Solicitation Best Practices

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Session Overview

- As procurement professionals, we develop best practices over time that result from training, experience and lessons learned

- As a rule, our best defense against any claim of wrongdoing is to follow the process as prescribed in Chapter 16, Admin Code, the State Procurement Manual, and in your solicitation.

  - We tend to encounter issues when we deviate

- Today, we're going to focus on six best practices that, when followed, will assist in setting you up for success!
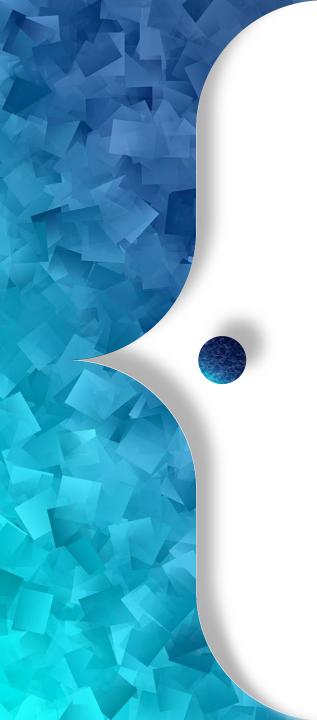
Best Practices

Administrative Review

Confirm compliance with mandatory requirements

Follow instructions outlined in the solicitation

Facilitate meaningful scoring discussions

Document the process

Ensure timely release of records

Best Practice #1:

Administrative Review

Administrative Review

- In SBOP, the Administrative Review committee is comprised of Bureau management and Section Chiefs
  - Composition of the committee can be tailored to meet your agency/campus needs
- Procurement Specialists are required to attend Administrative Review before taking certain actions including:
  - Disqualification of a vendor(s)
  - Intent to Award
- Administrative Review can also be used to collaborate on complex issues including clarifications, award methodology, etc.

Admin Review: Purpose

- Admin Review is used primarily to:

  - Ensure the process was followed correctly

  - Provide guidance on any next steps in the process

  - Obtain approval to move forward

- Admin Review also serves as a mechanism to:

  - Review and understand any outreach efforts, market research or other factors that went into the solicitation strategy and development

  - Ensure solicitations issued by the Bureau are being updated and refreshed and are keeping pace with the industry

Admin Review: Preparation

- The Procurement Lead must prepare and provide the following required documentation to the Admin Review Committee in advance of the meeting:
  - RFB/RFP document including all supporting documents (i.e., cost sheet, appendices)
    - Admin Review Briefing document (RFB)
    - Evaluation Committee Report (RFP)
  - Amendments issued, including Questions and Answers
  - Clarifications and other correspondence with Bidders/Proposers

Admin Review: Discussion/Outcome

- The Admin Review Committee will ask any questions related to the process

- The Committee will also discuss with the Procurement Lead:
  - Any changes from the previous solicitation, if applicable
  - General market conditions
  - Bidders' list
  - Previous bid results or contract issues
  - Outreach efforts
  - Cost comparisons

- Following the meeting, the Procurement Lead will be provided with approval to take next steps, as appropriate for the situation

Admin Review: Sample Documents

SBOP Standard Operating Procedures
Administrative Review Briefing Process

Last updated: 4/12/2021

Overview
This SOP outlines the Bureau's Administrative Review (Admin Review) process. The Administrative Review Committee evaluates all contract awards and vendor disqualifications from any RFB or RFP before the decision is finalized and announced to ensure all procurement policies, procedures, and applicable laws have been followed.

Purpose
The Admin Review process provides guidance to staff regarding the following procurement actions:

- All intended awards resulting from official Solicitations
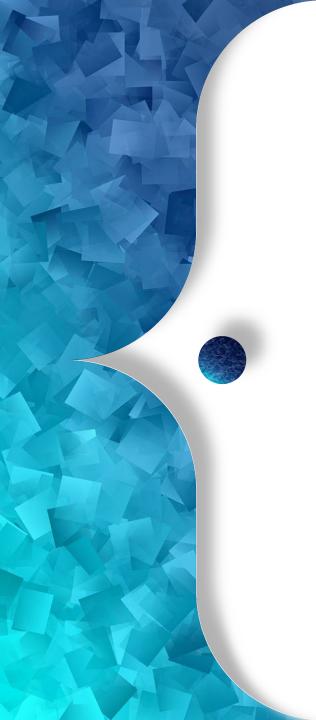- All intended Bidder disqualifications

Optional Admin Reviews may be scheduled at the request of the Section Chiefs.

Administrative Review Committee
The core members of the Administrative Review Committee include:

- Deputy Division Administrator
- SBOP Director
- SBOP Deputy Director
- SBOP Section Chiefs

Administrative Review Committee Meeting
Briefing Document

Procurement Specialist:	
Solicitation Type:	
Service:	
Issued:	
Bids Received:	

Purpose of the Solicitation

Bid Strategy
- Including history of last solicitation and any deviations between past and present solicitations
  - See examples

Estimated Annual Value, Contract terms and Renewal

Method of Award

Attached Documents
- Clarifications
- Amendments (including Questions and Answers)
- Bidder correspondence

List of Bidders
- Bidder outreach efforts and the result of those

Cost Evaluation
- Abstract

References
- Will they be conducted?
  - If not, why?

Recommendation
- Recommended disposition of each Bidder

Best Practice #2:

Confirm compliance with mandatory requirements

Mandatory Requirements

- The solicitation must clearly identify which requirements are mandatory and must explain how vendors will demonstrate compliance with mandatory requirements

  - Attestation (Yes/No; Will/Will Not Comply)

  - Documentation

  - Reference Checks

  - Other

Verifying Compliance

- The procurement lead is responsible for verifying vendor compliance with mandatory requirements

- The procurement lead must be thorough in their initial review of proposals and bids

- Build more time into the initial review period, assuming you will need to make clarifications to determine responsiveness

- If there is any contradictory information that cause doubt as to a vendor's ability to meet a mandatory requirement...clarify!

- Failure to accurately determine vendor compliance could result in another vendor's successful challenge of your award

Protest: Sample Argument

"Vendor ABC does not meet the mandatory requirements and therefore should have been disqualified."

Review in Action

Request for Bid

- Review response for compliance during initial review

- Carefully review additional documentation submitted by vendor (whether requested or not) for contradictions

- If there is a question of responsiveness, clarify before making an award

- Sometimes you may need to clarify after the award if the awarded vendor's responsiveness is called into question

Request for Proposal

- Procurement lead reviews responses for compliance before response is passed to the evaluation committee for technical scoring

- Vendors who do not meet minimum mandatory requirements should not move on to the scoring phase

- If you learn during the scoring process that there is a question about compliance, stop and clarify

Best Practice #3:

Follow the instructions outlined in the solicitation

Solicitation Instructions

- Solicitation instructions are used primarily to provide guidance to bidders/proposers to ensure they submit a responsive bid/proposal, but...

- ...the solicitation also sets expectations about actions the procuring agency will take

- Vendors will take issue when there is a perceived failure on the part of the procuring agency to follow the process as outlined in State Statute, Admin Code, SPM and in the solicitation

Protest: Sample Argument

"The procurement was fundamentally flawed because Agency XYZ failed to follow its own process."

Use of Disqualifying Language

- The solicitation must make clear which action or inaction by the vendor will result in disqualification and the agency is required to take appropriate action as described in the solicitation

- Best practice is to reserve disqualification for those actions that are so absolute that a vendor can no longer be considered for award, such as:
  - Failure to meet mandatory requirements
  - Failure to submit cost in the prescribed format, prohibiting the agency from equitably comparing costs

Use of Disqualifying Language

- The RFB/RFP process allows for substantial flexibility outside of those two scenarios and it's in the agency's best interest to exercise discretion when possible

- If the solicitation makes no distinction between those actions that will result in disqualification, you may be forced to disqualify a vendor for what is otherwise considered a minor omission
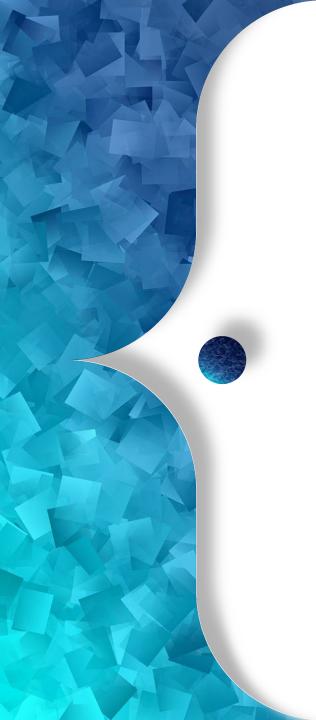
Disqualifying Language: Example

Mandatory Requirements

- "If a bidder fails to meet a mandatory requirement, the bid shall be disqualified."

- Bidder indicates they cannot meet a mandatory requirement

- Agency clarifies, and through that process, confirms non-compliance

- Agency proceeds with disqualification

Submission of Forms

- Agency uses the same language when describing the requirement to submit forms (i.e., "If bidder fails to submit required forms, the bid shall be disqualified.")

- Typically, omission of forms (other than cost) is considered minor, and agency would allow bidder time to submit

- In this scenario, use of "shall" instead of "may" could result in another vendor's successful challenge if agency does not disqualify vendor

Best Practice #4:

Facilitate meaningful scoring discussions

Procurement Lead Responsibilities

- Though the Procurement Manual makes clear that the subjectivity of evaluator scores cannot be protested, vendors will still call the objective elements of the scoring into question, such as:
  - Scoring criteria
  - Scoring anomalies that don't align with scoring criteria and benchmarks or aren't supported by the documentation

Protest: Sample Arguments

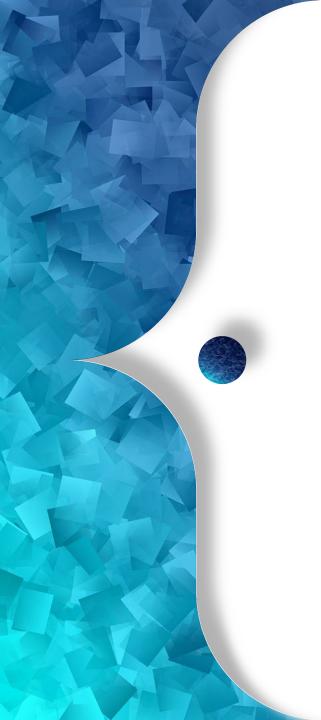*"The scoring of our proposal was arbitrary and unreasonable."*

"Evaluator A's scores were biased against my company."

Evaluator Scoring Discussion

- Procurement lead must ensure evaluators follow the scoring criteria and benchmarks

- Procurement lead must be comfortable discussing evaluator scores

  - Minimally, discussion should focus on any scoring anomalies

  - Without an understanding of those anomalies, scoring can look arbitrary

Evaluator Scoring Discussion: Example

- Pay particular attention to the benchmarks and ensure the scores given align with the benchmarks developed for the RFP

- Example:

  - The benchmark for a "0" states that a "0" is given if there is no answer

  - The proposer provided an answer, but Evaluator B gives the proposer a "0"

  - There is now a discrepancy between the scoring and the benchmark

Best Practice #5:

Document the process

Documentation & Records

- We are required to maintain certain records for the official procurement file, document the steps, and account for decisions made during a procurement process

- Use DOA-3840 Procurement Recordkeeping Checklist to ensure your file contains all required documents

- The abstract (RFB) and Evaluation Committee Report (RFP) will detail the steps followed in the process

- If the procurement file lacks documentation to support any actions taken by the procuring agencies, vendors may challenge those decisions

Protest: Sample Argument

"There must be some evidence in the record explaining the basis for a decision to disqualify or advance a proposal, otherwise that decision is arbitrary and unreasonable."
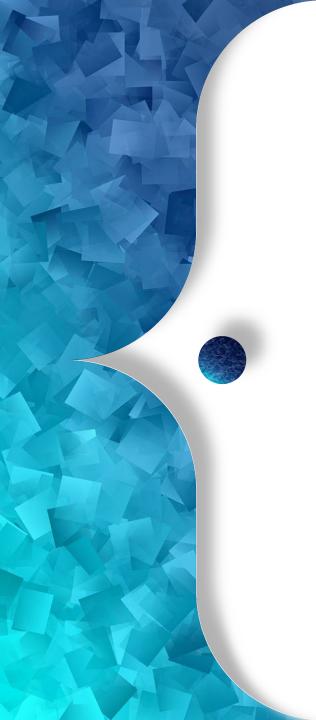
Documenting Compliance

- As discussed earlier, one critical component of a RFB or RFP is ensuring vendor compliance with mandatory requirements

- Other than "Other pertinent records as dictated by the transaction" on DOA 3840, there is no specific guidance relating to documenting vendor compliance with mandatory requirements

- Each agency/campus should create a method to document the process used to verify compliance with mandatories that clearly shows:

  - How you arrived at the decision regarding compliance

  - What action you took as a result

Documenting Compliance: Checklist

- In SBOP, we make use of a checklist to show that we have verified that the vendor:

    - Agreed to meet the mandatory requirement

    - Submitted any required documentation as needed to meet a mandatory requirement

    - Listing of references contacted and results of the reference checks as required.

- Checklist is part of the file that is used by the Administrative Review Committee prior to any awards or disqualifications

Documenting Compliance: Template

- In SBOP, we use a template for issuing clarifications that serves multiple purposes including to:

  - Obtain vendor agreement to comply with the mandatory requirement

  - Request additional, required information

  - Explain what action the Bureau will take if the vendor says "Yes" or "No"

- The vendor's response to the clarification will show how we arrived at the decision to either move forward or disqualify

- The vendor's cost/score will either be included on the abstract/evaluation committee report, or they vendor will be listed as disqualified which documents the action we took as a result.

Best Practice #6:

Ensure timely release of records

Releasing Records

- Per Admin Code, vendors have a limited window in which to submit an intent to protest and the subsequent protest

- A vendor will likely need to see the procurement file to determine if they want to protest

- If they request the records as soon as the Intent to Award is issued, but there is a delay on the agency's part in pulling documents together, do we have a responsibility to extend the timeline?

Releasing Records

- In practice, the vendor would have a compelling argument to make that our delay in producing the records cost them their ability to protest, as provided under Admin Code, but…

- …the other vendor could also argue that Admin Code does not provide the agency the authority to extend the protest timeline

- To avoid both arguments, ensure your procurement file is complete before issuing the Intent to Award

  - In SBOP, the Admin Review committee will not approve moving forward with the Intent to Award until the official procurement file is complete

Questions?

Thank You!