

Office of Operations
2013 Fall Conference
November 6-7
Back to Basics

Advanced Topics for RFP Procurements

Priscilla Cassidy, Kathyann Heffernan and Jenny Reyes



New York State Office of the State Comptroller
Thomas P. DiNapoli, Comptroller

Office of Operations

John Traylor, Executive Deputy Comptroller

Division of Contracts and Expenditures

Margaret Becker, Deputy Comptroller

Charlotte Breeyear, Director, Bureau of Contracts

ADVANCED TOPICS FOR RFP PROCUREMENTS

Agenda

- ❖ Request for Information
- ❖ Pre-Bid Conference / Site Visit
- ❖ Evaluation Topics
 - Minimum Qualifications/Minimum Technical Score
 - Short Listing
 - Interviews
 - Product Demonstrations
 - References
 - Optional Items
 - Cost Evaluation
- ❖ Best and Final Offers (BAFO)
- ❖ Negotiations
- ❖ Assignments



REQUEST FOR INFORMATION (RFI)

The agency prepares a document which:

- ❖ **Provides** a preliminary description of the program objectives and goals.

And

- ❖ **Solicits** input from the vendor community as to the availability of products, services and/or technology to meet their needs.



REQUEST FOR INFORMATION (RFI)

- ❖ Recommend notification of the RFI be published in the Contract Reporter and/or trade journals.
- ❖ The RFI is mailed to **all** potential offerors known by the agency at the time of mailing.



REQUEST FOR INFORMATION (RFI)

- ❖ Typically information provided is in the form of product pamphlets and white papers.
- ❖ Another approach is a round table session or open meeting. This approach allows:
 - potential vendors and agency staff to ask questions of each other.
 - Open exchange of information.
- ❖ Items to consider:
 - Provide agenda detailing specific topics to be discussed.
 - Request vendors submit questions prior to meeting.
 - Keep a level playing field. Provide in writing to all participants response to questions or clarifications.



REQUEST FOR INFORMATION (RFI)

- ❖ No award may be made under the RFI process.
- ❖ Results of the RFI should not be a basis for a Single Source Contract Reporter Exemption Request.
- ❖ Be aware of restrictions on vendor preparation of specifications found in State Finance Law §163(2) and for technology procurements, see §163-a.



SCENARIO 1 – WHAT WOULD YOU DO?

- ❖ Request For Information was issued to identify web-based applications in the marketplace that provide project portfolio management tools to track, report, monitor and measure their technology projects.
- ❖ Interested parties were requested to provide general information on product functionality and estimated price ranges. It was identified that firms may be asked to participate in a Questions and Answer Meeting.



SCENARIO 1 – WHAT WOULD YOU DO?

- ❖ A total of 25 firms responded to the Request For Information and provided the requested information on their product.
- ❖ The agency invited 15 firms to participate in a Question and Answer session.
- ❖ Agency ultimately issued a Request For Proposal. The same 25 firms responded to the Request For Proposal. An award was ultimately made to one of the firms that had participated in the Question and Answer session.



SCENARIO 1 – WHAT WOULD YOU DO?

- ❖ ***Approve the contract?***
- ❖ ***Request additional information?***
- ❖ ***Return the contract non-approved?***



SCENARIO 1 – WHAT WOULD YOU DO?

❖ ***Return contract non-approved.***

- Cannot limit participation unless a specific minimum qualification was established that must be met in order to participate in the Question and Answer Session.
- Vendors who did not participate in the Question and Answer session could potentially be disadvantaged.



BIDDER'S CONFERENCE/SITE VISIT

- ❖ Mandatory or Optional?
- ❖ A best practice is to keep the ad as simple as possible.
- ❖ Refer bidders to the RFP for timeline of all events.
- ❖ Allow sufficient time for advertisement to appear in the *Contract Reporter*. Particularly important if conference or visit is mandatory.
- ❖ Must maintain Record of Proceedings
- ❖ Prepare an Agenda with topics to be discussed.
- ❖ Be aware of Procurement Lobbying Law restrictions & requirements (Guide to Financial Operations XI.18.B)



BIDDER'S CONFERENCE/SITE VISIT

Mandatory

- ❖ Questions and Answers must be provided after the conference/visit to all bidders who attended.
- ❖ Transcript must be shared with all who attended.
- ❖ Sign-in sheet must be provided to OSC. The date, time, vendor name, and vendor representative signature must be included.

Optional

- ❖ Questions and Answers must be provided to all potential bidders or notify of posting on website.
- ❖ Sign in sheet is still a best practice



MINIMUM QUALIFICATIONS/MINIMUM TECHNICAL SCORES

- ❖ **Minimum Qualifications** reviewed by agency on Pass/Fail basis
- ❖ If agency wants to further score the qualification, may only be scored based on exceeding the minimum threshold.
- ❖ RFP must identify the qualifications.

- ❖ **Minimum Technical Score** must be met to continue through the process.
- ❖ RFP must identify the minimum technical points or specific technical score that must be achieved.



MINIMUM QUALIFICATIONS/MINIMUM TECHNICAL SCORES

- ❖ Agency should document rationale for both using a minimum technical score and the actual minimum technical score chosen.
- ❖ Evaluation Instrument must clearly define all scoring methodology.
- ❖ Any bidder disqualified for not meeting the criteria will not be included in cost score evaluation or any further step of the evaluation process.



SCENARIO 2 – WHAT WOULD YOU DO?

The Evaluation was structured such that cost was worth 30 points and technical was worth 70 points. The agency set a minimum technical score of 49 (70% of 70 points). Given the following scenario what are the agency's options?

	Technical Score
Bidder A	48
Bidder B	38
Bidder C	47
Bidder D	35



SCENARIO 2 – WHAT WOULD YOU DO?

- ❖ *Proceed with evaluation of Bidder A?*
- ❖ *Re-bid the services?*
- ❖ *Waive the Minimum Technical Score and proceed with evaluation of all?*



SCENARIO 2 – WHAT WOULD YOU DO?

❖ ***Re-bid the services.***

❖ ***If all bidders fail to meet the technical score, procurement must be re-bid.***

❖ Pitfalls

- ❖ Minimum score may be too restrictive.
- ❖ Possibility that none of the bidders will achieve the minimum score.
- ❖ Cannot alter evaluation criteria after proposals are received thus could result in services being re-bid.
- ❖ Ensure consistency between Request For Proposal, Evaluation documents and Contract Reporter Advertisement.



SHORT LISTING

A process that limits the number of vendors that are allowed to continue into the final evaluation step (i.e. Interview, Presentation, References, etc.) based on their preliminary score.

- ❖ Must consider both Technical and Cost scores.
- ❖ Request For Proposal and Evaluation Instrument should indicate the process that will be used to develop the short listed vendors.



SHORT LISTING

Options

- ❖ Will the final evaluation step be *scored*?

Example – Final evaluation phase is a product demonstration worth 15 points.

- RFP should state a short list will be used and all vendors susceptible to award will be included in the short list.
- Evaluation instrument should define how the short list will be developed. (i.e. If this phase is worth 15 points, only vendors within 15 points of the highest composite score will be invited to participate.)



SHORT LISTING

Options

- ❖ Will the final evaluation step be used to ***validate*** information only?

Example – Final evaluation phase is an interview. No points will be awarded but scores may be adjusted based on interview results.

- RFP should state a short list will be used and indicate the estimated number of bidders that will be interviewed.
- Evaluation instrument must define how the number of participants to be interviewed was determined. If re-scoring is allowed, OSC recommendation is to include all susceptible to award.
- Process not intended to re-score the entire proposal.



SCENARIO 3 – WHAT WOULD YOU DO?

- ❖ Agency has short listed bidders to move onto the interview phase. The preliminary results of the evaluation for the procurement are listed below.
- ❖ 70% Technical and 30% Cost Weighting.
- ❖ Request For Proposal and Evaluation Methodology state the two Vendors with the highest composite score will be invited in for interviews.
- ❖ Initial scores can be adjusted downward only based on interview results.

Preliminary Composite Score

	Tech Support Inc.	IT Specialist Inc.	Omni Technology	Knowledge Software
Total Technical	42.3	55.3	64.0	64.0
Total Cost	19.8	30.0	27.5	18.6
TOTAL	62.1	85.3	91.5	82.6



SCENARIO 3 – WHAT WOULD YOU DO?

- ❖ IT Specialist Inc. and Omni Technology were interviewed and both of their scores were adjusted.

Preliminary Composite Score

	Tech Support Inc.	IT Specialist Inc.	Omni Technology	Knowledge Software
Total Technical	42.3	55.3	64.0	64.0
Total Cost	19.8	30.0	27.5	18.6
TOTAL	62.1	85.3	91.5	82.6

Post Interview Score

	Tech Support Inc.	IT Specialist Inc.	Omni Technology	Knowledge Software
Total Technical	XX	44.0	53.0	XX
Total Cost	XX	30.0	27.5	XX
TOTAL	XX	74.00	80.5	XX



SCENARIO 3 – WHAT WOULD YOU DO?

- ❖ Realizing that making an award to a vendor with a lower composite score would appear to contradict the concept of best value, the Agency decides to invite Knowledge Software in for an interview.

Post Interview Score

	Tech Support Inc.	IT Specialist Inc.	Omni Technology	Knowledge Software
Total Technical	XX	44.0	53.0	63.0
Total Cost	XX	30.0	27.5	18.6
TOTAL	XX	74.00	80.5	81.6

- ❖ Based on the evaluation results, an award is made to Knowledge Software.



SCENARIO 3 – WHAT WOULD YOU DO?

- ❖ ***Approve the contract?***
- ❖ ***Request additional information?***
- ❖ ***Return the contract non-approved?***



SCENARIO 3– WHAT WOULD YOU DO?

❖ ***Return the contract non-approved.***

- By interviewing the 3rd ranked firm, the Agency changed its process after the receipt of the proposals in violation of State Finance Law § 163-7.
- If an award was made under the initial interview results, the evaluation process would not have achieved best value results.

❖ ***Pitfall***

- Contract is non-approved.
- Failure to include all vendors susceptible to award could result in a successful bid protest.



INTERVIEW

Request For Proposal should state how the interview will be used. The same evaluators must be present for all interviews.

❖ Two options:

- Score using a specific set of questions for all bidders who qualified for the interview. If this technique is used, all bidders susceptible to an award should be included;
- Use to validate information provided in the proposal. Based on the information provided, the agency reserves the right to re-score against the original technical criteria. Evaluators should note the reasons for changing their initial scores.



PRODUCT DEMONSTRATION

- ❖ Request For Proposal should state if the product demonstration will be scored or used to validate information already provided.
- ❖ The same evaluators must be present for all demonstrations.
- ❖ Agency should develop a product demonstration agenda and document outcomes.



REFERENCES

- ❖ Request For Proposal and Evaluation Instrument should state how and when (e.g. 9 to 5 EST) references will be contacted.
- ❖ How will the information be used?
 - Proposal validation?
 - Pass/Fail?
 - Points?
- ❖ Things to consider:
 - Define procedure that will be followed if a reference cannot be contacted.
 - Identify in RFP that it is the firm's responsibility to ensure that Contacts are willing to provide a reference.
 - Identify the number of references needed but suggest vendors provide more than the needed number and include order of preference.
 - Very time consuming process, weigh the benefits of the information that will be provided.
 - Anticipate difficulties.



OPTIONAL ITEMS

- ❖ If the Request For Proposal requests pricing for an optional item or service, it must be included in the evaluation process if it is the Agency's intent to include it in the contract or a future amendment.
- ❖ All bidders must provide pricing (optional for the agency not vendors)
 - Weigh the value of the need – will this make solicitation too restrictive?
- ❖ Cost must be evaluated.
- ❖ If not included in the evaluation process, normal procurement rules apply for future need.



COST EVALUATION

- ❖ Cost must be **objective**. Evaluation can be done by one individual. The result is a single value that is added to the technical score.
- ❖ Define in Evaluation Instrument the use of decimals and rounding.
- ❖ A two-step approach is possible.
 - For example: Step I is a fixed cost that is based on a set of deliverables. Step II is based on hourly costs for specific skill sets.



COST EVALUATION

- ❖ Provide two components for cost:
 - Step I lists each Deliverable as well as a fixed Not-to-Exceed cost total.
 - Step II to be completed with the hourly rate for each skill set.

- ❖ Set maximum points available for each of the cost components.



SCENARIO 4 – WHAT WOULD YOU DO?

- ❖ The Request For Proposal for the Project Management Tool requested the bidders provide a system implementation cost and a fixed annual maintenance cost over a five year period.
- ❖ 70% Technical and 30% Cost Weighting.
- ❖ Progressive Technology provided a fixed maintenance cost for year 1 and stated years 2 through 5 would be based on the preceding year's cost plus CPI.



SCENARIO 4 – WHAT WOULD YOU DO?

❖ To address this situation, the Agency assumed an annual escalation rate of 3% for evaluation purposes.

	Global IT Partners, Inc.	Progressive Technology	Worldwide System Specialists	Knowledge Forte
System Implementation	\$500,000	\$495,000	\$350,000	\$559,000
Maintenance Costs	\$58,500	\$63,710 *	\$90,000	\$29,000
Total Cost	\$558,500	\$558,710	\$440,000	\$588,000
Cost Score	23.63	23.63	30.00	22.45
Technical Score	69.00	69.00	55.00	70.00
Total Score	92.63	92.63	85.00	92.45



**Assume 3% annual CPI escalation*

SCENARIO 4 – WHAT WOULD YOU DO?

- ❖ **In accordance with State Finance Law, lowest cost is the determining factor in a tie.**
- ❖ **Global IT Partners has the lower cost and is determined to be the best value.**

	Global IT Partners, Inc.	Progressive Technology	Worldwide System Specialists	Knowledge Forte
System Implementation	\$500,000	\$495,000	\$350,000	\$559,000
Maintenance Costs	\$58,500	\$63,710 *	\$90,000	\$29,000
Total Cost	\$558,500	\$558,710	\$440,000	\$588,000
Cost Score	23.63	23.63	30.00	22.45
Technical Score	69.00	69.00	55.00	70.00
Total Score	92.63	92.63	85.00	92.45



**Assume 3% annual CPI escalation*

SCENARIO 4 – WHAT WOULD YOU DO?

❖ ***Approve the contract?***

❖ ***Request additional information?***

❖ ***Return the contract non-approved?***



SCENARIO 4 – WHAT WOULD YOU DO?

❖ **What if the agency assumed an annual escalation of 1.5%, the year-to-date CPI average?**

	Global IT Partners, Inc.	Progressive Technology	Worldwide System Specialists	Knowledge Forte
System Implementation	\$500,000	\$495,000	\$350,000	\$559,000
Maintenance Costs	\$58,500	\$61,827 *	\$90,000	\$29,000
Total Cost	\$558,500	\$556,827	\$440,000	\$588,000
Cost Score	23.63	23.71	30.00	22.45
Technical Score	69.00	69.00	55.00	70.00
Total Score	92.63	92.71	85.00	92.45

**Assume 1.5% annual CPI escalation*



SCENARIO 4– WHAT WOULD YOU DO?

❖ ***Return the contract non-approved.***

- The proposal from Progressive Technology was non-responsive to the Request For Proposal requirements as they did not provide a fixed rate for each year.
- The agency cannot not make an accurate assumption on what the CPI escalation will be each year in order to evaluate the cost proposal.



BEST AND FINAL OFFERS (BAFO)

- ❖ Considered a revision as discussed in State Finance Law.
- ❖ Typically a revised final cost proposal (opportunity to “sharpen their pencils”)
- ❖ Beneficial if bids are above agency budget

- ❖ **Agency must reserve right to request BAFOs**



BEST AND FINAL OFFERS (BAFO)

Things to Consider

- ❖ “Susceptible to Award” (eligible for BAFO) must be well defined in Evaluation Instrument, especially if short listing is also being used.
- ❖ May not change scope – cannot prejudice bidders who may not have bid based on original Request For Proposal.
- ❖ May not change evaluation criteria after receipt of bids.
- ❖ Problematic if also using short listing or any technical re-score.
- ❖ Cost and composite scores are re-calculated.



NEGOTIATIONS

- ❖ Different from a Best and Final Offer.
- ❖ Agency may negotiate with selected vendor to the benefit of NYS to drive down cost with the apparent winner.
- ❖ Award notification letter should:
 - Indicate a conditional award subject to successful negotiations.
 - Non-winning bidders should be notified of conditional award and the possibility that failed negotiations could result in an alternative award.
- ❖ Reserve this right in Request For Proposal.
- ❖ Do not allow tradeoff of some prices to increase while others decrease.



ASSIGNMENT

- ❖ One vendor assigns responsibility for performance **and** right to payment to another vendor.
- ❖ It will be signed by assignor, assignee and the agency.
- ❖ Due to a corporate restructuring, the assignor and assignee may have the same signatory.



ASSIGNMENT

- ❖ Must assume the work at no additional cost to the state with no change to terms or conditions.
- ❖ Must include an Effective Date for the transfer of liabilities.
- ❖ Contractor's legal name must be on the agreement (Guide to Financial Operations XI.2.D) if it also uses a Doing Business As (DBA) name.



ASSIGNMENT

- ❖ SFS requires 2 'batches' be created.
 - Amendment to Original Agreement
 - Change the end date to the day before the assignment effective date.
 - Reduce the contract amount down to the final total payment amount.
 - Create New Contract
 - Established under the new vendor ID.
 - Starts on the effective date of the assignment.
 - End date should be the same as original contract end date.
 - The contract amount may not exceed the total unexpended amount from the original agreement.



ASSIGNMENT

- ❖ Guide to Financial Operations Chapter XI.12.B provides guidance and boilerplate agreement.
- ❖ Different from an Assignment of Payment (Guide to Financial Operations Chapter XII.8.E) or a Vendor Name/Address Change.



THANK YOU!



Any Suggestions for Topics to be Covered Next Time

