



TEXAS
Health and Human
Services

HHS Vendor Interaction Policy

Effective September 1, 2018

PURPOSE

The Health and Human Services system (HHS) provides more than 200 programs to millions of Texans, including the most vulnerable. To accommodate the number of clients served by HHS and to conserve state funds, strategic planning is necessary to effectively and efficiently provide services today and anticipate needs in the future.

Industry research is essential to keeping up with the latest developments and trends. It enables HHS to spend its limited funding in a strategic manner and to ensure programs are viable and sustainable.

Through interaction with the vendor community, HHS is able to understand what vendors are able to provide and to ensure that they understand the needs of the state. Communication between public procurement professionals and agency staff with the vendor community is imperative and encouraged. If used effectively, communication with industry representatives ensures the best products, resources, and services are procured on behalf of the state.

Texas Government Code Section 2155.090(b) acknowledges that an exchange of information between a state agency and the vendor community, related to future solicitations or as necessary to monitor existing contracts, is an integral part of the state agency-vendor relationship. Steps must be taken, however, to maintain a fair opportunity to compete for all vendors and to avoid even the appearance of favoritism. Agency personnel must be mindful that one-on-one communications with vendors occurring outside of the procurement process are subject to enhanced scrutiny due to the importance of maintaining an equal playing field among all eligible vendors during competitive procurements.

Each employee is expected to use sound reason and their best judgement when interacting with vendor representatives. Employees should be familiar with the agency's Ethics Policy and the specific Ethics Policy for Contracting and Procurement Personnel and ensure that all training and disclosure requirements related to ethics issues are up to date prior to meeting with any vendor representative. If at any point an employee is faced with an ethical dilemma that is not addressed in the agency Ethics Policies, the employee should cease all communications with the vendor representative immediately and consult with the agency's procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance.

This policy is intended to promote and guide collaboration between HHS staff and the vendor community. The policy provides parameters to facilitate communication while protecting the integrity of the procurement process.

First and foremost, at the beginning of any vendor interaction, HHS staff should inform all vendor representatives that if at any point during vendor communications or during a meeting agency staff believes inappropriate, unethical, or communications that would compromise a current or potential solicitation has occurred or is about to occur, the communications and or meeting will be stopped immediately.

PROGRAM-LEVEL MEETINGS

Generally, the starting point for any vendor interaction is at the program level. Vendors will often seek meetings with program staff to make staff aware of the vendor's offerings, market trends, and suggestions for program efficiencies.

HHS staff are encouraged to meet with vendors to learn more about the goods, services, and resources that are available. Meetings can be in person or by teleconference.

Vendor Meetings with Vendors Currently Under Contract.

Requests for vendor meetings from vendors under an active contract are the most common interactions agency staff will encounter. These meetings are an essential element of properly managing and delivering on an awarded contract and may be requested by the vendor or the agency. In addition, meetings may be necessary to introduce personnel, discuss current contract performance, or to seek guidance on service adjustments being provided within the scope of the vendor's awarded contract. Interactions should be restricted to the scope of the awarded contract and care should be given to not create the perception of favoritism to any vendor for work outside the scope of the current contract. Agency personnel should use caution to avoid providing the vendor a future unfair competitive advantage by sharing future business requirements, information about systems or internal processes, or protocols outside the scope of the current contract that the vendor may be able to use in the development phase of a future solicitation. When in doubt, staff should consult with the procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance.

Meetings with vendors currently under contract are an expected part of the contractual relationship. The purpose in distinguishing this type of meeting from those meetings discussed below, is to stress that the meeting should be restricted to the scope of the existing contract. Any other type of meeting, such as meetings outside of the scope of the current contract, should be conducted in the same manner as a general vendor meeting with a vendor that is not currently under contract.

Vendor Meetings with Vendors Not Currently Under Contract.

Requests for general vendor meetings are not unusual and are a valuable way to stay ahead of market, technology, service, and resource trends and capabilities. These meetings may be requested by the vendor or the agency to introduce key personnel, capabilities, or to seek guidance on the market, product, or service strategies and trends. In some cases, these meetings may involve a request from the vendor to discuss possible contracting opportunities within the agency. Because agency staff may not be aware of a planned or active solicitation, employees should check with the agency's procurement office before agreeing to a vendor meeting. Agency personnel should use caution to avoid providing the vendor a future unfair competitive advantage by sharing information not otherwise publicly available about systems, future business requirements, internal processes, or protocols the vendor may be able to use in the development phase of a future solicitation. When in doubt, staff should consult with the procurement office, their supervisor, or the HHS Chief Ethics Officer for guidance. In general, it is acceptable to receive information from the vendor but not to give information to the vendor that is not otherwise publicly available or disclosable under transparency policies of the Texas Public Information Act. For specific questions regarding the Texas Public Information Act, staff should contact the agency's Public Information Coordinator in the Office of the Chief Counsel.

Finally, prior to scheduling a meeting, staff must check the vendor's grade on the Vendor Performance Tracking System, available at <http://www.txsmartbuy.com/vpts>. Enter the vendor's name in the "Vendor Name" box and click "Search." Then, select the correct vendor from the search results. As long as the vendor has a grade of A, B, or C, the meeting may be scheduled. If the vendor has a grade of D or F, email the Deputy Executive Commissioner for Procurement and Contracting Services (PCS) to seek guidance, bart.broz@hhsc.state.tx.us.

CROSS-DIVISIONAL MEETINGS

If a vendor would like to discuss a good or service that may possibly benefit multiple program areas in HHS, a cross-divisional meeting should be established. When receiving such a request from a vendor, ask the vendor to submit an email to the Executive Assistant to the Deputy Executive Commissioner of PCS, stephanie.morris@hhsc.state.tx.us. The email should include the purpose of the meeting and outline any presentation materials that may be needed. The executive assistant will coordinate the meeting with the vendor, the appropriate program areas, and PCS.

EXECUTIVE-LEVEL MEETINGS

Some vendors have goods or services that apply to the entire HHS system or that may directly affect a key strategy or goal of HHS. In those cases, it is permissible for the vendor to seek a meeting with the Executive Commissioner, Chief Deputy Executive Commissioner, Chief of Staff, Chief Operating Officer, Chief Program and Services Officer, or Chief Policy Officer. Such meetings will be scheduled by the appropriate office and the Deputy Executive Commissioner for PCS or designee will attend.

VENDOR RESPONSIBILITIES

Although the following requirements are the responsibility of the vendor representative, if applicable, reminding the vendor representative of these requirements prior to any meeting is encouraged.

Texas State Lobby Laws.

Texas Government Code Chapter 305 regulates certain direct communications with an officer or employee of any state agency, department, or office in the executive branch of state government. Vendor representatives who meet the Texas Ethics Commission's lobby registration requirements must be registered with the Texas Ethics Commission. State lobby laws work hand-in-hand with prohibitions on bribery in the Penal Code. There are criminal and civil sanctions for violation of the lobby law or the Penal Code. Vendor representatives should contact the Texas Ethics Commission with any questions concerning the requirement to register as a lobbyist.

HHS staff should contact the HHS Chief Ethics Officer for any questions or concerns about meeting with vendor representatives that are or may be registered lobbyists.

Representation Before State Agencies.

Texas Government Code Chapter 2004 requires an individual who has contact with an officer or employee of a state agency to register with the agency. Failure to register as required by Chapter 2004 is a misdemeanor punishable by a fine of not more than \$500, confinement in jail for a term not to exceed six months, or both the fine and imprisonment. For more specific information vendor representatives should consult with the Texas Ethics Commission or review the [Texas Ethics Commission's guide to Chapter 2004, Government Code](#), to determine if registration is required.

GUIDELINES FOR ALL MEETINGS

In order to assure appropriate communications and efficient use of time, HHS staff must abide by these guidelines:

1. Do not discuss active procurement projects or provide specifications or information about potential, future procurements.
2. Do not accept any confidential information from a vendor. Any information that the vendor provides to HHS staff becomes subject to the Public Information Act, Government Code Chapter 552. Staff must advise vendors that information may be subject to public release pursuant to the Public Information Act. For specific questions regarding the Texas Public Information Act, staff should contact the agency's Public Information Coordinator in the Office of the Chief Counsel.
3. Have at least one additional agency representative present at meetings.
4. Document the attendees and purpose for all meetings: an agenda, sign-in sheet, and minutes are recommended.
5. Do not meet with vendor representatives if the subject matter to be discussed or presented relates to a pending solicitation that is in process or development or a current solicitation that is posted. No meeting may occur until the solicitation process is complete.
6. Treat all vendors equally and impartially.
7. Do not share agency strategies that are not publicly known.
8. Do not accept gifts or donations.
9. Do not commit to accept, or plan to accept, products or services.

10. Do not guarantee or imply that a solicitation may result from a meeting.
11. Be familiar with the HHS Ethics Policy and the Standards of Conduct and Conflict of Interest Provisions of the Government Code, Chapter 572, Subchapter C and the Penal Code, Chapter 36, Bribery and Corrupt Influence. Ensure that all HHS staff attending the meeting are up to date on any HHS disclosure and training requirements. For specific questions concerning the HHS Ethics Policy and state ethics laws, including matters involving the standards of conduct, or conflicts of interest provisions, staff should contact the HHS Chief Ethics Officer. (All HHS staff are expected to be current on any agency training required for their specific job duties.)
12. Inform all vendor representatives that if at any point during vendor communications or during a meeting agency staff believes inappropriate, unethical, or communications that would compromise a current or potential solicitation has occurred or is about to occur, the meeting and all vendor communications will be terminated immediately.
13. Information technology related meetings should include a representative from IT. Vendor communications and meetings regarding technology demonstrations prior to a formal solicitation process must adhere to the HHS Guidelines for Engaging Technology Vendors Prior to a Formal Solicitation Process, Policy HHS IT-04.

Opening a Meeting

To ensure compliance with item 12 referenced above, HHS staff should make the following announcement at the commencement of any vendor communication or meeting:

“HHS is committed to ensuring the integrity of active or potential procurements including ensuring that all vendors have an equal opportunity related to any potential or active procurement. No information related to the subject matter of a procurement that is in the development phase or has been issued may be exchanged or discussed outside of the procurement process. Vendors should contact PCS regarding potential or active procurement matters.”

Quiet Period

Texas Government Code Section 2155.090(b) allows the exchange of information between an agency and a vendor related to future solicitations. However, once an actual solicitation-drafting process has begun, all vendor communication related to or with an appearance of being related to the subject

matter of the solicitation must cease to ensure the integrity of the procurement process. Once a solicitation is posted, vendor communication related to or with an appearance of being related to the subject matter of the solicitation must follow the procedure outlined in the solicitation. The time period encompassing solicitation-drafting, open solicitations, and contract negotiation is considered a "Quiet Period." No meetings other than those within the specific procurement process should occur. The Quiet Period ends once a fully executed contract is issued. HHS staff are encouraged to contact PCS prior to scheduling a vendor meeting to ensure the subject matter to be discussed is not subject to the Quiet Period.

External Events

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

Declining a Meeting

HHS staff are always free to decline meeting with a vendor or to refer the vendor to PCS rather than meeting with the vendor.

PCS

The public procurement professionals of PCS interact with the vendor community on a regular basis as part of their program specific duties. As public procurement professionals, the PCS team is an experienced resource regarding vendor interactions. HHS staff may request that a member of the PCS team is included during vendor communications or meetings.

Statutory Prohibition Reminders

Texas Government Code Section 572.069. A state employee who participates in a procurement or contract negotiation that results in the award of a contract to a vendor may not accept employment from that vendor before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.¹

¹ For a listing of applicable post-employment restrictions, see the HHS Ethics Policy at pp. 20-23.

Texas Government Code Section 2155.004. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. In other words, a vendor that participates in drafting a request for offer (RFO) or statement of work (SOW) in most cases is not allowed to respond to the same RFO or SOW.

Texas Government Code Section 2252.901. A state agency may not enter into an employment contract, a professional services contract, or a consulting services contract with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency if appropriated money will be used to make payments under the contract.