

OSE RFP HANDBOOK

*Selection Procedures for Construction
Using A Request for Proposal*

**Office of Procurement Services
Office of State Engineer
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Chapter 1. INTRODUCTION

Applicability

The State Engineer has issued this Handbook as a guide for competitive sealed proposal procurements. As used in this Handbook, the term "selection process" refers to the procedure for competitively negotiated procurements of construction services. This procedure is outlined in §11-35-1530 of the South Carolina Code (Code) and Chapters 3 (Construction Management at Risk) and 11 (Design-Build) of the Manual for Planning and Execution of State Permanent Improvement Projects – Part II (the Manual), which require that the evaluation of proposals and the award of contracts be based on price and other factors specified in the solicitation documents. This handbook does not apply to acquisitions of Architect-Engineer services independent of construction services.

Authority to Employ

SC Code Ann §11-35-3010 of the Code requires the Agency to make a written determination of the project delivery method that is most advantageous to the State for the project at hand. This provision also requires the State Engineer's approval of the selected project delivery method. Chapter 2 of the Manual sets for the process of making a written determination and the requirements the determination must meet.

SC Code Ann § 11-35-3005 the following project delivery methods:

1. Design-Bid-Build
2. Construction management at-risk (CM/at-risk) also known as CM/Constructor (CM/C);
3. Design-build;
4. Operations and Maintenance;
5. Design-build-operate-maintain;
6. Design-build-finance-operate-maintain; and
7. Any other combination of design, construction, finance, and services for operation and maintenance the Board or State Engineer may authorize.

SC Code Ann § 11-35-3015 and Chapters 2, 3, and 11 provide that the competitive sealed proposal source selection process as set forth in SC Code Ann § 11-35-1530 is the appropriate source selection method for construction management at risk, design-build, design-build-operate-maintain, and design-build-finance-operate-maintain.

Contents of the Handbook

This handbook provides guidance on the selection process. It includes a general outline of the process, an explanation of sample approaches to source selection using a Request for Proposals (RFP) and details for conducting a construction project acquisition using those approaches. Specific methods of project delivery, such as Design-Build, or other aspects of the selection process, such as pre-qualification may have additional requirements.

CHAPTER 2: OUTLINE OF PROCESSES AND APPROACHES

General

SC Code Ann §11-35-1530 prescribes the general policies and procedures for source selection in competitively negotiated acquisitions. The procedures apply to negotiated procurements where the final selection will be based the Agency's evaluation of price and other factors as specified in the solicitation documents.

The goals of the proposal evaluation process are to assure an impartial, equitable, and comprehensive evaluation of competitive proposals, and to support the selection of that source whose proposal best satisfies the Agency's needs, price, and other factors considered. Objectives in support of this goal are:

1. Agency is able to solicit and evaluate proposals and make the selection decision with minimum complexity and maximum efficiency and effectiveness.

2. The Agency's evaluation of each offeror's proposal and related capabilities is impartial, equitable, economical, and thorough and is accomplished in a manner that provides the Agency with appropriate information on which to make an objective selection.
3. The selection process is flexible to accommodate the objectives for a specific procurement. The process assures that the selection approach and procedures are compatible with the Agency's program requirements, risks, and conditions.
4. The selection process minimizes offeror proposal and Agency evaluation expenses.
5. The process ensures a balanced appraisal of all significant factors by using the professional skills of qualified personnel in appropriate functional areas.

The OSE has developed this Handbook to assist State Agencies to accomplish these objectives.

Agency Selection Plan

First, the Agency needs to prepare the Selection Plan (Plan) that it will use to select and award a contract. The approach selected should reflect the nature of the project and the size or complexity of the acquisition involved. The Agency must submit this plan to the State Engineer for review and approval as required by SC Code Ann §11-35-3010 and Reg 19-445.2145. Once the State Engineer approves the preliminary Plan, the Agency will need to establish a Selection Committee and prepare a final Plan, including a statement of the project requirements and the evaluation factors that it will use to select the contract awardees. The Agency must identify these criteria in the RFP.

Sample Approaches to Selection

The following are sample approaches for selection by competitive sealed proposals. These approaches may or may not be applicable to your particular project and the agency must evaluate the approach best for their project. OSE must approve the selected approach.

Approach 1: Technically Superior Proposal (*superior in quantity, quality, and technical ability*)

This approach involves publication of the Agency's budget and the solicitation of technical proposals to provide the Agency with the maximum possible for the budget. These proposals are evaluated to identify those which are acceptable to the Agency or could, after clarification, be made acceptable. Separate sealed price proposals are solicited at the same time or later, to be evaluated at a later date for compliance with the Agency's budget requirements. After any necessary clarification of the technical proposals, the offerors are ranked from most technically superior to least. The price proposal from the highest ranked offeror is then opened and evaluated against the Agency's budget requirements for price reasonableness. If the price is within the Agency's published budget, then the Agency will award the contract to the highest ranked offeror. The Agency must return the price proposals of the other offerors unopened. If the price does not comply with the Agency's budget requirements the Agency may initiate price negotiations with offerors as set forth in 11-35-1530 and the Manual.

In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors.

Approach 2: Greatest Value Proposal

The "greatest value" proposal is a method of evaluating price and other factors specified in the solicitation. The goal is to select the one proposal that offers the greatest value to the Agency in terms of performance and other factors. Properly used, the "greatest value" approach results in the selection of the proposal that offers the most for the money, not necessarily the lowest price.

Under this method, the Agency issues a solicitation requesting both technical and price proposals. The technical proposals are evaluated and any necessary clarifications are obtained (any clarifications discussions must comply with the requirements of the law and the Manual). The price proposals are then evaluated to rank the proposals from most advantageous to least advantageous.

If the Agency has so stated in the solicitation documents, it may either continue to an award without discussions or establish a competitive range. If an award is made without discussions, the unsuccessful offerors are notified.

If the Agency elects to establish a competitive range, all offerors outside the competitive range are notified that their offers have been eliminated from further consideration. The Agency then conducts oral or written discussions and negotiations with all offerors within the competitive range (any discussions must comply with the requirements of the law and the Manual). The offerors are asked to submit best and final proposals and they are then assigned a final ranking in accordance with the solicitation's evaluation criteria. The award is made to the offeror that submitted the proposal whose best and final offer represents the greatest value to the Agency in terms of price, performance and other factors. Unsuccessful offerors are notified.

This approach gives the Agency flexibility to select the offeror whose total proposal is expected to meet the stated Agency requirements best. The greatest value concept encourages the Agency to perform a value analysis or price and technical trade off. It does not require that the award be made to the offeror submitting the lowest price, although the ultimate decision may be to award to the lowest priced offeror.

If an award is made at a higher price, the selection decision must document the value analysis that justifies the expenditure of the additional funds.

Go, No-Go Factors

When using either of the approaches outlined above, a go, no-go approach can be applied to some or all of the evaluation factors or sub factors identified in the solicitation. An evaluation factor such as "management" may be used as a discriminator for evaluation on a "go, no-go" or pass-fail basis. If the "management" factor is scored "adequate", it may, or may not, have further relevance in the evaluation process depending upon how the evaluation process is structured. The evaluation process may be structured so that the factor is dropped from the evaluation process if it is scored adequate. On the other hand, the evaluation process may be structured so that the factor is scored and the merits of the factor is considered in the ultimate award decision. An adequate score in such an area is therefore a minimum requirement for selection and failure to meet the minimum is cause for rejection of the proposal, unless the deficiency is susceptible to being corrected through the very limited process of clarification.

CHAPTER 3. ORGANIZATIONAL STRUCTURE AND STAFFING

Organizational Structure

Overview

Skilled personnel should be organized for conducting the evaluation and making the selection. As a minimum the organizational structure should:

- Be flexible.
- Avoid any overlapping or redundant responsibilities.
- Separate the evaluation and selection function from the final approval function.
- Provide for both horizontal and vertical channels of communication.
- Be staffed on a minimum essential basis only.

The selection organization consists of a selection committee to evaluate the proposals and a final approval authority (the Agency Head or a designee) at a management level above that of the Agency Project Manager. The individual designated to serve as the Agency's final approval authority should be at a management level above the Agency Project Manager and the cognizant technical program official so that he will be in a position to evaluate the best interests of the Agency, considering procurement as well as programmatic concerns.

The Selection Committee is composed of a non-voting Chair appointed by the State Engineer, technical members and the Agency Project Manager. For complex procurements, the Agency Head may assign a non-voting secretary

and a legal advisor. The number of technical members appointed for a particular procurement depends upon the circumstances of the procurement (e.g., types of expertise needed and number of proposals anticipated). For the make up of the selection committee, see Chapters 11 or 12 of the Manual as appropriate to the project delivery method.

The Selection Committee assists the Agency Project Manager in developing the Selection Plan, and for evaluating proposals in accordance with the Plan and the RFP. The Selection Committee is also responsible for the preparation of report(s) on the evaluation results. The Selection Committee reports to the individual with the responsibility for final Agency approval of the selection.

Specific Responsibilities

Agency Head

In this Handbook the term “Agency Head” is used to identify the function of giving final Agency approval to award a contract. Depending on the specific agency structure and operational procedures, that may be the Agency Head, or a designee, a Board, or other entity. The Agency Head, acting as the final selection authority, is responsible for:

1. Directing the Agency's efforts during the entire source selection process.
2. Reviewing and approving of the Selection Plan and the Request for Proposals (RFP).
3. Appointing the members of the Selection Committee, other than the Chair. The OSE’s concurrence with the proposed Committee membership is required.
4. Reviewing and approving the schedule of all actions required from receipt of proposals to signing of the contract.
5. Providing the Selection Committee with appropriate guidance and special instructions as may be necessary for conducting the evaluation and selection process including approving the evaluation factors and weights assigned.
6. Reviewing and approving the Selection Committee’s competitive range determination. Reviewing and approving the Selection Committee’s final report and selection. The Agency Head may choose to reject the Committee’s choice, but such action will require a new procurement.

Agency Project Manager

Subject to the policies and procedures of a specific agency, the Project Manager is responsible for:

1. Preparing and submitting a draft of the Selection Plan to the Selection Committee for its review.
2. Preparing and submitting the final Plan to the Agency Head and the Office of State Engineer for approval.
3. Preparing the Request for Proposals, with the assistance of program and/or technical personnel.
4. Coordinating with the Selection Committee, the Agency Head and the OSE on the preparation and issuance of the RFP.
5. Issuing any amendments to the RFP in conjunction with the OSE.
6. Conducting pre-proposal conferences in accordance with established procedures.
7. Preparing South Carolina Business Opportunities (SCBO) announcements.
8. Safeguarding classified or other sensitive materials, including proposals and amendments.
9. Scheduling Selection Committee meetings.
10. Conducting or coordinating price analyses and documenting the results.

11. Participating as a voting member of the Selection Committee.
12. Promptly notifying all offerors eliminated from the competition.
13. Determining contractor responsibility.
14. Compiling the Selection Committee's scores and submitting them to the chair for approval.
15. Conducting or controlling all discussions and negotiations with offerors.
16. Requesting best and final offers.
17. Taking all necessary contractual actions.
18. Preparing the Selection Committee's report to the Agency head outlining the selection process and making the Committee's recommendation (must be submitted to the chair for his approval).
19. Notifying unsuccessful offerors.

Selection Committee Chair

The Selection Committee Chair is a non-voting member appointed by the State Engineer. The Committee Chair's duties include the following:

1. Conducting Committee meetings and deliberations.
2. Providing overall supervision, planning direction and execution of the Committee's activities.
3. Reviewing and approving final determinations of responsiveness on individual proposals.
4. Supporting the Agency Head to the fullest extent possible by conducting intermittent in-process reviews as required.
5. Approving the Agency project manager's summarization of the raw evaluation data.
6. Approving the Agency project manager's report to the Agency Head on the selection process and the Selection Committee's recommendation.

Committee Membership

The Selection Committee should normally be composed of State employees.¹ For the purposes of selection, members of Agency Boards, acting in their official capacity, are considered State employees. The Committee should be comprised of more than two voting members. The State Engineer's concurrence is required for all RFP selection committee appointments. For the make up of the selection committee, see Chapters 11 or 12 of the Manual as appropriate to the project delivery method.

Technical Advisors

Outside technical advisors with special expertise not available on the Selection Committee, but considered essential to the selection process, may be appointed by the Agency Head. The Agency Head may use a letter similar to the one used to establish the Committee to appoint technical advisors. In addition, advisors must sign nondisclosure and conflict of interest statements. Since advisors are to be utilized in discrete areas, they should not be given access to

¹ A project by an eleemosynary organization subject to the provisions of the Consolidated Procurement Code by virtue of Section 11-35-40, depending on the details of the procurement, may be exempted from this requirement.

information concerning overall Committee activities. Advisors should not attend Committee meetings unless specifically requested by the Committee Chair.

Technical Advisors may be State employees, contract personnel or individuals whose special expertise is required to ensure a complete evaluation of the proposals.

Changes in Selection Committee Membership

Changes may be made only with the approval of the Agency Head and the OSE. The letter designating the change is prepared and issued in the same way as the letter establishing the Committee.

MEMORANDUM	
FROM:	Head of Agency
TO:	State Engineer
SUBJECT:	Selection Committee for <i>[PROCUREMENT PACKAGE TITLE]</i>
I hereby request your concurrence in the designation of the following individuals to serve as members of the Selection Committee for <i>[PROJECT TITLE AND NUMBER]</i> .	
Chair:	Name, OSE Project Manager, Non-voting
Other Members:	(Repeat as necessary Name, Functional Title, Organizational Assignment
Secretary:	Name, Functional Title, Organizational Assignment, Non-voting
Legal Advisor:	Name, Functional Title, Organizational Assignment, Non-voting
The Selection Committee will follow the applicable policies and procedures as defined in the Code, the Procurement Regulations and the OSE RFP Handbook. I understand that the Chair of the Selection Committee is responsible for ensuring that the Committee members are familiar with and adhere to these requirements, especially those relating to conflict of interest and nondisclosure of information. Selection Committee duties take precedence over other duties of the Committee members.	
Submitted:	_____
	Head of Agency Date
Concurrence:	_____
	State Engineer Date

Figure 1 - Sample Memorandum Establishing the Selection Committee

CHAPTER 4. SELECTION PLAN

Definition

The Selection Plan (Plan) is the document that explains how proposals from contractors are to be solicited and evaluated in order to make the selection decision. It outlines how negotiations will be conducted. It identifies who will do the evaluating (i.e., it identifies the Chair and members of the Committee). The Plan establishes milestone dates for the completion of the selection process.

The Plan is, in short, the Agency's statement to itself and to others as to how it intends to acquire what it needs. It distinguishes what is important from what is not and, by assigning weights, defines how important these distinctions are.

Uses of the Selection Plan

The Selection Plan serves several useful purposes, such as:

1. It translates the objectives stated in the agency's initial request to employ an RFP into a specific approach for soliciting and evaluating proposals.
2. It communicates the Committee's approach as a recommendation to the Agency Head and the State Engineer.
3. It serves as a charter for the Selection Committee.
4. It provides essential guidance to the writers of the RFP regarding what should be emphasized in the solicitation documents.
5. It describes the evaluation factors to be used, the weighting of factors, and the assessment methodology to be used by the evaluators.

Minimum Requirements

The Plan should include the following, as a minimum:

1. A description of the organizational structure; and,
2. A description of the proposed pre-solicitation activities; and,
3. A summary of the acquisition strategy, including any project-specific modifications to the State's standard contract forms, terms and conditions; and,
4. A statement of the proposed evaluation factors and their relative importance; and,
5. A description of the evaluation process, methodology, and techniques to be used; and,
6. A schedule of significant milestones.

Preparation and Approval of the Plan

The Plan is prepared by the Project Manager with the assistance of the responsible program and technical officials. The Committee must review the plan and the Agency Head and the OSE must approve the final plan before any pre-solicitation conferences are held and before the solicitation is issued.

Principal Elements of the Selection Plan

Although there is no prescribed format for a Plan, certain essential data must be included in a complete and understandable manner. A sample format that may be used in developing a source Plan is shown in Figure 2. The principal elements that must be considered in the development of each Plan are outlined below:

Description Of Property Or Services To Be Acquired

Include a brief, concise statement describing the property or services to be acquired, using a minimum of technical language.

Description Of The Organizational Structure

Include an organization chart, showing the Committee structure or a brief statement describing the organization structure.

Include a description of the duties and responsibilities of each element of the organization.

Include the nominations for Committee by attaching a roster of personnel by name, title, and agency to the plan.

Include schedules and agenda for the Committee. Key events or milestones that may be expected to occur between the time the Selection Committee is organized and its adjournment should be listed here. Provisions should be made for the following events:

- **Introductory Session.** During this meeting any special instructions of the Agency Head would be provided, as would the Committee Chair's explanation of the Plan, and the outline of training that might be required to ensure a common understanding among the evaluators of the evaluation requirements.
- **Intermediate Sessions.** The time between the receipt of the proposals and the completion of the evaluation is planned by the Committee Chair to meet the particular requirements of the RFP. Target dates for interim milestones may be established to complete the evaluation effort. The organization of the Committee's time is also important for making optimum use of the expertise and talent that has been assembled, in one place, to evaluate the proposals.
- **Concluding Session.** The final meeting should be for drafting the final Committee report.

Include information on the need for any preparation and training of individuals designated to participate in the evaluation process and how the Agency will provide that training.

Proposed Pre-solicitation Activities

Include any plans for pre-solicitation activities, such as the issuance of a draft solicitation or convening a pre-solicitation conference or pre-proposal conference. The plan should outline who will be responsible for arranging for conferences and who will attend as well as provide for a pre-briefing of Agency personnel on the objectives of the conference, and what can and cannot be discussed.

Summary Of The Acquisition Strategy

Include an explanation of the type of contract to be used, the proposed contract form, and the nature of any special features to be included in the contract.

Statement Of The Proposed Evaluation Factors And Their Relative Importance

Include a statement outlining the proposed evaluation factors and their relative importance. The following guidance should be considered in selecting evaluation factors and establishing their relative importance. The goal of the evaluation scheme should be to reflect the Agency's program needs so that the evaluation will accurately assess the ability of the offerors to meet the Agency's needs and to provide a basis for determining the relative merits of competing proposals. In selecting factors and developing the evaluation methodology, it is important to remember

that the evaluation and scoring of proposals must be against the evaluation factors and the related standards, not against other proposals.

Evaluation Factors

The evaluation factors that apply to a specific procurement and the relative order of importance of those factors are within the broad discretion of agency acquisition officials. In addition to requirements set forth in SC Code Ann § 11-35-1530, SC Code Ann § 11-35-3024 sets forth required evaluation factors specific to design-build, design-build-operate-maintain, and design-build-finance-operate-maintain projects including price. See Chapter 11 of the Manual for factors specific to these project delivery methods. Other evaluation factors that may apply to a particular acquisition are price realism, technical excellence, management capability, personnel qualifications, experience, past performance, schedule and any other relevant factors.

Agencies commonly use responsibility related factors in the evaluation process, notwithstanding the fact that a separate responsibility determination must ultimately be made. In a negotiated procurement it is recognized that traditional responsibility factors may be considered as technical evaluation factors and be used to judge proposals in assessing their relative merits, as long as the factors selected are limited to areas which, when evaluated comparatively, can provide an appropriate basis for selection that will be in the State's best interests. Such factors may include experience, available facilities, and personnel qualifications, but generally not financial capability (which is more usually addressed by bonding capacity for construction).

Evaluation factors for most procurements fall into two categories. The first relates to the manner in which the offeror plans to go about performing the contract work. The other relates to the characteristics of the offeror as a firm. Project-specific selection criteria may be used to supplement those described in the following paragraphs.

Factors relating to the manner of performance may include:

1. Technical excellence. This factor refers to the technical excellence, and the appropriateness to successful accomplishment of the work, of techniques, processes, and tests that the offeror plans to use. The greater the degree of such technical excellence and appropriateness of plans and proposed solutions in a given proposal, the more advantageous to the State.
2. Facilities. This factor refers to the character of the facilities the offeror plans to devote to the contract work, in terms of qualities important to successful performance in the particular case (e.g., accuracy, capacity, capability, and appropriateness of layout).
3. Schedule And Detailed Plan. This factor refers to the appropriateness, realism, comprehensiveness, and technical soundness of the contractor's schedule and detailed plan for carrying out the contract work. The completeness of detail, the sequence of planned operations, the timing and duration of any testing, and the time allowed for various phases of the work may significantly bear on the risk of technical failure and delay. Generally, the time of delivery itself will not be evaluated, but in some cases the value of the State of early delivery may justify the selection of a higher priced proposal.
4. Management Plan. This factor refers to the merit of the offeror's plan for managing the project and related contract administration. It may be pertinent to evaluate the degree to which the offeror's management plan has established well-defined lines of authority, responsibility and communication. The proposed management team should be evaluated for its' demonstrated ability to respond to technical changes and to mobilize to resolve problems. The ability of the offeror's management techniques to identify performance problems at an early stage and to help work around subcontractor delays and similar problems should be assessed.

Factors relating to the offeror itself may include:

1. Qualifications of key personnel. This factor refers to the availability, competency, pertinent education, and related experience of a firm's (or teams's) technical personnel. The experience and ability of key technical and administrative personnel are important factors in successful performance of a contract. In judging the competence of the offeror's technical and project management personnel, it is relevant to evaluate the degree to which the proposal demonstrates that the offeror has a sound and thorough understanding of the problems involved in the work to be contracted. The offeror's grasp of the difficulties and problems involved in performing a particular job reflect on his qualifications to perform that job well. The degree to which each offeror possesses technical qualifications to perform the work is commonly made a evaluation factor for selection. Often, the offeror's understanding of the work is stated as a separate factor, although it is essentially an indicator of qualification. One of the most valuable ways of gaining insight into an offeror's understanding of what a job really involves is to find out how he breaks it down and what personnel he proposes to assign to performing the various segments or aspects of the work. If an offeror proposes to assign to a rather difficult technical task, individuals who have had relatively elementary professional training in the relevant technical areas, or proposes to assign inadequate numbers of personnel for accomplishing the work in the required time, then the offeror's understanding of the work and ability to perform it satisfactorily should be questioned. Generally, the Agency should establish minimum qualification standards for key personnel in the solicitation to provide a common base for evaluation.
2. Availability of resources. This factor refers to the adequacy and availability of resources. In some cases, a firm may be more or less qualified, or particularly well qualified to conduct the work because of resources organizationally available to the firm, perhaps through affiliates or teaming partners.
3. Past experience. This factor refers to the extent of the offeror's past experience in carrying out similar work. In solicitations where the offeror is anticipated to be a team or joint venture, the Agency should use of subfactors to reflect the importance of relevant specialized experience and joint working experience of the members of the team or joint venture.
4. Past Performance. This factor refers to the quality of the offeror's past performance in carrying out similar work, with reference especially to such consideration as timeliness, cost control and technical success.

Selecting Evaluation Factors

Evaluation factors should be relevant, measurable, and essential. This is one case where more is not necessarily better. Too many evaluation factors can lead to a leveling of scores, in which case the final result will be a number of closely ranked offerors, with no discrimination among competitors. Generally, the number of technical evaluation factors should be limited to 3 to 5 factors. It is not the number of factors that is critical, but having the right factors. Evaluation factors should be studied and chosen with great care.

The factors and sub-factors selected must be independent of each other to avoid double counting. The factors should be reviewed to ensure that there are no common elements.

It is important to remember that the evaluation of proposals is conducted at the factor or sub-factor level by comparing proposals against measurable objective standards for each factor or sub-factor level, and not by comparing proposals against each other.

Once the evaluation factors have been identified, the Committee must describe the factor. The factor descriptions collectively serve as checks to determine that the evaluation plan is complete and that duplication does not exist between factors. They also serve as a guide to the evaluator to determine what is to be evaluated.

The evaluation factors and their descriptions must be included in the solicitation documents.

Development Of Evaluation Standards

After the factors have been determined and described, the Committee's next step is to prepare the evaluation standard itself. The minimum requirements of a standard must not exceed those which are specified as minimally

acceptable in the solicitation, and must not address requirements not included in the solicitation documents. Therefore, the standard defines the required minimum acceptable performance. While it is preferred that quantitative standards be used because of their definitive nature, qualitative standards are acceptable. All standards must be prepared before proposals are received.

The evaluation standards, which must be prepared for all factors and sub-factors, serve as positive indicators of the minimum performance or compliance acceptable to enable a contractor to meet the requirements of the solicitation. The standards serve as a measurement guide to determine how well an offeror's response meets the Agency's goals. Conversely, the standard identifies areas where proposals fail to meet requirements.

The following two examples of standards are furnished for illustration:

Example of a quantitative standard for Past Experience

Description: This factor considers the extent of the offeror's past experience in carrying out similar work on at least three projects, as well as the quality of the offeror's past performance in carrying out the work with reference to such considerations as timeliness and technical success.

The evaluation standard is met when:

- The offeror has performed work similar to that described in the solicitation under at least three contracts of comparable size. Work is similar if the functions, responsibilities, and control exercised by the contractor were essentially the same as required under the solicitation. A contract is comparable in size if it is within ___ percent of the estimated cost of the contract to be awarded.
- The past performance on the similar contracts was satisfactory, or better. In order to be considered satisfactory, the contractor must have completed the work on time and, in accordance with all contract requirements. The individual(s) responsible for awarding and administering the similar contracts will provide the assessment of the contractor's performance.

Example of a qualitative standard for Management Plan

Description: This factor considers the overall management strategy to be employed by the offeror in accomplishing the work. It will include all periods of the contract and cover all aspects of the operation. The factor includes the overall operational concept, identification of problem areas considered most critical and the offeror's strategy for resolution of problems, the organizational plan and how it facilitates the accomplishment of the Agency's requirements, and the organization chart showing all individuals with direct or indirect involvement in the proposed plan.

The evaluation standard is met when:

- The offeror demonstrates its understanding of the requirements by succinctly expressing the concept of the entire operation, clearly showing a grasp of the range and complexity of the work, including, but not limited to, the nature of work to be constructed and all supporting services to be rendered, the need for automated scheduling, tracking, and reporting, and the role of effective communication.
- The offeror demonstrates that it recognizes the major problem areas and has solutions in mind, such as: development of automated scheduling and reporting system and development of procedures for responding to concerns raised by the Agency or any other body having jurisdiction over the work.
- The offeror presents an organizational scheme that is capable of carrying out all functions effectively. The elements of the plan should reveal the offeror's understanding of the relative importance of each component.
- The offeror presents an organizational chart that clearly reveals sufficient personnel to carry out the tasks required.

Relative Importance of Factors

After choosing the evaluation factors the Committee and the Agency Head must carefully consider and define the relative importance among the factors. If the relative importance of factors does not accurately reflect the Agency's needs, the Agency find itself awarding to the wrong offeror. A very common example of this is having to decide between an offeror who offers more performance but at a high price and an offeror who offers marginally acceptable performance but at a very attractive price. In situations of low technical risk, one might decide the latter offeror could handle it and save the Agency some money. In situations of high technical risk, the Committee may decide it is worth the money to award to the offeror who is more likely to succeed. In either situation, the Agency may be thwarted because improper weighting of evaluation factors has "driven" the decision to the wrong offeror.

The relative importance of evaluation factors may be established by weighting the factors, by preparing priority or trade off statements, by judgmental decision rules, or a combination of these.

- Weighting would involve an assignment of relative importance among the factors by assigning points to each factor (typically a total of 100 or 1,000 points would be assigned). Numerical scoring systems do not ensure mathematical certitude. Over-reliance upon arithmetic summarization can lead to an incorrect decision based on the tabulations of numerous decisions scored by the individual evaluators.
- Priority or trade off statements would relate one factor to others. For example, in a priority statement "price" may be said to be slightly more important than "management" but slightly less than "operational suitability."
- A decision rule would tell how to deal with a factor under varying conditions. For example, a decision rule might be "if Management is rated anything less than satisfactory, the entire proposal is unacceptable," or "if the price offered is 30 percent higher than the Agency estimate, it will be judged as being potentially unrealistic, and the technical proposal will be reevaluated to see if there is some misunderstanding of the requirements."

Price must be considered in every selection, but cannot be scored numerically. Price should be related to technical evaluation factors by priority or trade off statements, e.g., "price is more important than technical evaluation factors"; or, "price is of equal importance to the technical evaluation factors."

Description Of The Evaluation Process, Methodology And Techniques

Include an explanation of the approach to selection that will be used, i.e., greatest value concept or technically superior proposal. In every case, the Plan should include a description, for "in-house" use, of the methodology that evaluators will use to express their judgment of the degree of merit each proposal possesses in relation to the announced evaluation factors. The objectives of this portion of the Plan are to provide guidance to the evaluators, to provide the ground rules for an objective, impartial and uniform evaluation of the proposals, and to provide a basis for preparation of the solicitation documents.

The particular scoring system to be used in the evaluation should also be described in this portion of the plan. Of the scoring systems available, including numerical, adjectival, or combination, one must be chosen and tailored to the requirements of the specific procurement.

Sample forms to be used by the evaluators may be appended to or included in the Plan at this point. Such forms may provide for recording the findings of evaluators and for totaling scores or averaging the scores.

The most frequently used rating procedure in proposal evaluation is the numeric method. Raw scores are normally based on a pre-established scale from 0 to 10. Each raw score is then multiplied by the weighting factor, if they have been assigned. Each final numerical score must be accompanied by a supporting narrative signed by the evaluator and discussing strong and weak points which were considered in the scoring.

Adjectival scoring may be employed independently or in connection with numerical ratings. Where this is done, it is customary to establish adjective scoring standard in advance, for the purpose of having the same set of values used

by all evaluators in arriving at their independent judgments. A typical numerical-adjectival combined rating matrix is shown in Table 1.

Adjectival ratings may be used by themselves, or combined with numerical scores when the weighting factor is to be applied. In any event, a written narrative of the strengths and weaknesses of a proposal, for each evaluation factor, must be prepared.

The go, no-go approach can be applied to individual evaluation factors. For example, financial soundness may be utilized as a discriminator for evaluation on the basis of go, no-go. In the actual evaluation, the response to that factor is either adequate or inadequate. If it is inadequate, the Agency would exclude the offeror from further consideration. In a "go" situation, the element may, or may not, be further scored depending upon the structure of the evaluation plan.

Schedule Of Significant Milestones

Efficient use of time is indispensable to the sound management of the selection process. Optimum use of all personnel assigned is doubly important because the time spent on the evaluation is also time lost from primary duties. Therefore, the plotting of a schedule with target dates is a basic part of the Plan. Only the pivotal or significant events should be listed. However, the plan should cover, as a minimum, the following phases:

- The period beginning with the designation of the Project Manager and ending with the issuance of the RFP.
- The period from the receipt of contractor proposals continuing through the signing of a contract, during which evaluation, negotiation, and selection take place.

When time permits, it is to the Agency's advantage (and the offeror's as well) to permit the submission of the proposal in installments (i.e., the technical proposal first, to be followed later by the price proposal or other segments of the contractor's total response). The delayed submission of the price proposal may contribute to reliability in the contractor's estimates, particularly when it has been continuously reworking the technical proposal up to the date of delivery in order to present the best possible proposal in the time allowed. Care should be taken to set out specific times and places for delivery of each part of the proposal.

AGENCY SELECTION PLAN	
Selection Plan for: _____	
1	Description of the Project and Services to be acquired.
2	Description of the organizational structure, including: <ul style="list-style-type: none"> 2.1 The duties of the Agency Head and the Selection Committee 2.2 Nominations for staffing the Selection Committee by individual name and field of expertise.
3	Proposed pre-solicitation activities
4	Summary of the procurement strategy
5	Statement of the proposed evaluation factors and their relative importance.
6	Description of the evaluation process, methodology, and techniques to be used, including the evaluation standards.
7	Schedule of significant milestone events, such as: <ul style="list-style-type: none"> 7.1 Plan approval by Agency Head 7.2 Plan review and approval by OSE 7.3 Release of the RFP 7.4 Proposal due date 7.5 Completion of proposal evaluations 7.6 Completion of the Evaluation Report 7.7 Agency Head ratification of the selection decision 7.8 Contract review and negotiation 7.9 Final award

Figure 2 - Sample Format for the Selection Plan

Score	Evaluation
10	<u>Excellent</u> — the response is innovative, comprehensive and complete in all details, meets all requirements and objectives without gold plating.
8-9	<u>Very good</u> — the response is a substantial response in clearly definable detail, meets all critical requirements.
5-7	<u>Good</u> – the response generally meets minimum requirements.
3-4	<u>Fair</u> – the response lacks essential information to substantiate the data presented.
1-2	<u>Poor</u> – the response shows a lack of understanding of requirements or omissions in major areas.
0	<u>Unacceptable.</u>

Table 1 - Typical Combined Rating Structure

CHAPTER 5. COMMUNICATING THE REQUIREMENTS

To receive the best proposals possible, a solicitation must be prepared which will clearly communicate to the offerors both the Agency’s needs and the evaluation factors to be used in the evaluation of proposals. Skillful planning and preparation of solicitation documents by the Project Manager will be rewarded by proposals which are responsive to the Agency’s stated needs. Deficiencies or lack of clarity in solicitations will result in confusion during proposal preparation, proposals unresponsive to the Agency’s actual needs and difficult to evaluate, and a multitude of administrative and legal problems for all parties concerned. Therefore, the Project Manager must ensure that the highest degree of clarity and precision is exercised in communicating the Agency’s needs and soliciting proposals which best satisfy those needs.

The Selection Committee, along with the Agency Head and the OSE, is responsible for reviewing the solicitation documents for both content and acceptability for evaluation. Figure 4 lists typical questions that should be addressed in this review.

The Request For Proposal (RFP)

The Project Manager must prepare solicitations and resulting contracts using the uniform contract format outlined in the OSE’s *Manual for Planning and Execution of State Permanent Improvements*. The format specified facilitates the preparation of the solicitation and contract, as well as reference to and use of those documents by offerors and contractors. Do not include the Plan in the Request of Proposal.

The solicitation must advise prospective offerors on how their proposals should be organized and arranged. The RFP must advise offerors to submit technical and price portions of the proposals in separate sealed envelopes.

Offerors should be discouraged from using unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to the RFP.

The solicitation must inform offerors of the evaluation factors for award and information on the source selection system to be employed. At a minimum, the solicitation must include a statement of all significant factors and sub-factors (including price) which the agency reasonably expects to consider in evaluating competitive proposals and the relative importance assigned to each of these factors. The solicitation must inform offerors of minimum requirements that apply to particular evaluation factors and significant sub-factors.

A statement that the evaluation factors are listed in the order of their relative importance is satisfactory, so long as the differences between any one factor and another immediately preceding, or immediately following is small. However, if one or more factors are to have predominant consideration over the other factors, this should be disclosed to the offerors. If evaluation factors are of equal importance, the solicitation should so state. In many instances, the relationship between the evaluation factors is variable rather than fixed (e.g., “as proposals become more equal in their technical merit, the evaluating price becomes more important”). When this is the case, the Project Manager should include a statement in the RFP describing the relationship that will be used in the evaluation.

Figure 5 provides examples of RFP language that properly informs offerors of the way the selection will be made.

Pre-solicitation Information

Pre-solicitation Notices

In situations where the cost of preparing a formal solicitation and responses would be substantial for both the Agency and the offerors, a SCBO announcement may be issued notifying prospective offerors, and containing a summary description of the property or service being acquired and requesting an expression of interest in the contemplated acquisition. Recipients of these letters should also be told that their responses will be used as a basis in preparing a non-exclusive list of companies for initial solicitation. The notice must be tailored to meet the circumstances and requirements surrounding the acquisition, although a minimum response period of 14 days is mandatory.

Draft RFP

Subsequent to response to the pre-solicitation notice, a draft RFP may be furnished for comments to the firms indicating interest in the proposed acquisition. Contractors' responses to the draft RFP may eliminate any need for further communications prior to release of the official RFP, or it may provide a basis for modifying the RFP or for conducting a pre-solicitation conference. The availability of a draft RFP must be announced in SCBO with a minimum of 14 days allowed for submission of requests for copies. The draft RFP should allow a minimum of 30 days for potential offerors to submit comments.

Pre-solicitation Conferences

The pre-solicitation conference, which must be announced in SCBO, has the advantages of:

1. Providing background information to prospective offerors about the current status of the project.
2. Informing potential offerors of the nature and scope of the project, thereby enlarging the opportunities to get wider competition from interested prime contractors and subcontractors.
3. Disseminating current, reliable information to potential offerors.
4. Providing the Agency with additional insights into potential offerors' thinking, thus enabling it to prepare a better solicitation document.
5. Permitting companies who are interested in submitting an offer the opportunity to do the advance planning necessary for submitting a meaningful proposal.
6. Assisting potential offerors in deciding whether or not to undertake the effort and expense required to prepare and submit a proposal.

Pre-proposal Conferences

The pre-proposal conference is a procedure that may be used, generally for complex project selections, as a means of enhancing communication with prospective offerors after a solicitation has been issued, but before proposals are prepared. Such a conference permits the Agency to explain or clarify the solicitation (in particular, complicated specifications and requirements e.g., proposal format, to interested firms). The conference also offers the Agency an opportunity to stress the importance of certain evaluation factors that might influence offeror’s responses and eliminate misunderstandings that may arise from misinterpretation, complexity, errors, omissions, or other deficiencies.

When it is in the best interest of the Agency to hold a pre-proposal conference, the Project Manager must make the necessary arrangements, notify all firms receiving solicitations and advertise the conference in SCBO. Adequate notice must be given to prospective offerors so that all who wish to may arrange for representation. A minimum of 14 days advance notice is mandatory. The notice must define as explicitly as possible the nature and scope of the conference. If time permits, prospective offerors should be asked to submit any questions they may have in advance, in order to give the Project Manager time to prepare responses and to make the conference as fruitful as possible.

The pre-proposal conference must be conducted by the Project Manager or his representative, and attended by technical and other personnel as appropriate. The Project manager must brief all Agency personnel on the conference objectives. The Project manager must brief them on what they can and cannot discuss at the conference.

All prospective offerors must be furnished identical information in connection with the proposed acquisition. Remarks and explanations at the conference must not qualify the terms of the solicitation and specifications. All conferees must be advised that unless the solicitation is amended in writing it will remain unchanged. A complete record must be made of the conference and made part of the Agency procurement file.

The following questions will not apply to every procurement, but are offered as an aid to the Selection Committee

- 1 Statement of Work and Specifications
 - 1.1 Does it clearly and accurately describe the product or service to be acquired?
 - 1.2 Is it consistent with the Agency’s mission?
 - 1.3 Are there adequate configuration controls in place?
 - 1.4 Is it consistent with the requirements described in the approved Selection Plan?
 - 1.5 Are the deliverable items accurately described and are the delivery dates realistic?
 - 1.6 Have the number of deliverable items been specified along with the delivery address?
 - 1.7 Has a realistic level of effort been included when work/task orders are to be used?
 - 1.8 Is the effort consistent with the Agency’s estimate?
 - 1.9 Have all option provisions been adequately described and has a reasonable time been allowed to exercise these options?
 - 1.10 Have requirements for spare parts or reprourement data been requested?
 - 1.11 Has a requirement for startup testing or commissioning been included?
 - 1.12 Have all State-furnished property or facilities been described, along with their estimated value?
 - 1.13 Does the described requirement foster or restrict competition?
 - 1.14 Is the information to be submitted by the offerors excessive?

Figure 3 - RFP Review Questions, page 1 of 2

2.	Evaluation Factors
2.1	Are all significant areas that must be addressed in the offer and which will form the basis for selection addressed?
2.2	Are the evaluation factors tailored to the requirements of this acquisition?
2.3	Do the evaluation factors represent the standard against which all offers can be evaluated?
2.4	Are the evaluation factors clear, concise and fair so that all offerors are fully aware of the basis for evaluation and are given an equal opportunity to compete?
2.5	Do the evaluation factors address the key program concerns which the offerors must be aware of in preparing the offer?
2.6	Do the evaluation factors emphasize only the significant areas considered critical to the selection of an offeror?
3	Relative Importance of Factors
3.1	Is the importance of each factor and subfactor shown, as well as the relative importance of each factor in comparison to the other factors?
3.2	Are all the factors of equal importance? If not, the relative importance of each must be described and a mere listing of the factors in order of descending order of importance is not acceptable.
3.3	If a factor has been divided into subfactors, has the relative importance of each subfactor been shown?
3.4	Has a statement been included to reflect the importance of technical merit in comparison to cost or price accurately?
3.5	If cost realism is a factor, is it clearly explained how this will be determined?
4	Proposal Preparation Instructions
4.1	Have all firms been provided with essential information needed to prepare a proposal?
4.2	Do the instructions describe the information and data needed to be provided?
4.3	Do the instructions tell the offerors how the project is expected to be organized, staffed and managed?
4.4	Do the instruction contain all information needed so the offeror can address all key elements allowing each pertinent area to be easily evaluated?
4.5	Do the instructions require the submission of information showing the qualifications and experience of the firm and all subcontractors?
4.6	Do the instructions require the submission of the names and resumes of the technical personnel who are being proposed to work of the project, as well as the extent to which each individual will participate in the project?
4.7	Do the instructions require the submission of an organization chart of the firm's organizational elements as they will be assigned to the project along with lines of authority, and names and job title for each individual?
4.8	Do the instructions require a detailed work plan showing how each aspect of the work will be accomplished?
4.9	Is there a clear path from the requirements to the evaluation factors and to the evaluation methodology?

Figure 4 - RFP Review Questions, page 2 of 2

Example No. 1 - Greatest Value ApproachEvaluation Factors for Award

1. The Agency will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the State, cost or price and technical factors listed below considered. For this solicitation, technical quality is more important than cost or price. As proposals become more equal in their technical merit, the evaluated cost or price becomes more important.
2. The technical evaluation factors listed below are in descending order of importance, with 2a substantially more important than the remaining factors:
 - 1.1 Experience on similar contracts
 - 1.2 Quality Control system
 - 1.3 Capacity to deliver on time.

Example No. 2 - Greatest Value ApproachEvaluation Factors for Award

1. The Agency will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the State, cost or price and technical factors listed below considered. For this solicitation, cost or price is more important than the combined weight of the technical factors.
2. The technical evaluation factors listed below are in descending order of importance:
 - 1.1 Management Approach
 - 1.2 Experience on similar projects
 - 1.3 Qualifications of key personnel

Example No. 3 - Greatest Value ApproachEvaluation Factors for Award

1. The Agency will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the State, cost or price and technical factors listed below considered. For this solicitation, technical quality is equally important as cost or price. When the technical proposals are evaluated as essentially equal, cost or price may be the deciding factor. When cost or price proposals are evaluated as essentially equal, technical quality may be the deciding factor.
2. The technical evaluation factors listed below are in descending order of importance:
 - 1.1 Experience on similar projects
 - 1.2 Management Approach
 - 1.3 Capacity to accomplish work in required time

Figure 5 - Examples of RFP Language, page 1 of 1

Example No. 4 - Greatest Value ApproachEvaluation Factors for Award

1. The Agency will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the State, cost or price and technical factors listed below considered.
2. Proposal will be evaluated based on the following technical evaluation factors which are listed in descending order of importance:
 - 1.1 Past performance on similar projects
 - 1.2 Management Approach
 - 1.3 Experience on similar projects
 - 1.4 Qualification of key personnel

Example No. 5 - Greatest Value Approach with Go, No-Go FactorEvaluation Factors for Award

- 1 The Agency will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the State, cost or price and technical factors listed below considered. For this solicitation, technical quality is more important than cost or price. As proposals become more equal in their technical merit, the evaluated cost or price becomes more important.
- 2 The technical evaluation factors are listed below in descending order of importance:
 - 2.1 Experience on similar projects
 - 2.2 Management Approach
 - 2.3 Capability to accomplish work in required time

Factor No. 2a, Experience on Similar Projects, will be evaluated on a go, no-go basis. To be considered further in the evaluation process, an offeror must demonstrate that it has successfully completed at least three similar projects with the past three years. Offerors that do not meet the minimum requirement will not be considered for award.

Figure 4 - Examples of RFP Language (pg. 2 of 2)

CHAPTER 6. THE EVALUATION PROCESS

Procurement Integrity

The South Carolina Code has several underlying policies and principles, as listed in § 11-35-20. These policies and principles include the fostering of broad-based competition for public procurement within the free enterprise system, and, the provision of safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process. For the procurement process to succeed, each person associated with the selection must adhere to the highest standards of ethical and professional conduct. Note that procurement integrity provisions apply only until award of a contract. Thereafter, other provisions, such as the Freedom of Information Act, govern the release of information.

Non-Disclosure of Information

Personnel participating in the procurement process must not discuss or reveal proprietary or source selection information to any unauthorized person during the conduct of a State Agency procurement. This period begins with the development, preparation, and issuance of a specific procurement solicitation, and concludes with the award, modification, or extension of a contract, and includes the evaluation of bids or proposals, the selection of sources, and the conduct of negotiations. Actions included are:

1. The drafting of a specification or a statement of work.
2. The review and approval of specification or statement of work.
3. The preparation and issuance of a solicitation document.
4. The evaluation of bids or proposals.
5. The selection of contractor(s).
6. The conduct of negotiations.
7. The review and approval of the award of a contract or contract modification.

The term “proprietary information” includes:

1. Information contained in a bid or proposal.
2. Cost or pricing data.
3. Any information submitted to the State by a contractor and designated as proprietary, in accordance with law or regulations, by the contractor, the Head of the Agency or the OSE.

The term “source selection information” is information, including information stored in electronic, magnetic, audio, or video formats, which is prepared or developed for use by the State to conduct a particular procurement and the disclosure of which to a competing contractor would jeopardize the integrity or successful completion of a particular procurement; and is required by statute, regulation or order to be secured in a procurement file or other facility to prevent disclosure. Source selection information is limited to:

1. Proposed costs or prices submitted in response to an Agency solicitation, or lists of those proposed costs or prices.
2. Selection Plans.
3. Technical Evaluation Plans.
4. Technical evaluations of proposals.

5. Price evaluation of proposals.
6. Competitive range determinations which identify proposals that have a reasonable chance of being selected to award of a contract.
7. Rankings of bids, proposals or competitors.
8. The reports and evaluations of the Selection Committee.
9. Other information based on a case-by-case determination of the Head of the Agency or the OSE that meet the standards stated above.

All personnel who participate in the procurement process must agree not discuss or reveal information concerning the process except to an individual participating in the same proceeding, and then only to the extent that the information is required in connection with the proceedings. Form SE-214 (Selection Committee Confidentiality and Conflict of Interest Policy) should be used for this purpose.

Divulging information during the evaluation, selection, and negotiation phases of the acquisition to offerors or to personnel not having a need to know could jeopardize the resultant award. Therefore, the Committee Chair must instruct personnel participating in the evaluation to observe these restrictions and ensure that all personnel understand that unauthorized disclosure of information, no matter how innocent, could compromise the acquisition process and is prohibited. A summary of these briefing instructions are shown in Figure 6. The Chair of the Selection Committee has the authority to and may remove Committee members who violate this requirement.

Conflicts of Interest

The Chair of the Selection Committee must instruct personnel participating in the evaluation of the Procurement Code's requirements for ethical conduct, and ask each evaluator to sign a statement that he has read and understands those standards of conduct and that he does not have an actual or apparent conflict of interest relating to the proposed acquisition. Form SE-214 (Selection Committee Confidentiality and Conflict of Interest Policy) should be used for this purpose.

If an evaluator has an actual or apparent conflict of interest related to a proposal under evaluation, that evaluator must be removed and replaced with another. If a suitable replacement is not available, the remaining evaluators must perform the evaluation.

Essentials Of The Evaluation Process

The principal purposes of proposal evaluation are to:

1. Determine which proposals meet the minimum requirements for acceptance and are responsive to the solicitation.
2. Determine from among the acceptable proposals received which one is most advantageous to the Agency considering price and other factors outlined in the solicitation.
3. Provide a sound basis for the Agency Head to make an informed and objective review of the Committee's selection by:
 - a) Presenting a sharp definition of the issues considered during the evaluation.
 - b) Identifying areas of uncertainty as well as those in which there is substantial assurance of a successful outcome.
 - c) Listing the pros and cons of available approaches to the solution of operational, cost, or managerial problems.

The methods used for evaluating proposals should focus on realizing the highest attainable measure of objectivity. The evaluation should frame the issues of the selection decision with such clarity and visibility that the Agency Head will have little difficulty in accepting or rejecting the Committee's choice.

Proposal evaluation requires a mixture of fact finding, reporting, and the application of professional judgment to provide a rounded and comprehensive picture of the adequacy of each offer. This calls for:

1. Validation of the representations, estimates, and projections presented in each proposal, particularly by comparison with independent Agency estimates of performance, schedule, cost, and established requirements.
2. Examination and judgment of the merits of each proposal submitted as compared to the standards for each factor selected for evaluation.
3. Examination and judgment of the merits of each firm with respect to other factors bearing on its performance potential, e.g., experience, past performance.
4. Summarization of the detailed evaluation results, accompanied by an analysis in sufficient depth to give visibility to the significant findings or reservations.

Component Tasks In The Evaluation Process

The component tasks of the evaluation vary in number, content, and sequence with each source selection. Chapter 2 outlines the various approaches that can be used in source selection and the major events in the evaluation and selection for each. The following paragraphs describe some of the more typical tasks, arranged in the order of their probable occurrence, starting with the preparation for review and ending with the ratification of the Committee's selection decision by the Agency Head.

Familiarization

Before proposals are received, each evaluator should re-read the work statement and other requirements of the RFP. The review should preferably begin well in advance of the date the proposals are to be received. Furthermore, the Selection Committee should be convened before the proposals are received to discuss the Plan and scoring methods. In this way, the evaluators can begin work immediately upon receipt of the proposals.

Identifying Ambiguities In Proposals

Sometimes the language in a proposal is ambiguous, and the proposal's technical merit will differ depending on which of two possible meanings is applied. In other instances, proposal language may simply be unclear, and the evaluator cannot understand it well enough to evaluate it without guessing. The evaluator should document in writing each instance where he cannot make a sound evaluation because proposal language is ambiguous or the meaning of the proposal cannot be fully understood. This information must be provided to the Project Manager and Committee Chair. In instances of ambiguity the evaluator must indicate the alternate meanings the language could be given. Evaluators must not contact offerors to obtain clarification. Any contact with offerors concerning proposals must be handled by the Project Manager.

Identifying Instances Of Inadequate Substantiation

An offeror will sometimes describe, in general terms, a particular approach proposed for use in performing some part of the contract work but will not provide enough detailed information to support an evaluation of its feasibility and merit. Each instance in which this occurs must be identified in writing by the evaluator so that the Project Manager can advise each offeror what additional information is needed in order to permit sound evaluation.

Identifying Strengths And Weakness Of Proposals

Evaluators must identify strengths and weaknesses of the technical aspects of proposals. The documentation of strengths and weaknesses is an essential element of the final evaluation report to the Agency Head. To appreciate the technical merits of a given proposal and to compare it intelligently with others, the Agency Head needs to

understand the ways in which a given proposal is considered technically strong, as well as the ways in which it is weak or deficient. A catalog of the significant strengths and weaknesses of each proposal (in terms of the evaluation factors) provides a kind of summary that facilitates the process of arriving at a well-informed judgment as to which proposal is, overall, most advantageous to the Agency from the viewpoint of the technical factors involved. As evaluators review each proposal they should document the strengths, weaknesses, and deficiencies on a worksheet similar to the one illustrated as Figure 7.

Deficient And Unacceptable Proposals

Evaluators must identify each respect in which an offeror or the approach being offered is inadequate to meet the Agency's minimum requirements. A determination of unacceptability must be based on minimum requirements that are clearly and definitely stated in the RFP. These requirements may concern either the technical qualifications of the offeror or the adequacy of what is being proposed. (For example, the solicitation may state a number of years of experience in a particular field of work, at or above a stated level of difficulty.) For each deficiency identified, the evaluator must provide:

1. An explanation to why it is felt that one or more minimum requirements outlined in the solicitation will not be met.
2. An opinion (with supporting rationale) as to whether the deficiency can be remedied by the offeror.
3. An opinion (with supporting rationale) as to whether remedying the deficiency--assuming it is technically feasible to do so--would entail so substantial a revision of the proposal as to amount to allowing the submission of a second proposal (i.e., virtually an entirely new technical proposal).

Generally, the fact that a proposal for a negotiated contract is deficient as submitted does not mean that it is automatically excluded from further consideration. It should be discussed, and in order to make a discussion meaningful, the offeror should be advised of the nature of the deficiency so that he may have an opportunity to remedy it.

It is to the Agency's advantage to maintain a healthy competitive atmosphere throughout the process that leads to final selection. Therefore, any doubts about the propriety of excluding an offeror on the basis that a deficiency is not technically capable of being corrected or that the necessary revisions would result in a virtually new proposal should be resolved in favor of the offeror. Do not forget that the State must be in a position to defend and support any exclusion with a sound and reasonable rationale.

Scoring

Examining each proposal in detail to measure its contents against the established standards for evaluation factors, and assigning a score, numerical or otherwise, to each factor constitutes the core of the evaluation process. The effectiveness of prior planning and preparation becomes apparent at this critical stage of the proposal evaluation process.

Because numerical scores or other types of grading may not convey fully the individual evaluator's judgment of some aspects of the proposal, each evaluator must supplement each rating with a concise narrative evaluation which includes a discussion and interpretation of the limitations of the rating. The narrative records what the contractor offered and how it met the established requirements, and it summarizes the strong and weak points of what the contractor has proposed. In instances where the contractor has failed to meet a critical requirement, the evaluator assesses what should be done to remedy the deficiency and what the impact of the deficiency (corrected or uncorrected) is on the overall proposal.

All errors, omissions, and deficiencies must be considered by evaluators in determining the initial score to be given the offer for each factor. Regardless of how they are scored, errors, omissions, and deficiencies must be identified, described, and reported to the Committee Chair for discussion with the responsible offeror unless the evidence of technical unacceptability is so strong that further negotiation would not be warranted. Before reaching such a decision, the Committee Chair will review the matter with the Project Manager, the Committee legal adviser, and Selection Committee members as applicable.

Consensus

The final score assigned to each technical proposal is assigned by a consensus of the Selection Committee.

Each evaluator should first independently evaluate all the technical aspects of the proposals. By so doing, the Agency gains the benefit of having several opinions on the relative technical merits of each proposal. Different evaluators, however, may arrive at differing conclusions on a given point. The true value of the Selection Committee system emerges when the Selection Committee as a whole arrives at a balanced conclusion that reflects the different viewpoints and contributions of the Selection Committee members. Hence, after the individual members have separately evaluated the proposals, including preparation of their narrative explanations, the Selection Committee will meet and formulate its collective conclusions. Significant variations in evaluators scores or assessments of technical merit must be discussed and discrepancies resolved or fully explained in the record.

The final score assigned to each proposal by the Selection Committee must be accompanied by a narrative justification so that the Agency can demonstrate that the final selection was based on an intelligent and rational judgment of the technical merits of each competing proposal.

A Selection Committee consensus should also be provided to the Selection Committee Chair regarding (a) the strengths and weaknesses of the proposals, (b) the existence and seriousness of deficiencies in proposals and (c) other matters on which the Selection Committee is to provide advice.

In exceptional cases, where the Selection Committee is unable to reach agreement without unreasonably delaying the procurement process, the evaluation report should include the majority conclusion and the dissenting view(s), each with a supporting rationale.

Price Evaluation

Price must not be assigned a numerical weight, point score or adjectival rating. A numerical evaluation system can be designed to include point scoring for price proposals. However, the use of such a system is prohibited by OSE because of the pitfalls that are inherent in such a system. Experience with systems which point score price has shown that the use of such a system is contrary to the goal of an efficient source selection and that such a system often leads to a selection which is not the most advantageous to the Agency.

OSE requires the relative importance of price be stated in the RFP in terms of its relationship to the combined weight of the other award factors, e.g., “price is more important than the combined weight of the other award factors”; “price is less important than the combined weight of the other award factors”; or, “price is of equal importance to the combined weight of other award factors”; or similar wording.

When the “greatest value concept” is used, the first step is to array the proposal’s technical ratings and prices. Figure 8 may be used for this purpose. Price must be used by the Selection Committee to judge the value of the work to be done and quality of services to be furnished, and not as an addition to the cumulative score or rating resulting from the technical evaluation. The Selection Committee should provide a recommendation to the Committee Chair as to whether any proposals do not have a reasonable chance of being selected for award, taking into account the possibilities for improvement as a result of discussions. The technical elements as well as the price proposal must be examined by the Project Manager before a decision is made as to whether or not the proposal is in the competitive range. The Selection Committee’s contribution to that decision should include more than a statement of whether a proposal is technically “deficient” and whether the deficiency is reasonable susceptible of correction without a “complete rewrite.” Detailed written rationale must be provided.

Award on Initial Proposals

For an Agency to make an award based upon initial offers, the solicitation documents must include a notice alerting offerors to that possibility. An award may be made without discussions when it can be clearly demonstrated from the existence of full and open competition, or accurate prior cost experience, that acceptance of an initial proposal without discussion would result in the lowest overall cost to the Agency.

Where there is uncertainty as to the pricing or technical aspects of any proposals, the award should not be made without further exploration and discussion prior to award. Also, when the proposal most advantageous to the Agency involves a material departure from the stated requirements, consideration should be given to offering the other firms an opportunity to submit new proposals on a technical basis comparable to that of the most advantageous proposal; provided, that this can be done without revealing to the other firms any information which the offeror does not want disclosed to the public.

Competitive Range Determination

When the Selection Committee has evaluated the proposals and made a determination that it is not in the Agency's interest to award on the basis of initial proposals, the Committee must decide which offerors will be selected for competitive negotiation. This is accomplished by determining which offerors are within the competitive range.

The competitive range must be determined on the basis of price and other factors that were stated in the solicitation and must include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, the proposal should be included.

While it is preferable that the Committee reach a consensus on the competitive range, the Committee Chair has the authority to add proposers to the list. Committee Chairs have broad discretion in determining whether to place a proposal within the competitive range, and their decisions in this regard must not be disturbed unless they are clearly shown to be arbitrary, capricious or unreasonable.

The competitive range is established by comparing the proposals with each other and with the Agency's requirements. A proposal which might be capable of meeting the Agency's requirements if revised can nonetheless be excluded from the competitive range if, based on the evaluation of all proposals, the proposal clearly does not have a real chance of being selected for award.

Since oral and written discussions contemplate the curing of deficiencies, a proposal may not be excluded from discussions solely because it fails to conform to the RFP. Offerors may not be excluded from the competitive range based on predetermined cut-off scores or a pre-determined number of proposals.

Proposals may be excluded from the competitive range based solely on informational deficiencies if the deficiencies are so material as to preclude any possibility of upgrading except through major revisions or additions. In determining whether an informational deficiency is "material," consideration should be given to the detail called for in the RFP, whether the omissions make the proposal unacceptable or merely inferior, the scope and range of omissions, and whether the proposal offers significant cost savings.

Since the competitive range is determined on the basis of price and other factors, a technically acceptable proposal may be determined to be outside of the competitive range when the Committee believes that the price is too high and could not be reduced sufficiently without detracting from its technical acceptability. A low priced proposal, however, is not guaranteed inclusion in the competitive range solely by virtue of its low price. A proposal's price need not be considered in making the competitive determination if the proposal is found to be technically unacceptable.

Conducting The Negotiations

Negotiations must be conducted with all offerors in the competitive range. Negotiations are generally conducted in order to come to agreement on such matters as price considerations, incentive arrangements, special provisions to be incorporated in the contract, or scheduling. Negotiations are also frequently required to resolve any errors, omissions, or deficiencies that were identified during the initial evaluation, prior to establishment of the competitive range.

Because of the number and variety of errors, omissions, deficiencies, and other considerations that are likely to be encountered in the typical procurement, an orderly method for identification, description, and reporting of negotiation topics to the Committee Chair is necessary. After each evaluator has completed scoring the proposals, the evaluators, as a group, should prepare, with the Committee Chair's concurrence, a negotiation recommendation to the Project Manager which will identify all deficiencies, omissions, ambiguities, etc. This would serve not only as

a disciplined method of communicating with the Project Manager, but would also provide a memorandum of record for the permanent procurement file.

All discussions or negotiations with offerors within the competitive range are conducted by the Selection Committee. The Committee may be assisted by technical advisors if considered necessary, including, in some instances, the specialists who are most familiar with what is needed to remedy errors and correct deficiencies.

In their negotiations with the offerors, the Committee should discuss all ambiguities, deficiencies, or omissions as identified in the evaluation in order to obtain enough information to an otherwise promising proposal acceptable, and to negotiate acceptable terms and conditions. Their purpose is not to rearrange the technical order of merit or relative standings among competing offerors. It is, therefore, necessary for them to point out areas of error, omission, or deficiency rather than to suggest right answers. The contents of another competitor's proposal must not be revealed under any circumstances. Each prospective contractor must be allowed a reasonable period of time to prepare positions and submit revisions to its proposals without allowing one contractor an unfair advantage over another. Finally, any new information imparted to one offeror must be made available to all.

Best and Final Offers

At the end of discussions and negotiations, all offerors remaining in the competitive range are provided one final opportunity to submit revisions which must be received by a common cutoff date. This last opportunity for revisions is known as the best and final offer.

Offerors have a right to know that best and final offers are being requested. Therefore, they must be specifically advised in writing that discussions have been concluded, that best and final offers are being called for and of the cutoff date for receipt of best and final offers.

A common deadline for receipt of the best and final offers must be established to preclude any possible advantage from accruing to an offeror who has more time to prepare the final proposal than the competition.

Repeated requests for best and final offers are discouraged because the indiscriminate reopening of negotiation tends to undermine the integrity of the procurement system. Therefore, calling for a new round of best and finals simply on the basis that successive rounds will reduce price (called "auctioning") is improper and ultimately self-defeating.

Final Evaluation By The Selection Committee

The proposer's best and final offers or revisions to proposals are returned to the Selection Committee, which will reevaluate and rescore those portions of the original proposal affected. New scores are then computed and the final relative standing of the offerors is determined.

In the event that the relative standing of the offerors has changed due to revisions of proposals, the Selection Committee should document the basis for the revised score in the final report.

Where the revised proposal fails to remedy a substantial deficiency in what was otherwise a marginal proposal, the Project Manager may have sufficient basis to eliminate it from the competitive range. After clearance with the Committee Chair and the Agency Head, the Project Manager should notify the offeror promptly.

Significance Of Point Scores

Technical point scores are merely guides for decision-making by selection officials who are responsible for determining whether technical point advantages are worth the price that might be associated with a higher scored proposal. Whether a given point spread between two competing proposals indicates significant superiority of one proposal over another depends on the facts and circumstances of each procurement. The determination element is not the difference in point scores themselves, but the considered judgment of the Committee concerning the significance of that difference.

Price And Technical Trade Off

When the greatest value concept is applied to a source selection, the Selection Committee has the flexibility to make price and technical trade off judgments. The Committee has broad discretion in determining the manner and extent to which it will make use of the technical and price evaluation results. The Committee's judgments must be rational and consistent with the evaluation factors contained in the solicitation.

To identify and differences in the technical merit of proposals, the Committee must analyze the strengths and weaknesses of each proposal. The significance of a proposal's perceived strengths and weaknesses for each factor must be considered in light of the importance of each factor as stated in the solicitation. If the Committee determines that all proposals in the competitive range are essentially equal technically, then the award must be made to the offeror submitting the lowest priced offer. If the Committee decides that there is a significant difference in the technical merit of the proposals, the Committee must examine the difference in price. When the technically superior proposal is not the lowest priced proposal, the Committee must decide whether the technical difference warrants the expenditure of the additional funds. In other words, the Committee must consider what the Agency is getting for the extra money and decide if it's worth the extra cost.

The Committee must make a specific and detailed written determination regarding price and technical trade off judgments. The Committee must explain the rationale for the decision to make or not to make the trade off and to justify the expenditure of the additional funds, if applicable. This justification must clearly state what the Agency is getting for the extra money and why it is in the Agency's interest to expend the additional funds. This determination is required in every case, even when the RFP indicates that technical factors are more important than price.

Requirement For Documentary Support

After the evaluators read, evaluate, and rate each technical proposal, the evaluators must prepare a narrative explanation for all ratings. This requirement demands the commitment of significant effort and time. Nevertheless, meeting it is important for several reasons.

Suppose an evaluator concludes that a proposal feature deserves a particular merit rating. When he arrives at that conclusion, he has the rationale or basis for the conclusion clearly in mind. The evaluator must remember that rationale later in the evaluation process, perhaps days or weeks later, after reading and evaluating several other proposals. If evaluators cannot remember how they arrived at their scores for that feature, it will take time to reconstruct the reasoning underlying the raw scores in order to develop a written rationale for the Committee Chair.

Unsuccessful offerors are ordinarily provided a debriefing as to why they were not selected. Debriefings may occur many weeks after the completion of the technical evaluation. The Agency and OSE must be able to explain readily just what aspects of the unsuccessful proposal were weak or deficient. If the Agency can do no more than produce an unexplained score, not only will it be embarrassed but the contract award may be subject to protest on the grounds that it was made arbitrarily.

Evaluators must document their rationale for scoring as each proposal is being evaluated. Evaluation sheets should be provided for each member to ensure that all elements of the evaluation are completed and to record the results of the evaluations. Figure 7 and Figure 8 are examples of formats that may be used for this purpose. The evaluation sheets will form the basis of the narrative report to be submitted to the Agency Head. Care must be taken to ensure that scores accurately reflect the evaluators' assessment of the firm's capability for each evaluation factor.

It is absolutely essential that technical point scores and price and technical trade off judgments be documented in detail by relevant facts and supporting technical rationale. Bare conclusionary statements are not acceptable.

SELECTION COMMITTEE BRIEFING INSTRUCTIONS

As Chair of the Selection Committee, the OSE Project Manager will address each of the following areas with the Selection Committee before the Committee's evaluation process begins.

CONFIDENTIALITY. Form SE-214 (Selection Committee Confidentiality and Conflict of Interest Policy) should be used for this purpose.

CONFLICT OF INTEREST. Form SE-214 (Selection Committee Confidentiality and Conflict of Interest Policy) should be used for this purpose.

INDEPENDENT EVALUATION. Each member of the Selection Committee must evaluate each and every proposal independently. Proposals should be read a minimum of two times - the first for familiarization and compliance with the RFP and the second to develop the initial scoring. Final scores will be developed at a called Committee meeting.

NON-RESPONSIVENESS. Proposals that do not comply with all essential, mandatory requirements must be considered non-responsive and therefore ineligible for award. A final evaluation will be not be performed on non-responsive proposals. The Chair of the Selection Committee is the final authority on the responsiveness of any proposal. **Be prepared to discuss in detail if you feel any proposal is non-responsive.**

RATING OF PROPOSALS. Each voting Committee member must score each and every proposal using the selection criteria and weightings established in the Agency Plan.

COST EVALUATION. Each voting Committee member must evaluate the cost of each proposal using the rationale established in the Agency Plan.

DOCUMENTATION OF SCORING. Selection Committee members must support their reasoning for discussions and scoring with appropriate documentation or notes. Any such documentation must be made on separate work sheets for each offeror. Preliminary work sheets and notes will not be taken up or become part of the procurement file. Such notes are subject to the FOIA, even when they are in the possession of the evaluator. Do not write in the proposals or on the final score sheets.

ORAL OR WRITTEN PRESENTATIONS. The Committee may request oral or written presentations from offerors, if provided for in the RFP, in order to reach a final decision. All offerors determined to be in the competitive range must be extended the opportunity to make an oral or written presentation.

PROTEST HEARINGS. All decisions by the Selection Committee are subject to protest. Any member of the Committee may be called upon to explain or defend their scoring of a specific proposal.

SUMMARY TECHNICAL RATING SHEET					
PROPOSER: _____		EVALUATOR: _____			
EVALUATION FACTOR	RAW SCORE	X	WEIGHT	=	WEIGHTED SCORE
1. Experience on similar projects			30		
2. Key Personnel qualifications			25		
3. Past Performance on similar projects.			25		
4. Capacity to perform work in required time.			10		
5. Management Approach			10		

Figure 8 - Sample Technical Rating Sheet

CHAPTER 7. WRITTEN REPORTS

Initial Report

After the proposals have been evaluated, the Agency project manager must prepare an initial evaluation report to be furnished to the Agency Head by the Chair of the Selection Committee and maintained as a permanent record in the contract file. The report should be signed by the Chair and each Selection Committee member and include the following as a minimum:

1. A description of the property or services to be acquired.
2. A description of the selection approach used.
3. The number of firms solicited and a listing of the offers received.
4. A narrative evaluation of each offer specifying the strengths, weaknesses, and deficiencies of each proposal, a copy of each evaluator’s rating sheets, and any reservations, qualifications, or areas to be addressed that might bear upon the selection of source(s) for negotiation and award.
5. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal.
6. Specific points and questions which should be raised in discussions or negotiations.
7. The names of the firms recommended for inclusion in the competitive range, if applicable.

Final Report

the Agency project manager must prepare the final evaluation report to be delivered to the Agency Head by the Committee Chair after the responses to questions and best and final offers are evaluated. The Chair and each Committee member must sign the report. The final report, together with the initial report, will be used to support the ratification of the Committee's selection decision.

The report should rank each offeror's proposal from the most advantageous to the least advantageous. For each offeror, the report should provide the final score and a summary analysis of each proposal (initial, revised and best and final offer) including an assessment of the offeror's compliance with the requirements of the solicitation, any changes to the technical evaluation scores and a narrative to support the changes. If no substantive change has been made by the offeror to require a change in score, the report should so state.

The final report must include the Committee's recommendation to the Agency Head regarding the source(s) to be selected. A recommendation to award to a higher priced, higher scored offeror must be supported by a specific finding that the technical superiority of the higher priced offer relative to other offers in the competitive range, warrants the additional cost. The rationale for the finding of technical superiority must be documented in detail. Unsupported conclusory statements are not acceptable.

A cover page identifying the procurement and including the names and signatures of the Committee members must be used for the Selection Committee report.

CHAPTER 8. SELECTING THE SOURCE

General

The final selection decision is typically made by the Agency Head or the Agency's governing body. The Selection Committee's decision must not be overturned unless the Agency Head determines that there is no rational basis for the Committee's decision, if the RFP evaluation factors are not followed, or if the Committee has exercised its discretion in an arbitrary or capricious manner. This would be the case if an applicable statute or regulation was violated, or if there was no substantial evidence in the record on which the Committee could base its decision. If the Agency Head determines that the Committee's selection decision should be rejected, the procurement action must be canceled and a new procurement process must be started.

Significance Of The Technical Scores

In the final evaluation process, the Committee is not bound by the initial findings, scoring, and recommendations of lower level evaluators or technical advisors, as long as the Committee has a rational basis for a differing evaluation. Given a rational basis, the Committee is free to rescore proposals, provided that the reasons for the rescoring are fully explained. The Committee's final award decision should not be based upon numeric, adjectival, or other scores alone, rather, it should be based upon the Committee's assessment of the relative strengths and weaknesses of the competing proposals.

Consistency With RFP Evaluation Factors

The Committee may not alter the relative importance of the factors stated in the RFP. If the Committee does not follow the RFP evaluation factors, the decision will be overturned if protested.

The trade off between price and technical factors made by the Committee must be supported by the established evaluation factors. An explicit justification is required to support award to a higher priced, higher quality technical proposal, even where technical merit is the more important factor. Selection officials also have broad discretion in assessing the significance of a technical point differential or price differential.

Documenting The Selection Decision

When the Committee has made its choice, the Project Manger, with the assistance of the Committee Chair, prepares a report setting forth the rationale of the decision. The selection statement should stand alone and cover the following basic points:

- A description of the acquisition.
- The names of the offerors.
- The competitive ranking of the proposals.
- A summation of the strengths and weaknesses of each proposal and offeror.
- Reasons why the firm selected provides the greatest probability of satisfying the Agency's requirements.

After the Agency Head approves the final report, the Project Manager may submit the proposed contract, with supporting documentation, the OSE for review and approval.

CHAPTER 9. SELECTION RECORDS

Accumulation Of Records

Throughout the entire effort surrounding the proposal evaluation and selection process, documents and other records will be generated within the various levels of the organization. The various records should be retained at the organization level of generation until the selection decision is made. Then, all records relating to the source selection effort should be collected and forwarded to the Agency procurement office for inclusion in the official contract file.

Retention Of Records

Because of the wide variety of acquisitions that are subject to this handbook, it is not possible to provide a finite listing of the procurement records to be retained. However, to the extent such records apply, the following list includes the minimum records to be retained.

- Request to procure by the RFP method, with OSE authorization.
- Agency Selection Plan.
- Plan approval documents with any directed changes.
- All orders or other documentation establishing membership within the organization structure.
- Records of attendance and a summary of proceedings of presolicitation and preproposal conferences.
- RFP with amendments.
- All proposals including any modifications.
- Initial evaluation report.
- The competitive range determination(s).
- Final evaluation report of the Selection Committee.
- Memorandums of instructions received from the Agency Head as a result of briefings prior to announcement and award.

- Agency Head's decision document.
- Any other data or documents having a direct relation to the selection process or selection records should be considered to be part of the official contract file, and retained in accordance with the requirements of SC Department of Archives and History

CHAPTER 10. NOTIFICATION OF UNSUCCESSFUL OFFERORS

General

A number of interests are served by promptly notifying unsuccessful offerors that they are no longer being considered for award and explaining the reasons why their proposals will not be considered further. Fairness dictates such communication in response to the effort that an offeror has put into preparing and submitting the proposal. In addition, it is in the State's interest to fully inform the offeror of the deficiencies in the proposal so that the same mistakes are not repeated in future procurements. The State's interests are also served by permitting the offeror to release the resources which would have been devoted to the contract effort so that they can become productive on other work. This reduces the cost of the competitive process and makes it more likely that the offeror will continue to view the State marketplace as a worthwhile area to invest its resources.

Notification Requirements

The Agency is required to provide prompt notification of all unsuccessful offerors unless the disclosure might prejudice the State's interests. The decision to withhold notification to unsuccessful offerors must be made only with the approval of the Office of State Engineer. When an offeror has been determined to be outside the competitive range, the Agency's notice must inform the offeror of the basis of the determination in general terms and advise the offeror that a revision to the proposal will not be considered. Following completion of negotiations, the Agency must post a Notice of Intent to Award as required in §11-35-1520(10) of the Code.

Information Available to Unsuccessful Offerors

Guidance on the information that can be released to unsuccessful offerors is contained in South Carolina's Freedom of Information Act (FOIA) found at Title 30, Chapter 4 of the South Carolina Code of Laws, as amended, SC Code Ann § 11-35-410, and Regulation 19-445.2010. The FOIA, SC Code Ann § 11-35-410, and Reg. 19-445.2010 define the outer limits of information obtainable through the debriefing process and constitutes a mechanism that can be used by an unsuccessful offeror to obtain information denied during the debriefing. The FOIA contains mandatory disclosure requirements pertaining to all "agency records." The FOIA requires that requested records be furnished unless one of eighteen exemptions applies. The right to obtain information under the FOIA depends primarily on what constitutes an "agency record," and the scope of the exemptions set forth in the FOIA. After posting a Notice Intent to Award a Contract, proposals submitted to an agency are agency records under the FOIA subject to protection of privileged and confidential. *See SC Code Ann. § 11-35-410.* Project Managers should request their assigned legal counsel provide assistance in responding to any FOIA requests.

Except as exempted by §30-4-40, any person may inspect or copy public records after an award. The following specifically applies to procurements:

1. Normally, a public procurement file is a public record subject to public viewing.
2. Until the Agency posts a Notice of Intent to Award, only the information disclosed by the Agency's procurement officer or his designee at the opening of sealed proposals is public information. Until this time, source selection information as defined in Reg. 19-445.2010 may not be disclosed.
3. The following becomes public information at the time the Agency posts a Notice of Intent to Award:
 - 1) Proposals, including proposed costs or prices submitted in response to an agency solicitation,
 - (2) source selection plans,
 - (3) technical evaluation plans,

- (4) technical evaluations of proposals,
- (5) cost or price evaluations of proposals,
- (6) information regarding which proposals are determined to be reasonably susceptible of being selected for award,
- (7) rankings of responses, proposals, or competitors, and
- (8) reports, evaluations of source selection committees or evaluations panels.

4. Material not marked as privileged confidential at the time of submittal is public information.
5. Evaluative documents predecisional in nature such as inter-agency or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter-agency or intra-agency memoranda reflecting the predecisional deliberations.
6. The public body must separate records containing information that is exempt from disclosure before making the remaining information available to the public.

If an actual offeror makes a written request for procurement information prior to final contract award (i.e. during the protest period after posting of the Notice of Intent to Award), the Agency must make documents directly related to the procurement activity that are not exempted available for inspection within 10 days of receiving the request. (SC Reg. 19-445.2010) In all other cases, if a person makes a written FOIA request to the Agency, the Agency must provide that person written notification as to public availability of the records within 15 days (excluding Saturday, Sundays and legal holidays) of receiving the request.

Any person that violates the provisions of FOIA is guilty of a misdemeanor and subject to the penalties listed in SC Code Ann. §30-4-110.

Appendix A - DEFINITIONS

Clarification - As used in this Handbook, **clarification** means communications with a offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. It is achieved by explanation or substantiation, either in response to State inquiry or as initiated by the offeror. Unlike **discussion**, clarification does not give the offeror an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision.

Deficiency - As used in this Handbook, a **deficiency** is defined as any part of an offeror's proposal which would not satisfy the State's minimum requirements as established in the solicitation. Deficiencies identified must derive only from individual evaluation of each offeror's proposal against the specific evaluation standard or the State's minimum requirements established in the solicitation. In no event are deficiencies to be derived from a comparative evaluation of the strengths and weaknesses of competing offerors' proposals. Deficiencies may be the subject of written or oral discussions between the State and an offeror, but relative strengths and weaknesses must not be discussed under any circumstances.

Discussion - As used in this Handbook, **discussion** means any oral or written communication between the State and an offeror (other than minor communications conducted for the purpose of **clarification**), whether or not initiated by the State, that (a) involves information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal.