be excessively high for some contracts and not well aligned with the efforts needed to recover. States might also consider the continued need in out years regarding performance bond requirements that span the entire contract term on long term contracts or lessening the percentage requirement in out years on long term contracts. Contracts that have already balanced the effort and bond amount mitigate protracted performance bond discussions.
- **Audits/Inspection** - State agency boilerplate contracts sometimes contain language allowing for unlimited access to the vendor's site, records, documents, etc. without limitation. While vendors are statutorily required to maintain contract-related records and documentation and to make certain records available for audit and inspection, there are often few limitations on who will be granted access and whether those individuals will have access only to specified records. This is another area that usually requires additional discussion and negotiation between vendors and state agencies to reach mutual terms.

There is no doubt that progress has been made and improvements are continuing regarding the procurement process. States are increasingly working to align procurement processes and their technology purchases. Likewise, vendors are leveraging industry conferences and organizations such as APHSA-ISM to help them gain insight into specific state concerns and offer states greater transparency regarding vendor procurement processes.

However, with the speed at which the technology domain evolves, even with the combined state and vendor efforts, it requires significant time, attention, and resources to keep up with the latest trends so outdated technology can be procured in a more timely manner. Continued focus and even joint efforts by both states and vendors help prevent a growing gap between what was and what is.

Effective contracting on both the vendor and agency sides requires an understanding of both sides' areas of interest and constraints, as well as an understanding of the product or service being procured. Procurement, legal, and IT/program offices must continue to work as a cohesive team to ensure that both scope of work and general terms utilized within each solicitation and contract are reasonable and appropriate, with less reliance on a one-size-fits-all boilerplate language which may only delay or hinder successful procurement or contract outcomes.

EFFECTIVE CONTRACTING BY BOTH THE VENDOR AND THE AGENCY
REQUIRES A JOINT UNDERSTANDING OF AREAS OF INTEREST AND
CONSTRAINTS, AS WELL AS AN UNDERSTANDING OF THE PRODUCT
OR SERVICE BEING PROCURED.

Requirements

Technology solutions and the methods in which they are built have dramatically changed and it is essential that procurement requirements take this into account and leave no ambiguity. It is important to ensure requirements are aligned and do not conflict with the solution and selected approach. When possible, consider alternative requirement methods that may provide more benefits and lead to better outcomes.

Requirements have always played the central role in technology procurement. They are the main vehicles with which states communicate the specific needs for what capabilities must be built. It is also the mechanism by which the vendors are held accountable for delivering what is specified in the solicitation. But as we have seen too often, these can sometimes conflict; what is documented in the solicitation might be ambiguous, unconstrained, or open to interpretation.

Likewise, vendors might interpret requirements in their best interest or respond in a manner where any modification or slight adjustment results in a change in the contract. In either case, both states and vendors are not properly served, and the result can be undesirable: a system that cannot be implemented or does not meet the needs or objectives of the State.

There are many types of requirements that are typically found in a solicitation. They can be grouped into three categories:

1. Project-level requirements that convey the scope of work and timing, the deliverables that need to be produced, the software development approach that should be used or proposed, and service-level agreements that must be met.
2. Unique requirements that are specific to the type of solution or architecture being requested.
3. Requirements in the form of a matrix that lists the functional and series of non-functional requirements, including items such as infrastructure, audit, security, integration, or reporting.

Project-Level Requirements

The first category of requirements is essential for communicating the “how” of the scope to be delivered tasks that need to be performed and allow vendors to price the level of effort associated with completing the work. Most solicitations also provide some guidance or allowance on the systems development methodology that must be followed to design, develop, and implement the system to deliver on the second category of requirements. In many cases, the solicitation provides a timeline for when these activities must be completed, but there are many instances where the State allows the vendor the flexibility to propose their own.

One of the challenges for a state becomes when the selected methodology conflicts with the tasks or deliverables requested in the solicitation. The State must decide how prescriptive it wants to be in the solicitation and should consider whether the listed tasks or deliverables conflict with the solicitation's request for a development methodology. For example, if the solicitation allows the vendor to propose an Agile methodology, but the deliverables requested are structured for a waterfall approach, vendors will be forced to structure a response that might not be practical.

In addition, new considerations are required for the timing, sequencing, and level of detail of the deliverables, especially given modern development approaches and available solutions. The need for detailed functional or technical specification design documents might not necessarily be required for the implementation of a commercial-off-the-shelf (COTS) software or platform tool. When creating the solicitation, careful consideration must be given as to whether these types of requirements are at odds with each other.

Unique Requirements

The second category of requirements, unique requirements, are needed to implement a specific type of system being requested. In the last few years, states have moved to COTS and cloud-based deployments, either deployed as a single system or rolled out in a modular fashion. This change has ushered in new procurement decisions, such as the need to decide on whether to purchase Infrastructure as a Service (IaaS), a Platform-as-a-Service (PaaS), or a complete solution that operates as a Software-as-a-Service (SaaS).

When selecting the options to pursue, states must clearly articulate in their procurement document the desired option and what unique requirements are associated with the option to enable vendors to accurately price their proposed solutions. Likewise, without these specifics, states may find it hard to compare bids and perform a proper evaluation. For example, for SaaS options, what are the disaster recovery and business continuity requirements? What are the expected transaction volumes? Are the service-level agreement (SLA) requirements well understood? With the rollout of modular systems, states are now pressed to determine the balance between a modular build and a modular deployment of business and technical features. These requirements must be clearly defined, with no ambiguity on the requested approach and timing. If completely left out of the procurement, the bids will vary dramatically, and many assumptions will be made that make it difficult to evaluate and compare bids.

Detailed Functional and Non-Functional Requirements

The third category of requirements, detailed-functional and non-functional requirements, needs to communicate specific details on what needs to be built and are generated for both business and technical stakeholders. The number of these requirements varies, but they can average in the hundreds but also surpass 1,000. The level of granularity varies across procurements where some requirements are extremely specific while others are at a higher level, allowing the vendor the latitude on how to meet them. The objectives of these requirements matrices are to communicate the "what" in a manner that allows the State to determine whether the vendor's solution can meet the requested need. It also allows the State

to compare all vendor responses and their associated prices. Without properly defined requirements, vendors will make their own assumptions, add their own constraints, and possibly limit the feature and functions that will be delivered. States should consider approaches that limit the ambiguity when documenting their requirements to make sure they:

- Are complete, clear, or achievable
- Refer to current policies or procedures
- Include constraints and do not include words such as “all” or “entire”
- Are verifiable
- Are not open to interpretation

Each requirement should be written as individual statements, as opposed to lengthy narrative paragraphs combining multiple needs. Writing requirements in this manner allows vendors to easily respond, on a requirement-by-requirement basis, whether their solution fully addresses the requirement, partially addresses it, or does not address it at all.

Of course, publishing thousands of requirements does not always lead to a successful implementation. Requirements become outdated, are no longer a priority, or are replaced by new policies, procedures, or regulations. A large volume of requirements was more appropriate for custom-developed solutions where the capabilities were unknown. Today, COTS and platform solutions come with significant functionality out of the box, and a prescriptive set of detailed requirements is not always necessary nor the best way to deliver the business value.

A large set of requirements may inhibit innovation by limiting creative and innovative approaches to solving problems and may also restrict or even eliminate some vendors from responding, thereby decreasing competition and inflating the cost. For these reasons, it is essential for a state to decide whether asking vendors to respond to those number of requirements will ensure success.

States should also consider the use of user stories as an alternative to the traditional style of functional requirements. User stories are a paradigm shift—it is a change from writing about requirements to talking about them. They describe the “who, what, and why” from an end-user perspective and describe the business value that should be delivered. User stories should also follow the INVEST (Independent, Negotiable, Valuable, Estimable, Small, Testable) approach as developed by modern Agile consultant Bill Wake.

In many cases, user stories are more commonly aligned with Agile methodologies than that of traditional waterfall projects for custom development because their composition allows them to be grouped and built together in sets (called an Epic in Agile terminology). And just as important, they allow for the addition of acceptance criteria that can be added before the RFP and elaborated once a vendor is on board.

There are a number of benefits for leveraging user stories as opposed to the traditional requirements approach. The action-oriented nature of the user story promotes more discussion and collaboration. It is also more engaging to end-users who can relate to the action-oriented nature of what is being described, the value, and what will drive acceptance. User stories allow for an Agile approach to help elaborate them and bring them to life through development or configuration of a system, also letting the end user see business value delivered earlier in the project lifecycle. Finally, they allow vendors to propose solution options that are more flexible and do not box the State into a specific solution.

Regardless of the approach, states need to allocate time for a vendor to confirm or elaborate the requirements, an approach that could be drastically different depending on the solution and methodology being proposed. This process could involve time to elaborate the requirements/user stories, the user story acceptance criteria, and perform a gap analysis against the proposed solution. From there, the systems can be designed, configured, and tested. The result should be the same—provide enough information so that the system being delivered can be implemented and meet the needs or objectives of the State.

STATES NEED TO ALLOCATE TIME FOR A VENDOR TO CONFIRM OR ELABORATE THE REQUIREMENTS, AN APPROACH THAT COULD BE DRASTICALLY DIFFERENT DEPENDING ON THE SOLUTION AND METHODOLOGY BEING PROPOSED.

Roles and Responsibilities

To maximize the chance of success, both the State and vendors should be clear on the roles and responsibilities the State can reasonably fill and on the roles and responsibilities vendors take on.

Project success depends in large part on both the State and vendor teams having a clear and shared view of their project roles and responsibilities, as well as a joint commitment to meeting the obligations inherent in those roles and responsibilities. A failure by either party to understand their responsibilities fully or to hold up their end of the bargain will imperil the project.

To optimize the likelihood of success, we recommend states:

Define the roles and responsibilities for key state staff, as well as for key vendor staff, explicitly.

Project titles are often vague and have different definitions from state to state and vendor to vendor. This makes it difficult to rely on project titles alone to convey the responsibilities incumbent on each role. Both the State and vendor will benefit from a detailed, explicit view of the responsibilities of each key role on a project.

Conduct a thorough self-evaluation of their readiness to launch and sustain a major project.

This assessment should address every dimension of a project's readiness, including project management capability, key skills, executive support, budget, and technical environment. After the assessment, we recommend states develop and execute a plan to address any identified weaknesses, including hiring externally to support the project team if needed.

Be aggressive in identifying and managing risk. Risk management is only effective when project teams are candid about project risk and proactive in developing and executing mitigation strategies. It is sometimes difficult for both vendors and state teams to acknowledge project risks, but both parties have a responsibility to identify and manage project risks. Failing to acknowledge the risk does not make it go away. The single biggest risk to any project is the failure to identify and manage risk honestly and effectively.

Dedicate key staff to the project full time, if it all possible, rather than hoping to fit project responsibilities around existing duties. Project schedules are almost always very exacting, so making sure state resources are available when needed is critical to a project's success. In addition, continuity with the project can reduce the churn associated with onboarding new team members. This is particularly true for domain-specific subject matter experts. Also, note that modern development approaches, such as Agile, require more direct and sustained engagement than more traditional development approaches.

Engage a third-party technical advisory vendor or project consultant to optimize the probability that both the vendor and state teams are following best practices and meeting their commitments. While some federally funded projects require third-party advisory services, most projects of any significant size would benefit from these services. Some states have reorganized to create in-house PMO-type oversight entities to help fulfill this role. However, often strained for resources or with duties so spread across projects, the amount of time these teams can dedicate to each project severely curtails their intended purpose and impact.

Budget

Develop a budget for a new project as you might for a new car: be clear on what you really need, research the market to understand your options (including talking to vendors), and adjust your budget or your wish list accordingly.

Setting an appropriate project budget will not guarantee success, but not doing so can imperil a project before it even starts. Developing a project budget is difficult because of the number of variables involved, and because project funding requests compete with other needs. Scarce government resources can make fully funding a project budget especially challenging. Nonetheless, an underfunded project significantly increases the risk of failure. Both the State and its vendors have a vested interest in making sure the budget for a project is sufficient for the proposed scope and recognizes that the scope will likely change. Also, it should incorporate adequate contingency and recognize the budget implications of modern development approaches.

In working through project budgeting, we recommend states keep the following in mind:

Size the budget to fit the scope of the procurement or size the scope to fit the available budget.

To estimate the cost of a defined scope, consult with other jurisdictions that have undertaken similar projects, making sure to understand the actual implementation cost, not the initial contract award cost. Also, before finalizing a procurement document, consult with reputable vendors to get multiple estimates, as well as an indication of the factors that can drive costs up or down.

BEFORE FINALIZING A PROCUREMENT DOCUMENT, CONSULT WITH REPUTABLE VENDORS TO GET MULTIPLE ESTIMATES, AS WELL AS AN INDICATION OF THE FACTORS THAT CAN DRIVE COSTS UP OR DOWN.

Share as much detail as possible about the assumptions, capabilities, and constraints you are working under, and require your vendors to do the same. Every project requires both the State and vendors to make assumptions about scope, resources, schedules, and other factors, and those assumptions and constraints have an impact on the project budget. A clear view of these assumptions, as well as the capabilities and constraints under which both sides are operating, will help you assess whether the project scope and budget are truly aligned.

Include contingency in your project budget and room for change orders in your contract. Few projects of any scale are delivered exactly as specified. Policy and evolving requirements compel changes. Just as vendors will include contingency—a pricing cushion—to reflect the risk they see in unclear scope and other issues, states would be well served by including contingency in their budget as well to account for change orders, state-required project delays, and other factors. Similarly, states should consider building room in their project contract for change orders required by the State by requiring a bucket of project hours or dollars not allocated to any specific task.

Publish your available contract budget. When a vendor bid comes in well over the available contract budget, nobody benefits. Clearly communicating your likely budget to the vendor community encourages competition for the best solution for your available budget and avoids wasting time on bids that cost too much or too little to meet your needs.

Recognize that modern development approaches may require different budget models. They may also require differing levels of engagement from state professionals. Traditional on-premises waterfall development usually requires a front-loaded budget, followed by a longer tail of maintenance and operations. Modern approaches, such as cloud native development, Agile, or continuous integration/continuous deployment (CI/CD), have a different budget profile, with a flatter budget curve over time. For example, cloud services operate on a pay-as-you-go model, eliminating the traditional upfront cost of buying and installing hardware and software infrastructure but incurring ongoing utility costs.

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Evaluation

Evaluation criteria are a key point of many potential bidders' initial bid/no-bid decision and can drive components of the vendor response. Careful attention to the impact of evaluation criteria on potential responses can yield states more qualified responses from which to select a partner and help align the responses to meet the business need(s) driving the procurement.

Vendors often conduct an immediate review of key factors within an RFP or similar procurement vehicle to determine if their investment of time and resources will be worth the likelihood of success. One of those initial key factors for review is the evaluation criteria.

Mandatory Requirement: The Evaluation Threshold

Mandatory requirements are essentially pass/fail evaluation criteria and are one of the first key factors reviewed by potential bidders. Are they restrictive? Do they favor or point to a competitor? Are they relevant to the services or solution requested? Do they match the client's desire for innovative approaches or approaches based on experience demonstrated with other jurisdictions? As mandatory requirements are drafted, RFP authors might weigh these requirements against the desire to encourage qualified and competitive open market responses, particularly when a major theme of the procurement is seeking innovative approaches.

For example, a mandatory requirement that the proposed solution be operational in a number of other states within the past three years may have the same effect as naming the two or three vendors who can meet that requirement—essentially turning the open market procurement into a closed one. In this fashion, mandatory requirements might stifle the number of innovative approaches and solutions from both market leaders and new entrants. An alternative approach to a small number of mandatory requirements is setting a threshold of a minimum number of technical points needed, from across all scoring categories, to move to a further stage of evaluation. In this approach, vendors' decisions to respond are based on the totality of the request, rather than one or two mandatory evaluation criteria.

Technical v. Cost: Explicit and Implicit Messages

Beyond mandatory requirements (which may be pass/fail only or pass/fail and scored) the evaluation exercise is the detailed work of comparing the vendor response to the scope of the work described in the RFP. This may extend, if possible, to the technical evaluation points weighted in the proportion to the importance of the scope items. This comprehensive exercise is designed to match the business and technical needs in the RFP to the responses received. Hopefully, this detailed work includes identifying the good, qualified responses that best meet the stated needs.

Including RFP response components that may require vendor writing but do not clearly reference evaluation criteria can create extra content for evaluation teams to review. More so, it may not clearly correlate to their mission of scoring the proposals to determine the best fit to the RFP business and technical requirements.

From a potential bidder point of view, clarity between the proposal content and the evaluation criteria allows bidders to focus their efforts on the areas of primary importance. Vendors will, of course, address all RFP requirements; but by ensuring clarity, priority and focus to the chain of RFP requirements, vendor response, and evaluation criteria, client evaluation teams can be well positioned to select the solution that best meets the business and technical needs.

A common discussion is the split of technical and cost evaluation points with a 70/30 or 80/20 technical/cost split. However, cost evaluation points can be more determinative of the outcome than these ratios might suggest. When thinking about the technical scoring differential between bidders, there may be a cluster of vendors with remarkably similar point scores. Whether using a 3, 5, or 10-point scale, evaluators can tend to score to the middle with a reluctance to give exceedingly high or low scores, particularly amongst responsive bidders.

Cost scores, on the other hand, are not evaluated through a point or criteria scale as with technical points. The mechanics of assigning cost points are generally via a formula comparing the price or price components (if a multi-tiered cost scoring methodology is used). Bid prices can vary widely based on a variety of factors. This differentiation can produce raw point differences far greater than the technical point differentiation, thereby turning the outcome nearly solely on price. When a cost driven outcome is desired by the State, this is not of concern. However, when a technical point driven outcome is desired, more than the technical/cost point ratio should be considered. Instructions to evaluators to truly differentiate technical point scoring and the use of a 10-point rather than a 3-point scale to allow greater differentiation and technical score spread could be considered.

As a note on cost scoring, setting up separate cost categories with separate point totals should be carefully considered, particularly regarding the description of which pricing/cost components go into which category. For example, if there are two cost scoring categories of uneven value, the scoring maximization incentive is to add as many cost dollars as feasible into the lower point pool in order to maximize the potential point differentiation in the higher point pool. Of course, this is bound by specific instructions regarding the allocation of costs across different categories. States are advised to carefully consider the specificity of cost allocation instructions when using the technique of breaking cost points into separate pools.

Evaluation Considerations with Prequalified Vendor Pools

A frequent recommendation is to leverage various forms of prequalified vendor pools to achieve the best value for state IT procurements. There is an opportunity to set up evaluation criteria unique to these purchasing vehicles.

Prequalified vendor pools and other previously vetted lists of bidders can ask the question: Did the vendor demonstrate an ability to match or meet the business need through the prequalification process and how might that impact the evaluation criteria?

At one extreme, the pre-qualification process can help determine if each vendor is qualified to meet the functional and business needs. In this case, the key discriminator might be viewed as cost, or time to completion which would then become the focus of the evaluation criteria. At the other extreme, the pre-qualification process can reduce the number of potential bids and increase the likelihood that the bids required are of high quality resulting in reduced evaluation and award timelines. In this case, the subject of the request and evaluation criteria may cover all topics that would be included if a pre-qualified vendor list were not used.

In using a previously vetted list of bidders, states should carefully consider the evaluation criteria used to create the list. Duplicating this criterion fails to leverage the value of the evaluation performed in the vetting procurement. In addition, states may miss an opportunity to focus the evaluation on the key discriminators through a “second round” procurement amongst bidders demonstrated to be qualified. If staffing/personnel qualifications, cost, time to implement, or another factor is the most important business driver for the procurement, then utilizing a list of vetted, qualified bidders is an opportunity to disproportionately align the majority of the evaluation points with the State’s priority, given the list of bidders has been previously evaluated as capable of doing the work.

Conclusion

While “water cooler” discussions in our new normal may have morphed to online chats, the despair remains the same when a large-scale critical technology procurement goes wrong. Whether you are the agency representative who has invested a lot of time in the procurement process or you are part of the vendor community that has committed significant resources to win the business, the agony of a failed procurement is shared by all. But, more importantly, the business need driving the procurement has not been fulfilled. In SHHS, this often translates to an impact on critical client services for our country’s most vulnerable citizens—something we collectively want to avoid.

Many agencies are still leveraging systems that are more than 30 years old, but never has the need for modernized technology been so great as it has been during the COVID-19 pandemic. Newer, nimbler systems are required to respond quickly to policy changes and increased volumes. As we emerge from the darkest days of the COVID-19 pandemic, the need for technology investments to ensure a nimbler response will be front and center. It is critical that we optimize procurement successes.

About CompTIA

The Computing Technology Industry Association (CompTIA) is a leading voice and advocate for the \$5 trillion global information technology ecosystem; and the more than 50 million industry and tech professionals who design, implement, manage, and safeguard the technology that powers the world’s economy. Through education, training, certifications, advocacy, philanthropy, and market research, CompTIA is the hub for advancing the tech industry and its workforce. Visit **CompTIA.org** to learn more.

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