

**Part IV:  
Acquire the  
Technology**

*“Obstacles are those frightful things you  
see when you take your eyes off the goal.”*

— Henry Ford

## GRANT COMPLIANCE NOTICE

Recipients of COPS Office grants are obligated to comply with certain requirements when implementing grant-funded technology projects. These requirements include Federal regulations. We recommend that your agency be thoroughly familiar with these regulations:

- 28 CFR 23, **Criminal Intelligence Systems Operating Policies**
- 28 CFR 66.36, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments: **Procurement**
- 28 CFR 66.32, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments: **Equipment**



The full text of these regulations can be accessed online at <http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1>. For more information on other areas of compliance, see Chapter 19, Grant Management and Compliance.



**CHAPTER 14**  
**THE ART OF PROCUREMENT**

# Chapter 14:

## The Art of Procurement

- What** A *structured method* for determining the required hardware, software and services needed to fulfill the project goals and objectives.
- Why** In addition to meeting government mandates for purchasing, a well-planned procurement will (a) ensure that the chosen vendor can supply the agency's functional requirements, (b) foster competitive vendor pricing and (c) offer the agency choices with regard to products and services.
- Who** Steering Committee, Project Manager, User and Technical Committees, and the parent organization's finance and purchasing representatives.
- When** Once the decision has been made to purchase new technology.

Conducting a procurement is oddly similar to playing a game that is replete with rules, penalties and winners. Most would agree that the biggest difference lies in the fact that procurement is rarely fun.

Procurement is a process that enables your agency to create functional requirements and seek qualified providers. While the requirements should be sufficiently detailed to allow the vendors to supply an accurate technical and cost solution, it should not be so detailed as to border on data modeling or system design (after all, if that were the case, you would be hiring programmers and not seeking a vendor solution).

Law enforcement agencies are often frustrated by the complexity of purchasing products and services. In this chapter, we seek to simplify some of the more complex components of procurement by providing an overview of the process, a review of how to select the right tool to get the job done, a suggested outline for how to evaluate vendor offerings and, finally, a simple method for creating functional specifications.

Procurement is governed by many rules that must be adhered to as a condition of being a governmental agency. Those rules generally dictate how the procurement must be conducted, although there is normally a good deal of agency discretion with regard to creating the requirements and evaluating the vendors' proposals. **Nevertheless, requirements should be well defined and the process should always be thoroughly followed.**



A *bid protest* occurs when one or more vendors object to an element of the procurement process, usually caused by the agency's failure to follow the selection process outlined in the bid document. When a bid protest occurs, the vendor's attorney files a legal notification with the City or County, notifying them of the protest. The City or County will ordinarily suspend the procurement until such time that the matter has been fully resolved (which usually requires several months). Therefore, playing by the rules is absolutely imperative.

Failure to adhere to rules or to clearly define requirements can result in a legal action called a “bid protest” (or can cancel the process entirely — see sidebar).

After receiving the vendor proposals, your agency has the opportunity to carefully review the various choices, seeking to identify the product that most closely meets your agency's needs. Ultimately, a winner is chosen and the project will move from the procurement phase into the contract negotiations phase (see Chapter 15). The process normally requires between 4 and 10 months, and it all starts in your own backyard.

### LEARN FROM THEIR MISTAKES!

One Michigan city learned the importance of clearly defined requirements the hard way. It was forced to issue its RFP three separate times because of technicalities found by the City's purchasing department after the documents had been released.

## Step 1

### Research Your Jurisdiction's Procurement Requirements

**You must start the procurement process by gathering the specific procurement requirements of the parent organization.** Normally, the purchasing division or the City/County attorney's office will be able to provide you with a list of these required elements, which often include the following:

■ **Procurement Thresholds:** Most City or County governments have ordinances that require competitive procurement if the value of the purchase exceeds a certain dollar amount (usually, the range is between \$10,000 and \$50,000). Therefore, the budget that was developed in Chapter 11 will likely determine whether a competitive procurement is necessary.

■ **Advertising Requirements:** Per local, regional or State law, governments are often required to advertise their procurements in at least one publication for a specified period of time. This requirement is often overlooked and is a common cause of bid protests.

■ **Delivery Rules:** Aside from the due date (which is usually set by the agency), there may also be rules for *how* vendor proposals are to be submitted, including:

- The acceptability of electronic or faxed responses.
- The ability to submit responses via “overnight” delivery.
- The ability to include both vendor pricing and product offerings in a single package.



Be sure to prevent vendors from establishing “sidebar” meetings with agency employees — such action can create the appearance of “collusion” and is detrimental to the procurement process. Also, be prepared for the vendors to ask whether the project is fully funded and whether an extension in filing proposals could be granted.

■ **Preproposal Conferences:** Many organizations require that a preproposal conference be held 2 or 3 weeks after the bid is released. Normally, conference attendance is optional, but some City/County ordinances make them mandatory (i.e., if the vendor fails to show up for the conference, the company is automatically disqualified). The conferences usually last about 90 minutes and include the following: a vision statement from the Executive Sponsor(s), a response to questions submitted by vendors (in writing or orally), and a tour of the agency facilities.

■ **Bid Opening Processes:** There are rules that dictate how to open a vendor’s response. For example, some agencies are required to open the envelopes (or boxes) in a public forum, while others must have specific government employees present at opening (e.g., purchasing agent, attorneys, etc.). We also strongly suggest at this stage that you designate a **single point of contact** from your agency with the vendors. The procurement process requires clear and unambiguous communication between the two parties. You must ensure there is a single source of information and communication with the vendors.

## Step 2 Form an Evaluation Team

It’s a good idea to form an Evaluation Team comprised of a cross-section of the Project Team plus a representative from purchasing and, possibly, a City/County attorney (the attorney will be useful in preparations for contract negotiations).

We suggest that you try to keep the Evaluation Team’s size to a minimum (around 6-10 people) because they will take on many time-consuming responsibilities during the procurement process, such as analyzing all the proposals that are received, attending vendor demonstrations, making telephone calls to vendor references, visiting references (site visits), and attending Project Team meetings. Also, from a financial perspective, remember that the Evaluation Team will likely be required to attend site visits that can be costly if the sites are remote. The first task of the newly formed Evaluation Team is to select the right tool for procuring the required technology.

## Step 3 Select a Procurement Tool

Although a request for proposal is the most widely used tool for conducting a procurement, there are several other options that may be better suited to your agency’s needs. Review the following five procurement tools to determine which is best suited to your particular needs:



Resist the “full disclosure” temptation. While it is important to inform vendors of the project’s purpose and history, it is unwise to inform them of the project’s budget, grant information or issues that may be compelling your agency to act quickly. Otherwise, these issues could come back to haunt you come contract negotiation time!

## 1. Request for Proposal (RFP)

An RFP is a classic tool used by agencies seeking to obtain actual hardware, software and services proposals from vendors, including proposed costs that address the agency’s *specific* needs.

**When to use an RFP:** While an RFP delivers a complete proposal package, it requires a significant investment of time from the agency (particularly with regard to preparing functional specifications related to the application that you need to purchase). Therefore, an RFP is best suited to agencies that require a complete proposal response from vendors (including costs) *and* that have ample time (at least 4–6 months) and resources to properly prepare and execute the RFP process.

Normally, an RFP is used by agencies that are “serious” about procuring technology, rather than those that are merely “testing the water” or seeking information. Aside from the complexity of the process, an RFP will cost both the agency and the proposing vendors a significant amount of money. Preparing an RFP costs an average of \$50,000 in agency “in-kind” costs, while vendors spend an average of \$25,000 to respond to RFP documents (personnel time, document preparation, printing, attendance at preproposal conferences, etc.).

### Sections of an RFP Document:

- A. **Project Background:** Provides the project’s history and outlines the major applications being sought.
- B. **Rules of Preparation:** Informs vendors of your agency’s rules for conducting the procurement.
- C. **Volumes:** Describes various statistics that help the vendors to size their proposal (e.g., number of workstations to be licensed).
- D. **Vendor Response:** Provides questions that pertain to the vendor’s qualifications, experience, proposed solution and pricing.
- E. **Functional Response:** Provides functionality questions that are specific to the type of applications (see Step 5).

## 2. Request for Information (RFI)

An RFI is a document used to elicit *generalized* information about vendor products and services. Pricing, if included at all, is generic and based on averages.

**When to use an RFI:** An agency that seeks general information about a vendor’s products and services should use an RFI. Due to the fact that a proposal is not requested, the RFI is noncompetitive and, therefore, does not require the same level of planning and action of other procurement-related tools (such as an RFP). An RFI can also be used as a precursor to an actual bidding document (i.e., RFP).

**Note:** In addition to the procurement tool sections described in this chapter, all of the tools — whether RFP, RFI, RFQ, ITB or Sole-source — should include an appendix that contains agency-specific information (e.g., Application Program Interface information, organizational charts, glossary and definition of terms, etc.) that would be useful for vendors in preparing their responses.

#### Sections of an RFI Document:

- A. **Project Background:** Defines the project's purpose and informs vendors of the scope of your inquiry (i.e., which applications you are interested in learning more about).
- B. **Rules of Preparation:** Briefly informs vendors of when your agency expects to receive a response and any other general conditions of the RFI.
- C. **Volumes:** This optional section provides information on your agency's particular environment.
- D. **Requested Information:** In this section, your agency should define exactly what it is interested in knowing about the vendor's products and services (e.g., references, descriptions of products, normal implementation timeline, budgeting guidelines, key contact information, etc.).

### 3. Request for Qualifications (RFQ)

An RFQ seeks to determine whether a vendor meets minimum *qualification standards* set by the issuing agency. Like an RFI, the RFQ does not request a proposal response with prices and specific proposal details.

**When to use an RFQ:** Agencies frequently use an RFQ to establish a bidder's list in advance of conducting an actual procurement. The RFQ sets the bar for vendor attributes and seeks to identify those vendors that will meet the agency's minimum standards. An RFQ, like an RFI, is a generally harmless document because it does not place vendors in competition with one another. However, unlike the RFI, vendors often respond quickly to an RFQ *if they can meet the agency's requirements* because the RFQ is an indication of a near-term RFP process. Although the RFQ is noncompetitive, it definitely needs to be reviewed by purchasing and City/County attorney staff before release to ensure that your agency is not defining unlawful or unreasonable standards (e.g., the vendor's name must start with a Z, etc.). Such mistakes could corrupt the bidder's list and, ultimately, a future procurement.

#### Sections of an RFQ Document:

- A. **Project Background:** Provides vendors with basic information about the history and purpose of the project.
- B. **Rules of Preparation:** Briefly informs vendors of when your agency expects to receive a response and any other general conditions of the RFQ.
- C. **Qualifications Request:** This section can assume two formats: It can either ask vendors to define their qualifications in various areas (references, hardware standards, software platform, etc.), or your agency can define the standards and ask if the vendor can meet or exceed them (e.g., System must be Microsoft XP compliant - Yes/No).

#### 4. Invitation to Bid (ITB)

The rarest of all procurement tools, an ITB defines the agency's requirements and contract inclusions, offering vendors an opportunity to "*take it or leave it.*" The ITB is competitive in the event more than one vendor accepts the bid.

**When to use an ITB:** Rarely. An ITB is a complex document that includes *all* of the agency's requirements, contractual terms and pricing mandates. Most importantly, the contents of an ITB are not subject to negotiation — vendors either accept all the terms or none. Therefore, preparing such a document is usually best left to professional external entities (consultants or attorneys). ITBs are usually only used when the parent organization mandates that such an approach be taken.

##### Sections of an ITB Document:

- A. **Project Background:** Provides the project's history and outlines the major applications your agency is seeking.
- B. **Rules of Preparation:** Informs vendors of your agency's rules for conducting the procurement, including the contract that vendors must agree to, without exception.
- C. **Volumes:** Describes various statistics that help the vendors to size their proposal (e.g., number of workstations to be licensed).
- D. **Vendor Response:** Identifies your agency's requirements for vendor hardware, software, service, performance and pricing.
- E. **Functional Response:** Identifies your agency's functional requirements, asking the vendors to identify any exceptions. In an ITB, it is assumed that vendors will supply all of the listed functionality.

#### 5. Sole-source

In a sole-source procurement, the agency can show that the chosen vendor is the *only vendor capable* of supplying the required hardware, software and services in the best interest of the agency.

**When to use a Sole-source Justification:** In instances involving upgrades, or when an agency is certain that only one vendor can supply the required technology. When upgrading, justifying a sole-source procurement is fairly simple (functionality, training, implementation, costs and speed are usually compelling issues that favor an upgrade). Conversely, crafting a sole-source justification for a CAD, RMS or Mobile Computing vendor is risky unless the vendor truly offers a very unique solution. Otherwise, losing vendors can protest a sole-source justification in a maneuver similar to a bid protest. (Vendors routinely check local, regional, State and Federal registers that show government purchases.)



**Sections of a Sole-source Justification:** Agencies are required to use the U.S. Office of Management and Budget guidelines (see 28 CFR 66.36) for preparing a sole-source justification. In summary, the guidelines require the following sections: Expertise of the Contractor, Management and Responsiveness, Knowledge of the Engagement, Experience of the Contractor Personnel, Time Constraints, Uniqueness of the Vendor, Additional Information and Declaration.

## Step 4

### Develop Functional Specifications

We previously made reference to functional specifications, which are simply detailed descriptions of exactly what you expect the new applications to do. The specifications are extremely important because during procurement, vendors are required to divulge how closely their product matches your functional requirements.



Most proposals contain thousands of specifications for each major application (CAD, RMS, etc.) and are derived from the general specifications that you developed in Chapter 6. Your agency can compile specifications by asking the **operational experts** (users) to write descriptions of the functionality they hope to attain by implementing new technology. Encourage users to be as specific as possible: the more detailed the description, the more valuable the specification.

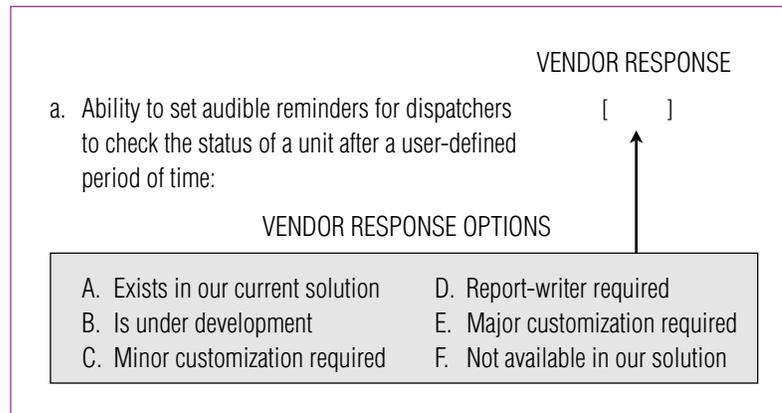
For example, if the broad requirement is to provide dispatchers with additional tools to check on unit status, the specification may read: *“Ability to set audible reminders for dispatchers to check the status of a unit after a user-defined period of time.”*

We recognize that developing functional specifications can be an enormous challenge for your agency, particularly if staffing is limited. Again, agencies that can’t (or don’t want to) develop their own specifications are left with the standard choices: either outsource this element to an external specialist (consultant) or network with other law enforcement agencies that have recently completed procurement. **Whenever possible, avoid reinventing the wheel!**

Borrowing another agency’s functional specifications does come with some degree of risk. After all, what if your needs don’t exactly match up to theirs? To manage this, it will be necessary for you (and your staff) to **read and amend every single specification!** Otherwise, you run the risk of ranking your vendor responses based upon the needs of others.

Regardless of how they are developed, functional specifications should be categorized into a logical order (e.g., all dispatching specifications should be contained within a single section titled “CAD Functionality,” etc.) and inserted into the appropriate location within a bidding document (RFP, ITB, etc.). Then, response codes should be created to

allow vendors the opportunity to define how their proposed solution can meet the specification. We suggest the use of codes that represent narrative responses that *you* control. Allowing vendors to provide a narrative response greatly enhances the ambiguity of their proposal and should be avoided. Once the codes are established, simply place some brackets in the margin next to each specification to allow the vendors to “fill in the blanks” with one of your codes. In keeping with our previous example, a common specification with ordinary response codes would look like this:



Upon receipt of the vendor’s proposals, these functional responses should be tallied and compared (see Step 6 for the evaluation and selection process).

A couple of words of caution regarding the creation of functional specifications:

- Occasionally we see agency RFPs that have functional specifications that all start out with “System **must have** the ability to...”. Be judicious about using the words *must have* because they represent an imperative that negates most of the response codes. More importantly, if something is a *must*, then vendors will try to develop a technical option for supplying it, which could result in higher-than-normal customization costs.
- Avoid lengthy descriptions of functionality that contain more than one tightly-focused specification. It might prevent vendors from accurately responding with a single response code.



**Remember:** Failure to follow local procurement requirements could result in a failed procurement!

## Step 5

### Create Evaluation and Selection Criteria

Most agencies must include the evaluation and selection criteria in the bid documents, per governmental requirements. However, it's a good idea to include the information *even if you don't have to* because it allows vendors to better understand how you will be evaluating their responses, and it compels you to plan ahead for how the evaluation will occur. Like many procurement-related concepts, the evaluation and selection criteria may be determined by the parent organization, so always remember to include a purchasing representative in planning meetings.

The list below represents some standard criteria that are frequently used in the industry. If your agency requires a mathematical ranking of each proposal, simply assign a numeric value to each of the 16 criteria that will total 100 points. For illustrative purposes, we have inserted some sample rankings:

NUMBER	CRITERIA	POINTS
1.	Adherence of the proposal to the specified format	3
2.	Completeness of the proposal	5
3.	Quality and depth of references	10
4.	Level of service and responsiveness that the vendor commits to providing to the agency	13
5.	Financial stability and resources of the vendor	5
6.	Experience and technical expertise of staff	5
7.	Design, capability and functionality of system and application software, as determined by the Evaluation Team	11
8.	Current availability and ability to demonstrate installation of the proposed software applications required by the agency	11
9.	Level of integration between applications and demonstrated interfaces with external systems/devices	5
10.	Capability, design, reliability, warranty and expandability of proposed hardware	5
11.	Economic feasibility and justification of all costs	5
12.	Vendor willingness and ability to negotiate a contract acceptable to the agency	5
13.	Feasibility, timeliness and quality of the software implementation schedule and conversion plans	5
14.	Level of vendor assistance to be provided to the agency during the implementation process	4
15.	The number of hours and extent of user training	5
16.	Quality and extent of the documentation to be provided	3

As spelled out in detail in Step 6, the Evaluation Team should carefully review each proposal using these 16 criteria. If necessary, a quantitative score could be assigned to each proposal based on a scale of 100, and the top two scoring vendors could be deemed qualified to present an oral demonstration of their system's capabilities to your Evaluation Team. If there is no need for a mathematical ranking, simply state that the Evaluation Team, at their sole discretion, will identify two semifinalist vendors that will be invited to make oral demonstrations.

In terms of evaluating a vendor's performance at an oral demonstration, we suggest the use of survey instruments to gauge the feedback of personnel who will observe the demonstration. Again, if a mathematical ranking is necessary, we suggest that the 16-criteria scale be modified (to reflect the oral presentation instead of a written proposal) and reused for the demonstration.

Shortly thereafter, the Evaluation Team should identify a single finalist vendor that will undergo a comprehensive review (including telephone reference checks, site visits and a possible secondary interview). Ultimately, the finalist vendor would be invited to enter into a contract negotiation process with your agency (if negotiations are permitted by your agency) and a contract would be signed. (See Chapter 15 for details on contract negotiations.)

### Step 6

#### Evaluate Bid Responses and Select a Finalist

Upon receipt of the proposals, your agency should review each response to determine which systems are best able to meet your agency's requirements. Evaluation Team members should review each proposal for completeness and to ensure that it properly addresses the functionality requirements of the bid document. You should take the vendor's specification responses to each category (CAD, RMS, etc.) and plot them side-by-side, for an easy-to-view comparison.

During this portion of the project, the methodology established in Step 5 (Evaluation and Selection Criteria) should be applied, thus eliminating those vendors that fail to meet the requirements.

Using the evaluation criteria as a guide, the Evaluation Team should evaluate qualified proposals in depth. For each proposal, the team should (a) summarize, evaluate and rank information pertaining to each major area of the specifications, and (b) obtain additional information and clarification from responding vendors as required. Finally, the team should narrow the list of vendors to two semifinalists that will be evaluated through vendor demonstrations.

**Evaluation Team:**

- Review
- Summarize
- Evaluate
- Rank
- Clarify
- Choose semifinalists

**Vendor Demos:**

- Create an agenda
- Define scope
- Establish timeframe



In the City of Reno/Washoe County (NV) Public Safety and Justice Project, the Project Team developed specific scenarios and provided data for the vendor to demonstrate with its products. The team found that this approach avoided the “canned” sales demo and required the vendor to prove its products could handle the scenarios and the agency’s data.

During vendor demonstrations, your agency should prepare an agenda that identifies *what you want to see*, rather than what the vendor wants to show you! You should insist upon vendors demonstrating the products that have been proposed, instead of those that are in development or planned for future release. The duration of the demonstration is subject to your particular scope and need, ranging from a couple of hours for a specific product demonstration (e.g., a laptop device) to a full week for a comprehensive, multi-application review.

Ordinarily, the consultant or Project Manager will distribute survey forms that ask evaluators to rank the vendor using the relevant criteria discussed earlier (Evaluation and Selection Criteria). Following the demonstration, the survey results should be tabulated and presented to the Evaluation Team for review. Based on the results, the team should be capable of identifying a single finalist vendor for further review.

Once a finalist vendor has been identified, the Evaluation Team must undertake some additional steps before determining whether the ranking vendor is “the one,” including:

■ **Telephone Reference Checks:** Evaluation Team members should contact their peers at the reference sites listed in the vendor’s proposal response, as well as any others who are identified through the process, seeking to learn more about the vendor’s performance. The team should meet prior to conducting the calls and develop a list of questions that are pertinent to the project. In addition to technology-specific questions, be sure to ask some of the following:

- Was the project completed on time?
- Was the project completed within budget?
- In general, was your experience with the vendor favorable?
- If you had to do it over, would you still choose vendor X?

Be sure to allow at least 2 weeks for telephone interviews to be conducted (to allow for call backs, missed calls, etc.) before reconvening the team.

Obviously, vendors will provide their top references and successes. You should do a little extra work and find out about other agencies using the products to get a full understanding of user satisfaction. Make sure to spend ample time talking to end users of the product. Sometimes technical staff will love an application, but users may have major problems with the functionality of the product.

After paying a site visit to another agency, your Executive Sponsor should follow up with a thank you letter to the agency's Chief or Sheriff. This point of etiquette is often overlooked, but can pave the way for future consultations with successful users of the product, should you contract with the same vendor.

■ **Assess Vendor Fit:** Following the telephone reference checks, the team should meet again to determine whether to continue with the review of the finalist, or select the “runner-up” vendor, as an alternative.

■ **Site Visits:** Assuming the vendor passes the reference checks, the next step is to schedule and conduct operational site visits of reference agencies that are the most similar (in terms of project scope and size) to your agency. Usually, two visits will suffice, although we have seen agencies conduct as many as six.

Like vendor demonstrations, we strongly suggest preparing an agenda for the site visit that maps out what your Evaluation Team hopes to accomplish. The agenda usually includes:

- An interview with the agency's project manager.
- An opportunity to speak with users of the technology.
- An opportunity to witness the technology “in action” (e.g., visit a communications center, see a laptop operating in the sunlight, etc.).

■ **Discuss Site Findings:** Following the site visits, the Evaluation Team should meet again and discuss the findings based upon the selection criteria identified in the proposal documents.

If, after the various examinations, the vendor remains a viable candidate, your agency should notify the vendor that the company has been identified as a finalist vendor and that contract negotiations may begin shortly. As a courtesy, you should also send notifications to semifinalist vendors as well, requesting that they keep their proposals valid in the event that your agency is unable to reach a successful agreement with the finalist.

Now that you've identified the finalist, it's on to contract negotiations!



## CHAPTER 15 CREATE THE CONTRACT

# Chapter 15:

## Create the Contract

- What** A *binding agreement* between the agency and the chosen vendor that defines the obligations between the parties, including deliverables, services and responsibilities. **Note:** The terms “contract” and “agreement” are used interchangeably throughout this chapter and mean the same thing.
- Why** Failure to negotiate a favorable agreement will leave the project exposed to tremendous risk and probable destruction.
- Who** A single authorized negotiator must be identified on both the side of the agency (usually the Project Manager), as well as the vendor. Additional resource persons, such as the parent organization’s legal counsel (City or County Attorney), should also participate.
- When** As soon as your agency identifies a finalist vendor.

**Disclaimer:**  
You must follow the policies and procedures governing contracts within your jurisdiction. This chapter is meant to provide guidance and offer best practices in doing so, but is not intended nor should be construed as providing legal advice specific to your situation and jurisdiction. Please see general disclaimer on page 3.

For most police agencies, the contract negotiation process is the most difficult and foreign project task. It’s particularly foreboding because the agency is at an immediate disadvantage: your Project Manager is likely not an attorney and may never have negotiated a contract, whereas the vendor will assign one or more attorneys who negotiate contracts for a living.

Further increasing the difficulty is the immense pressure that agency negotiators often feel during the process as they recognize that a leading factor in law enforcement technology failure is a poorly-worded contract.

This chapter seeks to take the mystery out of contract negotiations by explaining the basic process and elements of a well-crafted vendor contract. In addition to providing an overview of what to expect during the process, we’ll also explore the actual documents that should be included, adding advice along the way for securing the most advantageous language. Finally, we’ll review some tips for helping to keep negotiations running smoothly and, ultimately, successfully. We strongly recommend that your agency get help from the start of this process from an attorney who is an expert in **IT** contract negotiations. Not that it can’t be done without one, but you must realize that your agency is at a disadvantage when inexperienced agency staff negotiate with a vendor’s experienced team of contract negotiators and attorneys.

## Understanding the Process



Agencies should **never** use the vendor's base agreement, as it places the vendor in a commanding position over the contract structure and, ultimately, the entire project.

The entire contract negotiation process will likely require several months of dedicated effort from both the agency and the vendor. An average duration is approximately 4 months, yet more complex engagements have been known to require more than a year to complete. The lengthy time requirements are driven by the multitude of documents that must be prepared, as detailed in this chapter.

From the standpoint of the contract negotiation process, the following six steps are normally required:

1. The agency prepares a draft primary agreement based upon advice from legal counsel.
2. The primary agreement is supplemented with information from consultants and/or the Project Team about the project's scope.
3. The agency and vendor hold a discussion to identify the appropriate exhibits that must be developed and combined with the agreement.
4. The agency prepares an initial draft of the contract with the related exhibits and provides it to the vendor.
5. Meetings are held between the parties to identify the debatable issues — including pricing — and suggest language changes.
6. A final agreement is reached and the contract is provided to elected officials for ratification (or, in rare instances, a single project sponsor may have signatory authority to approve a document without elected official approval).

Usually, step 5 is repeated many times over, with the parties debating various contractual issues and refining the related agreement documents.

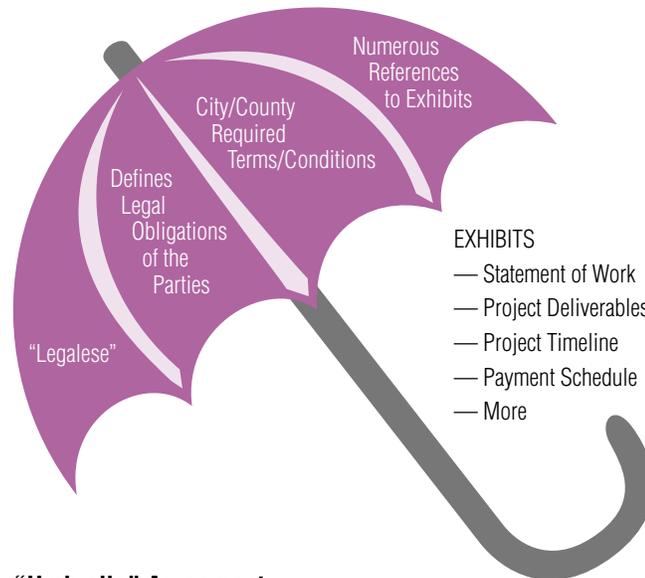


Pricing is always negotiable. Rely upon your budget, prepared in Chapter 11, to determine what the products and services should cost. If the vendor pricing appears too high, request a percentage discount to bring the prices within the project's budget. Remember, it **never** hurts your position to ask for reduced pricing or other incentives (e.g., additional services or software licenses).

## Crafting the Contract Documents

The creation of a solid contract is often a collaborative effort involving Project Team members and external experts, including consultants and City/County attorneys. Your agency's legal counsel will ordinarily supply the contract's framework, along with various terms and conditions that are jurisdictionally required, ultimately creating a primary, or "umbrella" agreement. Contract consultants are often useful for supplementing the City/County attorney's work, offering unique insight into the field of public safety software. Finally, the Project Team is responsible for "filling-in" the project-specific information that is gleaned from the vendor's proposal response, usually in the form of exhibits to the primary agreement.

From a global perspective, the contract itself has a clear hierarchy, with the primary agreement taking precedence over the exhibits, which fall beneath it:



■ Primary “Umbrella” Agreement

## Components of a Contract



The most common contract “sticking points” usually relate to indemnification and penalties for failure to perform (such as liquidated damages, defined in Chapter 12).

Before we get into the details of what topics should be included in the primary agreement and related exhibits, a word of caution: Although this chapter reveals major categories that should be included in any public safety software contract, it cannot substitute for the experience of your legal counselors and expert consultants.

### Primary Agreement

The place to start is with the City or County Attorney. He or she will probably provide a copy of the City or County’s “standard boilerplate” agreement and begin to make adjustments, based upon the scope of the project. If the attorney has never negotiated a public safety contract, or is unfamiliar with software or hardware contracts, consider the use of an external contract consultant who specializes in law enforcement software/hardware contracts. Ordinarily, the primary agreement includes language that addresses the following:

## THE PRIMARY AGREEMENT

### ■ STATEMENTS OF FACT

- Definition of the Parties
- Purpose of the Agreement
- System Price
- References to Exhibits
- Form of the Agreement
- Time for Performance under the Agreement

### ■ GENERAL CONTRACTS LANGUAGE

(modified for software contracts)

- Contractor Rights
- City/County Rights
- Grounds/Procedures for Termination
  - Default
  - Bankruptcy
  - Convenience
- Laws to be Observed
- Governing Law
- Permits/Licenses
- Taxes, Insurance, Expenses
- Limitation of Liability
- Indemnification and Hold Harmless
- Force Majeure
- Third-party Beneficiaries
- Nondiscrimination Standards
- Conflict of Interest
- Notices
- Modifications
- Waiver
- Headings
- Number/Gender
- Severability
- Counterparts
- Order of Precedence
- Patents/Royalties
- News Releases
- Immigration Laws
- Time is of the Essence
- Confidentiality
- Bonding
  - Performance, Payment

### ■ SPECIFIC PROJECT REGULATIONS

- Order/Delivery of Hardware
- Equipment Condition
- Site Preparation
- What Constitutes Acceptance of Hardware and Software (see Chapter 17)
- Rights to Source Code
- The Role of Third-party Software Applications
- The Role of External Equipment/Software
- Documentation Standards
- Training Requirements
- Right to Conduct Background Checks on Vendor Employees

### ■ RECURRING VENDOR RESPONSIBILITIES

- Contractor Commitments, Warranties, Representations
- Basic Maintenance
- Upgrade Process
- Enhancement Procedures

### ■ PROJECT MANAGEMENT LANGUAGE

- Problem Resolution (Arbitration, Other Methods)
- Delivery and Installation Procedures
- Certifications
- Payment Terms
- Management of Delays
- Liquidated Damages for Contractor-caused Delays
- Storage of Materials
- Change Orders
- Status Reporting
- Contractor Obligations
- The Right to Replace Vendor Project Manager/ Employees

These general terms and conditions will comprise the umbrella agreement, while project-specific material will need to be developed, based upon the vendor's proposal and as a consequence of meeting with the vendor and agreeing as to what the vendor will be providing throughout the project.



### Executive

**Sponsors:** City/County Attorneys will often equate technology contracts with public works or other infrastructure contracts. While there are similarities (i.e., high-dollar deliverables, multiple and complex services, bonding requirements, etc.), the two are vastly different. Using a public works contract “template” for a technology endeavor can leave gaping holes (i.e., the absence of language regarding performance, licensing, etc.) and is strongly discouraged.

### Think SOW!

The SOW defines the “who, what, where and when” for virtually every aspect of the project.

## Exhibits

Normally, attorneys will not offer advice on the exhibit-related content, simply because they don’t understand it! Further, they generally assume that their client (the police agency) is sufficiently knowledgeable in the product and services to create the related exhibits to their own satisfaction.

Therefore, it’s up to the Project Team to prepare a list of exhibits and draft their general content. The exhibits will be unique for each contract. Nevertheless, there are some exhibits that we strongly suggest be included, as follows:

■ **Statement of Work (SOW) Exhibit:** The blueprint for your implementation, this element of the contract defines each task involved in the entire project, which usually includes the following for each purchased application (or technology):

- Project Kickoff
- Requirements Validation and Hardware Review
- Project Schedule Delivery
- Hardware Installation
- Base Software Installation
- Software Customization (if any)
- Interface Development and Testing
- Geofile Building (usually only for CAD)
- Ancillary System Installation and Connection (e.g., NetClock, etc.)
- File Building
- Documentation Delivery
- Training
- Interface Testing
- Production Cutover
- Functional Testing
- Reliability Testing
- Performance Testing
- Product Certification
- Refresher Training

Then, for each of the tasks listed above, the SOW should:

- Provide a description of the task.
- Identify personnel involved in the task.



**Remember:** If it's not in the SOW, it's not going to happen!

- Identify the dates/times when the task is scheduled to occur.
- Identify the vendor and agency responsibilities related to the task.
- Describe what is considered to be completion of the task.

■ **Training Plan Exhibit:** A critical, and often overlooked, section of the SOW is the development of a comprehensive training plan. Agencies must carefully evaluate the vendor's training options and craft a training plan that ensures adequate training for both users and technical support staff. To better prepare you for developing the training plan aspect of the SOW, consider the following:

— **Training Types**

**Direct Training.** Direct training is often used when the pool of students is relatively small and requires intensive training (e.g., CAD dispatcher training). Due to the one-to-one training relationship, this type of training is usually the most expensive.

**Train the Trainer.** The most common training approach, this method provides direct training to a small group of employees focused on both learning the application, as well as how to train the balance of the organization's employees. It is generally the least expensive training option because it uses the fewest vendor resources and relies heavily upon the agency to train its own.

**Refresher Training.** About 6 weeks after going live with an application, many agencies benefit from "refresher training," wherein the vendor's training staff returns to the agency to revisit various training concepts and address questions from users.

**Mobile Patrol Training.** For large agencies, herding the entire patrol staff into classroom training sessions can be difficult, especially with reduced workforces and insufficient overtime budgets. To compensate for both, some agencies take the training to the officers in the form of mobile training centers. Using a van or even a vehicle (preferably without the cage), trainers can provide training to various employees during their shift, in their area/beat.

— **Training Location**

Few police agencies are blessed with their own technology training centers, requiring the agency to carefully consider where training will occur. Most vendors will require that the agency supply a training facility with variable equipment requirements, depending on the technology being implemented. Generally, vendors recommend that agencies provide a room that is equipped with about a dozen networked PCs, with a large overhead projector and screen toward the front of the room.



Many agencies have found that video or audiotaping training sessions is an invaluable tool. The tapes can be used as "refresher" training for existing employees or to partially train new employees.



Don't be tempted to reduce training to satisfy budget constraints: Lack of adequate training is the third most common reason for project failure!

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In the rare event the vendor doesn't supply a list of project deliverables in a spreadsheet format, insist on it!

If your agency does not have additional space that can be dedicated for several weeks to a training effort, consider relocating training to your parent organization's facilities or outsourcing to a local private technology training center.

#### — Training Costs

**External:** As you review the project budget, you will find that training is one of the most costly elements. Training usually requires the vendor to provide on-site visitations over an extended period of time. The visits can be costly to the vendor in terms of travel and resources: While the trainer is working with your agency, he/she cannot be actively involved in vendor sales, demonstrations or development. Consequently, training costs tend to be very high, with the vendor seeking to provide as little training as you are willing to accept.

**Internal:** The financial impact of training employees on new technology is obviously influenced by the type of technology being implemented and the size of your agency. The least expensive internal costs are usually associated with CAD implementations because the training is usually focused exclusively on the dispatch employees. Conversely, the highest costs tend to be associated with RMS products, as they usually require the training of a broad mix of employees, including patrol, records, detectives, etc. Whenever line-level employees require training, remember to forecast overtime expenses into your agency's annual budget.

■ **Project Deliverables Exhibit:** This section of the contract identifies *everything* that is being supplied by the vendor that has a direct cost, including: **hardware** (description of equipment), **software** (full description of modules, interfaces, licenses, etc.) and **services** (e.g., 100 hours of training at a rate of \$500/hour, etc.).



*Items that are excluded from this exhibit will reappear as change orders, so be extraordinarily diligent when reviewing the information. Because so much of the project deliverables exhibit is of a technical nature, the project's Technical Committee must review the document before contract signing.*

**Note:** Make sure to stipulate that the vendor provide the *most recent versions* of software and hardware at the time of delivery. This is critical, as there may be new releases between the time the RFP is released, a vendor is selected, the contract is negotiated and installation begins (sometimes upwards of 18 months).

■ **Payment Schedule Exhibit:** A key component of the contract, this document serves to identify when the vendor will be paid for tasks that are identified in the SOW. We suggest a milestone-based payment schedule, in which the vendor is paid a percentage of the contract for the successful completion of a particular project element. Here is an example:



**Remember:**  
Delivery does *not* equal acceptance. See Chapter 17, page 213, to learn more.

EXHIBIT X — SAMPLE PAYMENT SCHEDULE			
SOW Task Number	Description	% of Total	Amount
1	Contract Signing	2%	\$ 30,000
2	Hardware Delivery	8%	120,000
3	CAD <i>Acceptance</i>	15%	225,000
4	RMS <i>Acceptance</i>	25%	375,000
5	Training Completion	15%	225,000
6	Documentation Delivery	10%	150,000
7	Total System <i>Acceptance</i>	25%	375,000
	TOTAL	100%	\$1,500,000

■ **Project Timeline Exhibit:** The project timeline is a critical document because it defines the amount of time that will be required for the tasks identified in the SOW (plus a few extras like project status meetings, etc.). That definition is crucial to the main agreement language that controls various time-sensitive issues (such as liquidated damages, time-triggered payment incentives, or time-triggered holdbacks). The project timeline exhibit is different from the overall project timeline that was developed during the creation of the Project Plan. The project timeline exhibit is ordinarily prepared and maintained by the vendor.



When negotiating the agreement, be sure to insist that the project timeline be finalized *before* contract signing, to maximize the advantage and usefulness of related agreement language. Also, consider mandating that any change in schedule be approved in writing by both Project Managers (agency and vendor). Finally, be sure that the schedule is prepared and maintained in a project management software format for ease of management and update.

■ **Geofile Construction Document Exhibit:** Agencies that are purchasing CAD applications must often convert their parent organization's base geographic information systems (GIS) into the CAD vendor's preferred format. The GIS data are used for creating a geofile in the CAD that verifies the addresses that are entered into CAD. Ordinarily, undertaking such a procedure is exceptionally complex and warrants an individual contract exhibit dedicated exclusively toward defining how the GIS material will be converted, tested and ultimately installed into the CAD. Elements of this exhibit often include:

- Defining all of the known information regarding the existing GIS resources (e.g., format, date of creation, accuracy in terms of x/y coordinates, human resources, etc.), and
- Defining the vendor's roles and responsibilities in the conversion, testing and installation phases.

■ **License Agreement Exhibit:** Unless the attorneys have spelled out licensing agreement language in the primary agreement, it will have to be developed as an exhibit. This exhibit defines what rights the agency has with regard to the use of the vendor's software, which is normally licensed in one of three ways: *individual workstation*, *concurrent user* or *site license*. The type of licensing will ordinarily determine the content of this exhibit. If you are unfamiliar with license agreements, delegate their preparation to an expert (attorney or consultant).



Be sure to negotiate an escalation procedure into the Agreement for Extended Services, in which various priority issues are upgraded to the next highest level after a specified period of time. Also, try to have the severity level changed based on "aggregate" complaints (i.e., if you have 50 little problems, that in and of itself becomes a problem at the next highest level).

■ **Agreement for Extended Services Exhibit:** Agencies that require the vendor to provide continuous product support will need to prepare this exhibit. The document will identify the type of service (telephone, on-site, etc.), the availability (e.g., 8-5 each day or 24/7, etc.) and the allowable timeframe for response and correction of various types of problems (e.g., on-site within 24 hours if the system completely shuts down, or a phone call within 10 minutes of a report of trouble). Finally, the document will detail the pricing that has been negotiated for recurring support (ideally, with a 5-year cap). If you are unfamiliar with support agreements, delegate their preparation to an expert (attorney or consultant).

■ **The Vendor's RFP Response Exhibit:** That's right! The vendor's claims and assertions that were made in their response to your bid document are included as an exhibit. Countless engagements have been saved by this simple procedure, which is linked to the order of precedence language in the primary agreement (just identify the RFP response as being the arbiter of functionality disputes). Because the response is often hundreds of pages in length, a simple reference will suffice (in lieu of copying/inserting the whole thing into the agreement). Make sure to include reference to all addendums and negotiated changes to the RFP. The contract should also mention which specifications prevail, should the contract and RFP response be in conflict.

- **Software Warranty Exhibit:** Vendors generally offer a 1-year warranty on parts and labor. However, the duration is negotiable and can be 2 years or longer. After negotiating the duration, this exhibit includes the details about what constitutes a warranty-related repair issue and the procedures for activating the document. Again, unless you are very comfortable with the language of the software warranty, ensure that experts have reviewed and approved of the language before signing the contract.
  
- **Subcontracts Exhibit:** Occasionally, vendors will partner with subcontractors to fulfill a portion of the SOW. Be sure to have a copy of the agreement that exists between the prime vendor and any subcontractors. That information is instrumental in preventing finger pointing and getting results! The contract should specify that the primary vendor is responsible for the action and/or inaction by the subcontractor, not the agency.
  
- **Acceptance Test Criteria Exhibit:** Acceptance test plans and criteria are a must for any software project. See Chapter 17 for information on creating portions of this document.
  
- **Interface Control Document (ICD) Exhibit:** If the project includes interfaces, it must also include an ICD, which articulates how the interface(s) can and will operate. As a general rule, the agency **cannot supply too much information about any given interface**. Interfaces that are concretely defined are less subject to delays and excuses! As a sample ICD format, consider the following:

Interface Name	Vendor X CAD data to Vendor Y RMS
Interface Summary	Transfer of Vendor X CAD data to Vendor Y RMS product.
Vendor X CAD Version	V 2002.1
Vendor Y RMS Version	V 3.45
Vendor Y System Interface	Custom software development for Anywhere PD to use message switch device to transfer data from CAD.
Data Elements to be Exchanged	List of specific fields that need to be transferred from CAD to RMS (i.e., call number, location, etc.).
External System Interface	TCP/IP
Protocols	TCP/IP
Vendor Y Hardware Interface	CAD server Ethernet adapter.
Vendor Y Tasks	Install and test internal communications software and connect to City-provided network hub or switch equipment.
City Tasks	Provide City message switch communications and associated equipment beyond hub.
API Locations	See Appendix B for CAD API.
Comments	None

■ **Documentation Exhibit:** This exhibit clearly defines the type of documentation to be provided under the contract, specifying the medium (CD, paper, other) and whether the documentation is site-specific. (Some agencies must have the vendor’s documentation amended by technical writers to reflect customization — this is often called “as-built documentation.”)

■ **Other Exhibits:** Remember, each contract is unique and requires site-specific documents that would be developed over the course of the contract negotiation. There is never a limit to the number of exhibits that can be attached to a contract.

## Tips for Negotiating a Solid Contract

**Single Points of Contact:** Negotiating a contract of complexity requires clear and unambiguous communication between the parties. To accomplish this, it is necessary to assign a single representative from the Project Team (usually the Project Manager) to communicate with a single representative from the vendor's organization. This clearly defined channel of communication will go a long way toward ensuring that neither the agency nor the vendor are making promises that are not referenced in the contract.

**Consider Videotaping Negotiation Meetings:** Recently, some agencies have recorded or videotaped their negotiation meetings with the vendor. The recording can be used as an exhibit to the primary agreement for use in clarifying contract language (or showing intent). While this approach has benefits in solving disputes, be sure to remember that the agency's assertions are also captured in the recording and are equally useful to the vendor.

**Handling Disputes:** During the course of contract negotiations, disputes will occur! Handling them in a professional manner will convey a sense of authority and place the agency in a more commanding position. First, let's review a few "Nevers":

1. Never scream.
2. Never become violent.
3. Never embarrass yourself or the agency with unprofessional behavior.

You may be surprised that we would go to the length of listing these three "nevers" in a publication written for peace officers. However, the authors have witnessed all three, more than once (*including a memorable moment when a project manager leapt across a table and attempted to stab a vendor with a pen*). In each instance, the behavior became the issue and, ultimately, weakened the agency's position.

How will you know when an issue has reached impasse? When one or more of the following occur:

- A party says they simply cannot negotiate the issue.
- A party repeats their position more than once.
- An issue is debated for more than 10 minutes, with no apparent resolution in sight.

These three are just a few of the triggers for shelving the issue or taking a break. Remember that the party who takes command of the situation is in a stronger position, so don't hesitate to make a judgment that an issue should be temporarily suspended.

Ultimately, issues that are impassable usually will be resolved through concession from both parties. In such difficult issues, consider using language that enables “mutual agreement,” such as “system acceptance will be determined by mutual agreement” as a potential solution. Parties are often willing to agree to this because it enables both sides to reserve the right to further debate the issue, should it ever arise.

**Controlling Changes:** During the process, hundreds of changes will be made to contract documents. It is imperative that changes be evident to both parties (it is never advisable to “sneak” one past your vendor). We suggest using a word processing application that enables revision tracking and comment insertion.

**Renegotiating the Contract:** Surprisingly, few agencies are aware that contracts are often subject to amendment and renegotiation. While making changes to a contract after it has been ratified is not optimal, it is nevertheless possible so long as both parties are mutually agreeable to the change.

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### What’s Next?

- Plan for System Implementation ..... Chapter 16
- Conduct Quality Assurance Testing ..... Chapter 17

PART IV ASSIGNMENTS	
<b>EXECUTIVE SPONSOR</b>	
<b>Role</b>	<ol style="list-style-type: none"> <li>1. Ultimate decisionmaker</li> <li>2. Provide oversight and guidance</li> <li>3. Provide leadership and support</li> <li>4. Make personnel available for vendor evaluations and site visits</li> </ol>
<b>Acquire the Technology Tasks</b>	<ol style="list-style-type: none"> <li>1. Attend the preproposal conference and articulate the agency's goals with regard to the project to the competing vendors (Chapter 14)</li> </ol>
<b>EVALUATION TEAM (A SUBSET OF THE PROJECT TEAM)</b>	
<b>Role</b>	<ol style="list-style-type: none"> <li>1. Provide knowledge and recommendations</li> <li>2. Update/inform Steering Committee</li> <li>3. Participate in all phases of procurement and contract negotiations</li> <li>4. Review, evaluate and select vendor</li> </ol>
<b>Acquire the Technology Tasks</b>	<ol style="list-style-type: none"> <li>1. Form the Evaluation Team to participate in procurement and contract negotiations; augment with parent organization's finance representative and, possibly, the City/County attorney (Chapter 14, page 175)</li> <li>2. Select a procurement method (Chapter 14, page 175)</li> <li>3. Review and approve procurement documents and functional specifications (Chapter 14)</li> <li>4. Evaluate responses from vendors (Chapter 14, page 182)</li> <li>5. Conduct interviews, reference checks and site visits (Chapter 14, page 182)</li> <li>6. Select finalist vendor (Chapter 14, page 182)</li> <li>7. Assign a single point of contact for the vendor/contract negotiations, usually the Project Manager (Chapter 15, page 187)</li> <li>8. Participate in contract development (Chapter 15)</li> <li>9. Prepare a list of and draft contract exhibits (Chapter 15, page 191)</li> <li>10. Develop a payment schedule and project timeline to be included in the contract (Chapter 15, page 194)</li> </ol>

**PART IV ASSIGNMENTS, CONTINUED**

**PROJECT MANAGER**

- Role**
1. Coordinate all tasks and activities
  2. Conduct all phases of procurement research
  3. Prepare the procurement tool
  4. Coordinate vendor demonstrations, site visits and interviews
  5. Act as single point of contact with vendor authorized for contract negotiations

- Acquire the Technology Tasks**
1. Research jurisdiction's procurement requirements (Chapter 14, page 174)
  2. Coordinate Evaluation Team duties, such as procurement document development, evaluations, vendor demonstrations, site visits and reference checks (Chapter 14, page 175)
  3. Lead User and Technical Committee focus groups to develop functional specifications (Chapter 14, page 179)
  4. Prepare the procurement document (Chapter 14)
  5. Prepare draft contract based on legal advice and jurisdictional requirements (Chapter 15)
  6. Prepare a list of and draft contract exhibits (Chapter 15, page 191)
  7. Develop a payment schedule and project timeline to be included in the contract (Chapter 15, page 194)
  8. Formally track changes to contract documents (Chapter 15, page 199)

PART IV ASSIGNMENTS, CONTINUED

**USER COMMITTEE**

**Role** 1. Provide input to the Project Manager and Evaluation Team on procurement documents and vendor responses/demonstrations

**Acquire the Technology Tasks**

1. Participate in focus groups and develop written descriptions of functionality for new technology (Chapter 14)
2. Develop vendor response criteria for functional specifications (Chapter 14, page 180)
3. Create evaluation and selection criteria (Chapter 14, page 181)
4. Participate in vendor demonstrations (Chapter 14, page 183)

**TECHNICAL COMMITTEE**

**Role** 1. Provide input to the Project Manager and Evaluation Team on procurement documents and vendor responses/demonstrations

**Acquire the Technology Tasks**

1. Participate in focus groups and develop written descriptions of functionality for new technology (Chapter 14)
2. Develop vendor response criteria for functional specifications (Chapter 14, page 180)
3. Create evaluation and selection criteria (Chapter 14, page 181)
4. Participate in vendor demonstrations (Chapter 14, page 183)