



Procurement Symposium

The Passing Game

Legal Workflow in a Centralized Environment

Don Harris

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Doing the right thing

is never

the wrong thing...

-Ted Lasso



SPENDING OVER THRESHOLD LIMITS COME TO DOA

CURRENT SPENDING AUTHORITY MODEL:

\$100K DELEGATION

- All Sole Source to DOA
- All Contracts > \$100K to DOA

\$200K DELEGATION

- All Sole Source to DOA
- All Contracts > \$200K to DOA

PROPOSED BUYING POWER MODEL:

AGENCY RISK ASSESSMENT

BUYING THRESHOLD BASED ON THESE FACTORS:



AGENCY RISK ASSESSMENT THROUGH REQUISITION FILTERS TO DOA:

- CONTRACTS OVER THE X THRESHOLD TO DOA

- RFPs

- ACTIONS ABOVE \$X
DEPENDING ON RISK SCORE

- SOLE SOURCES

CONTRACTS FOR DOA
REVIEW & APPROVAL

DOA COMPLIANCE REVIEW OF AGENCIES

Reporting

Service Now Notifications

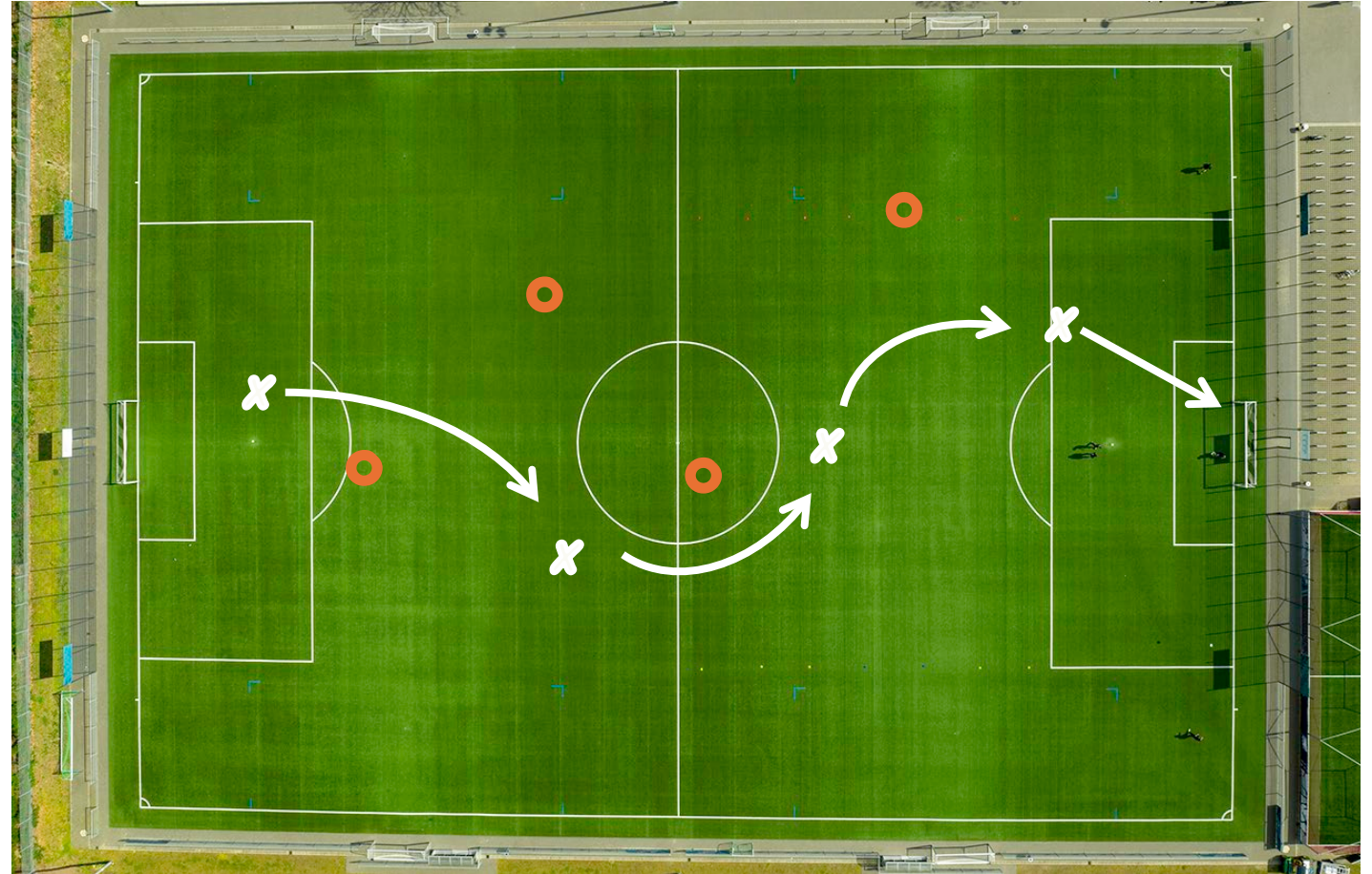
Revocation of Authority
by Business Unit and/or Agency

Real-time Compliance Reviews

The Passing Game: Procurement Legal Workflows

Key Areas

- Solicitation Selection & Design
- The Solicitation Event
- Contract Review and Negotiations
- Contract Management
- IT Procurement



Solicitation: Source Selection

Procurement procedures authorized by Procurement Act:

- Exigency purchase (18-4-133, MCA)
- Alternative procurement method (18-4-302, MCA)
- **Competitive sealed bidding/Invitation to bid (18-4-303, MCA)**
- **Competitive sealed proposals/Request for proposals (18-4-304, MCA)**
- **Sole source procurement (18-4-306, MCA)**
- Small purchase (18-4-305, MCA)
- Limited solicitation (18-4-305, MCA)
- Cooperative purchase (18-4-402, MCA)
- Direct purchase (18-4-132(4)(a), MCA; 18-4-133, MCA)
- Purchase from sheltered workshop (18-5-103, MCA)



PROCUREMENT PROCESS FLOW

ONE
DOOR



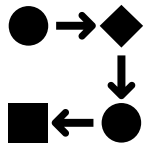
PROCESS STARTS HERE

Agency APO Approves
& Initiates Request



SERVICENOW WORKFLOW

Agency Selects the Type
of Solicitation



DOA APPROVAL

IT – HANDLES ALL IT CONTRACTING



ITPR PROCESS & APPROVAL (SITSD)

- RFPs, QVLs, POC, IFBs
- Software
- Licenses
- Cooperatives

HHS – HANDLES ALL HHS CONTRACTING

- RFPs, QVLs, IFBs
- Cooperatives
- IT Procurement – Routes to IT Flow

RFPs ALL OTHER (Non-HHS or IT)

- Handle all evaluations, scoring, etc.

COMMODITIES

STRATEGIC SOURCING

- Tracks and Plans for Future Strategic Buys
- Handles ALL Cooperative Buys

Partners with
STRATEGIC SOURCING
for Review & Approval

**PROCUREMENT
PROCESS
COMPLETE**

Solicitation
Pre-Award Action

Agency APO, SITSD, Agency
Legal - DOA Legal (as needed)

Notice Of Intent to
Award (NOIA) Process

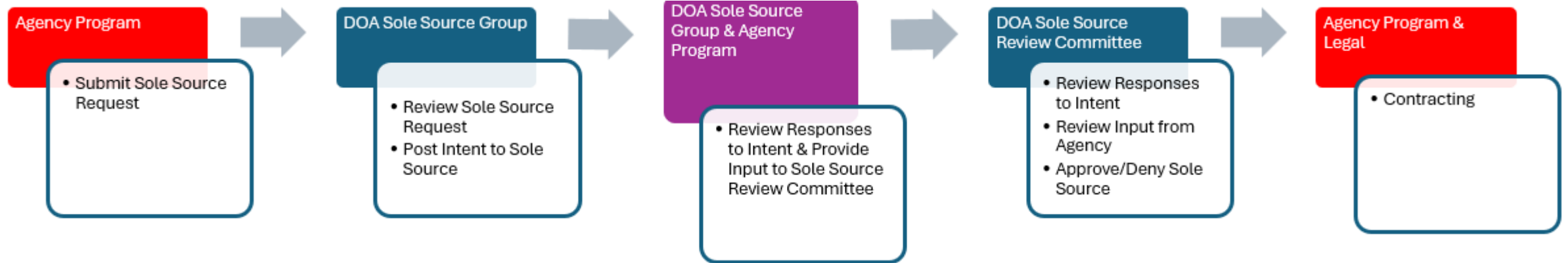
Contract
Executed /
Signed

Agency
Implementation
& Management

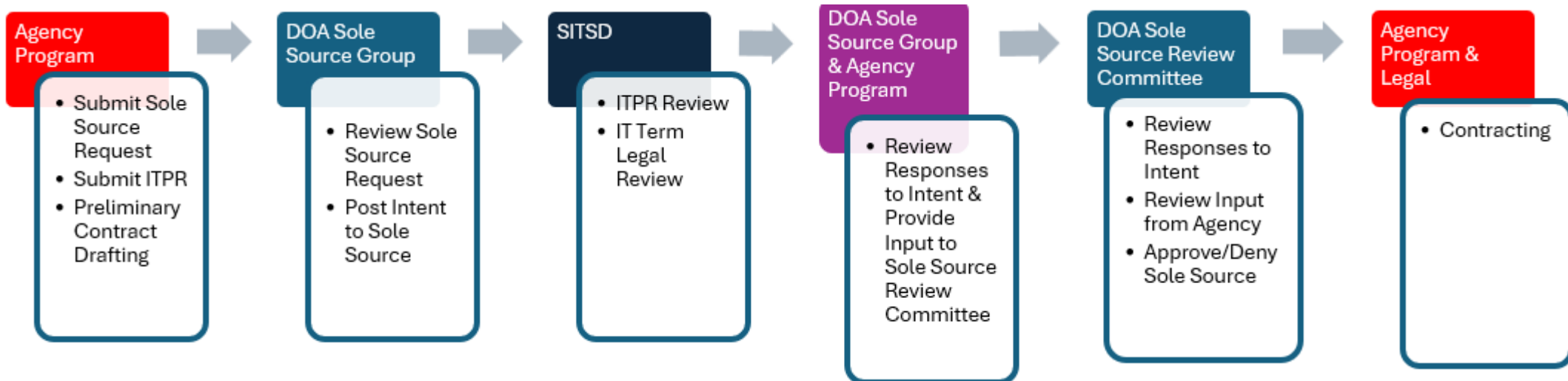


Solicitation: **Sole Source**

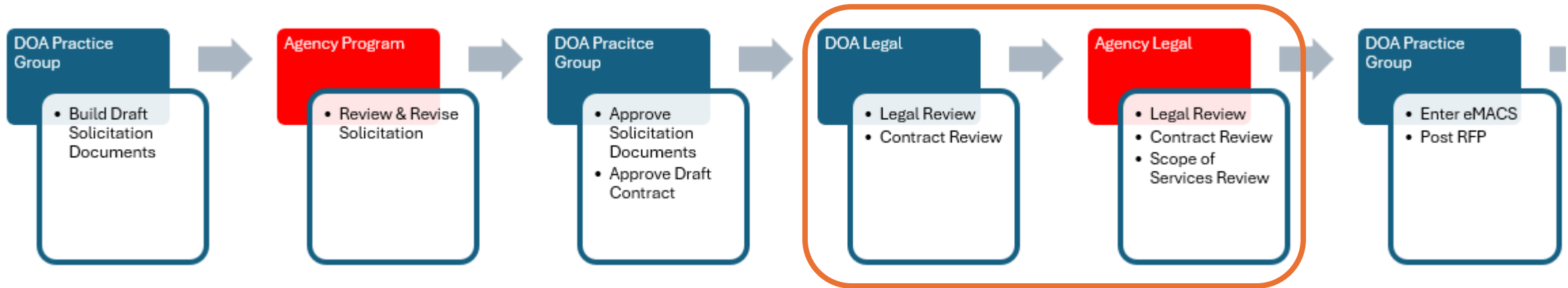
Non-IT Sole Source (Over \$100,000)



IT Sole Source (Over \$100,000)



Solicitation: High Risk RFP/IFB



DOA Legal

- Solicitation satisfies legal requirements
- Contract uses standard template and includes required terms

Agency Legal

- Solicitation meets program legal requirements (e.g., funding source)
- Scope defined for enforcement
- Contract includes agency-specific options and revisions



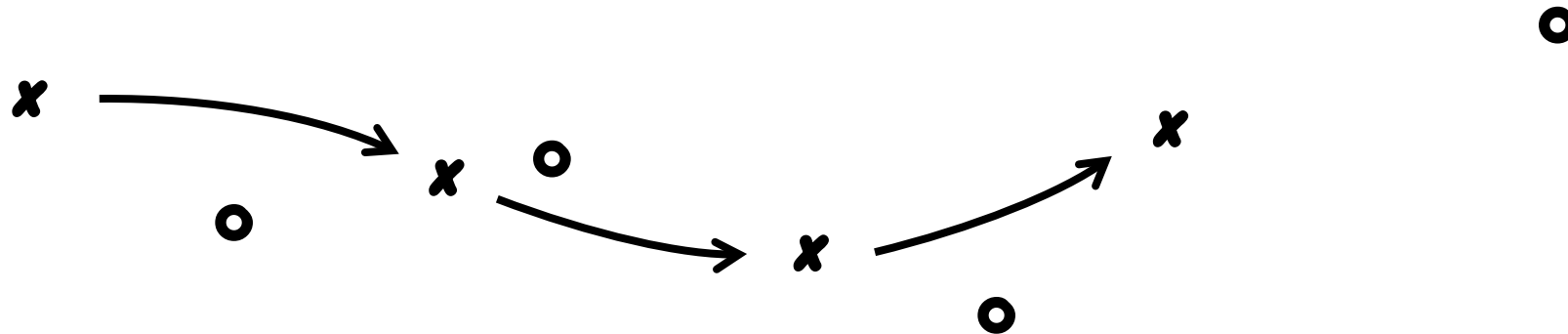
The Solicitation Event

Legal > Legal Passing

- Contract Exception Requests
 - Other Q&A
- Trade Secrecy Review

Procurement > Agency Passing

- Notice of Intent to Award & Public Comment



The Solicitation Event: Contract Exceptions

Reference / Original	Request	Proposed Language Change	Vendor Impact	State Response
Access to Records	Confidential classification of records as permitted by law	Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to audit for Contract compliance. <u>At all times, any such records shall be considered Contractor's confidential and/or proprietary information subject only to disclosure as legally required under applicable statute.</u> State may terminate this Contract, without incurring liability, for Contractor's refusal to allow access. (18-1-118, MCA.)	Moderate impact. Would not affect decision to bid, nor does it add risk or any increased cost to the solution.	The State does not agree to the proposed change.
Records retention	Since this a potential 10 yr engagement, records would need to be secured for a potential 18 years. The exception of is to allow for disposal and/or destruction of records if over 10 yrs old or as otherwise permitted under MT applicable statute.	Contractor shall retain all records related to this Contract for 8 years following the termination or expiration of this Contract, <u>or as otherwise permitted under applicable statute and upon State's consent.</u>	Minor impact. Would not affect decision to bid, nor does it add risk or any increased cost to the solution.	The State does not agree to the proposed change due to State record retention requirements; however, given changes made by 2025 Montana Senate Bill 143, the State agrees to amend the language as follows: Contractor shall retain all records related to this Contract for <u>8 6</u> years following the termination or expiration of this Contract.
Third Party Software and Services	Will the State allow for redaction or protection of confidential information or other trade secret not necessarily related to terms and conditions applicable to State?	ii. provide written copies of all third party agreements, <u>as may be redacted to protect and restrict disclosure of non-related confidential information, proprietary information or other trade secret</u> , and terms and conditions applicable to State;	Moderate impact. Would not affect decision to bid, nor does it add risk or any increased cost to the solution.	The State does not agree to the change as proposed; however, the State will agree to amend section 6.3(b)(ii) as follows: "provide written copies of third party agreements and terms and conditions applicable to State, <u>which may be redacted to the extent permitted by Montana law as necessary to protect and restrict disclosure of non-related confidential information, proprietary information or other trade secrets.</u> "



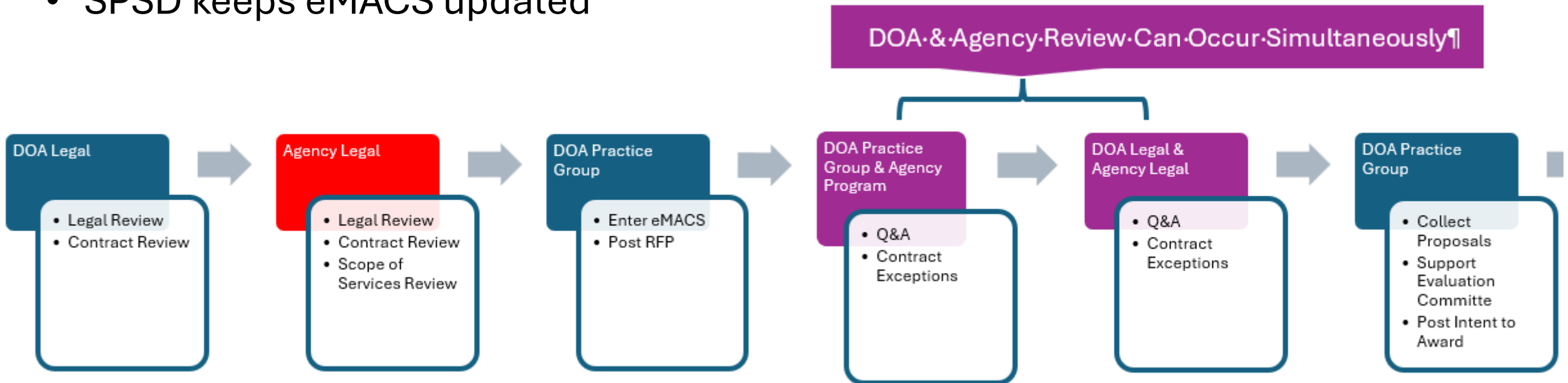
The Solicitation Event: Q&A / Contract Exceptions

Q&A or Contract Exceptions

- Agency Program and SPSP RFP Group Collaborate
- Agency Legal and SPSP Legal Collaborate

Simultaneous Review

- Leverage technology to collaborate, see changes
- SPSP keeps eMACS updated



The Solicitation Event: Trade Secrets

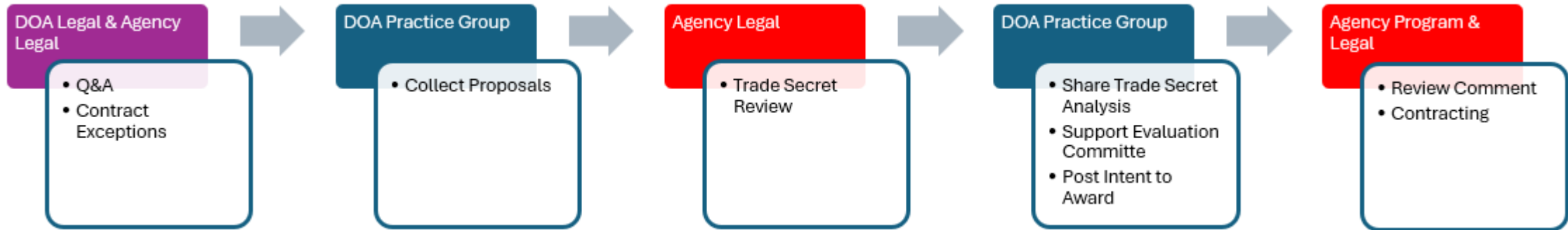
Offerors required to provide:

- redacted and unredacted proposals
- trade secret affidavit
- confidentiality analysis

Solicitation Number							
Vendor							
						For State Use Only	
Response Document Title	Page Number	Publicly Available	Type	Brief Description of Claimed Confidential Information	Rationale	State Response	State Response Rationale
Example Response to Scope of Services	5	No	Trade secret	Data points for our predictive algorithm.	Information is not shared publicly and has significant value to the firm.	Confidential	We agree this is a trade secret.



The Solicitation Event: Trade Secrets



Process

- gathered at proposal submission
- reviewed by agency legal counsel
- opportunity to collaborate with DOA legal counsel
- SPSPD communicates analysis to offerors



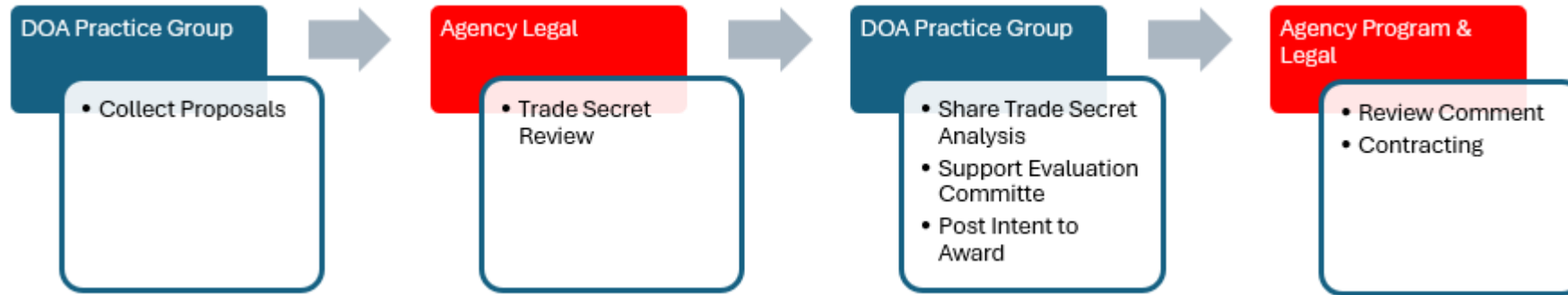
The Solicitation Event: **NOIA & Public Comment**

Notice of Intent to Award (NOIA)

- result of **2023 SB 51**
- allows confidentiality longer
 - offerors can't watch each others' presentations until NOIA
- provides **more transparency**
- requires leveraging technology
 - video record presentations
 - video record scoring
- release scoring and other RFP information after NOIA
- collect **public comment for 7 days**
- agency must consider public comment before finalizing award



The Solicitation Event: **NOIA & Public Comment**



Process

- SPSD record presentations
- SPSD record evaluation committee scoring
- SPSD post NOIA
- SPSD gather public comment
- Agency review comment and finalize award



Contract Review & Negotiations

Contract Negotiations/Refinement (All Solicitations)	DOA	Shared	Agency
When an offeror asks to negotiate state contract terms for an agency procurement, agency legal counsel will represent the agency in negotiations.	○	○	●
When an offeror asks to negotiate state IT terms for an agency procurement, agency legal counsel will represent the agency in negotiations and should involve DOA SITSD legal counsel when revising state IT terms. ○ NOTE: <u>DOA SITSD legal counsel will not review other contract terms</u> nor negotiate general terms on behalf of the agency.	○	●	○
Contract Final Review and Signature (All Solicitations)			
For all agency contracts regardless of contract value, agency legal counsel will perform the final contract review prior to signature, advise the program and agency leadership regarding the contract terms, and sign indicating the contract was reviewed by legal counsel.	○	○	●

Key ● = most cases ◐ = some cases ○ = rarely



Contract Management: **Protests**

Protests (IFB or RFP)	DOA	Shared	Agency
Draft Initial Protest Response	○	○	●
Review Initial Protest Response	○	●	○
Represent Agency in Contested Case	○	○	●

Key ● = most cases ◐ = some cases ○ = rarely

DOA Support

- Administrative Record
- Templates
- Advice



Contract Management: Contractor Problems

Contract Disputes/Terminations	DOA	Shared	Agency
Advise agency in contract disputes and negotiations	○	◐	●
Draft stop work order (when contract allows)	○	◐	●
Review and approve stop work order	○	●	◐
Represent agency in contract disputes and negotiations	○	◐	●

Key ● = most cases ◐ = some cases ○ = rarely

DOA Support

- Templates
- Advice

Note: Agency typically hires outside counsel for active litigation.



Contract Management: **Terms & Duties**

WHAT TO INCLUDE IN THE CONTRACT:

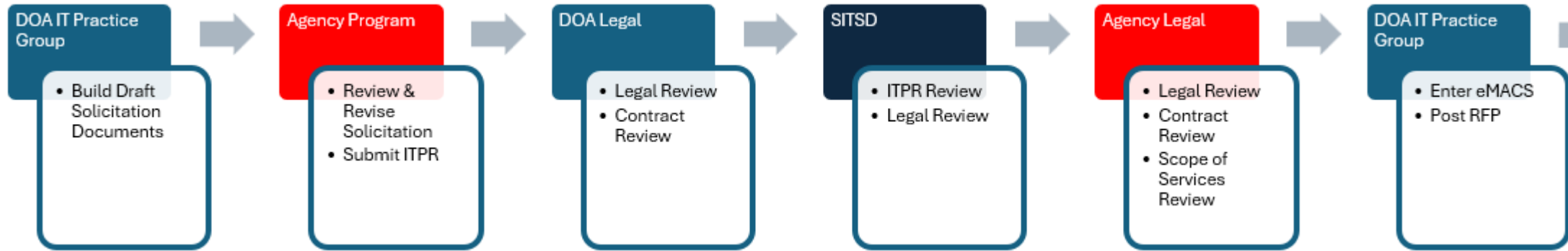
- Use Contract Liaison and Contract Manager language;
- Use the Meetings clauses in the contract – Technical/Contractual problems;
- Define performance in your contract (performance monitoring requirements) with the following functions:
 - Ensure required obligations in the contract are fulfilled;
 - Ensure acceptable levels of services or product quality levels are provided.

CONTRACT MANAGEMENT DUTIES

- Knowing the contract (all requirement, terms and conditions)
- Inspecting and Approving/Rejecting work
- Determining and documenting modifications amendments
- Reviewing and approving invoices
- Approving subcontractors
- Providing notices
- Documenting milestones
- Documenting technical/contractual and progress meetings
- Documenting contract complaints, disputes, potential terminations
- **Is the State meeting its obligations?**
- Have progress meetings
- Completing contract close-out when appropriate
- Involving legal staff, when needed



IT Procurement: Contract Building

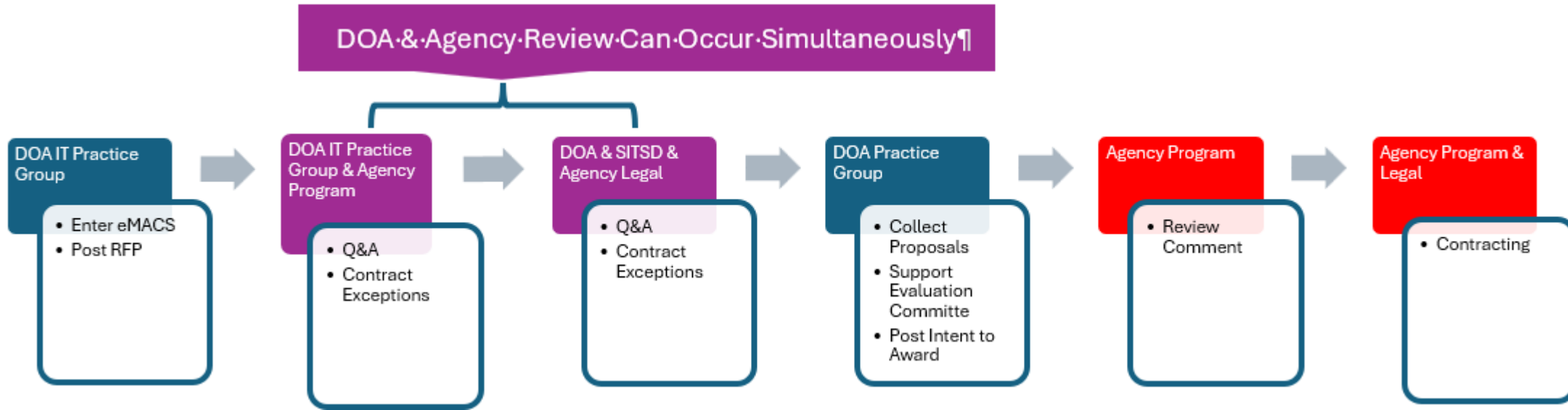


Contract Building

- contract base built by DOA SPSD IT Practice Group
 - reviewed by DOA Legal (general & state terms)
 - reviewed by SITSD Legal (IT terms)
- contract base and IT terms reviewed by Agency Legal
- contract base and IT terms reviewed by Agency
- complete draft contract posted with RFP by DOA IT group



IT Procurement: Contract Exceptions



Q&A or Contract Exceptions

- Agency Program and SPSPD IT Group Collaborate
- Agency Legal, SPSPD Legal, and SITSD Legal Collaborate

Simultaneous Review

- Leverage technology to collaborate, see changes
- SPSPD keeps eMACS updated



IT Procurement: **Contract Review & Negotiation**

Agency Legal Counsel

- Ensure compliance with procurement and IT laws
- Advise and represent agency as in other agency procurements
- **Review and negotiate all non-IT terms and conditions**
- **Participate in negotiating IT terms**
- Sign all IT contracts indicating they have been reviewed for legal content

SITSD Legal Counsel

- Review and participate in negotiating requested changes to standard IT terms
- Work with DOA SITSD security to address IT security risks
- **Will NOT review or negotiate non-IT terms**
- Signs or approves IT terms signed by State CIO



BELIEVE





Discussion & Questions?