

Procurement via Competitive Sealed Proposals (CSP) Instructions for Evaluation Committee Members

Selecting Evaluation Committee Members:

Contracts solicited by means of the Competitive Sealed Proposals method are awarded to the “responsible offeror whose proposal is determined to be the most advantageous to the State, considering price and the evaluation factors set forth in the request for proposals.” [COMAR 21.05.03.03 F.] The ultimate evaluation of proposals, both technical and price proposals, is the responsibility of the procurement officer and the agency head. However, initial evaluations may be conducted and recommendation for award made by an evaluation committee. [COMAR 21.05.03.03 A.]

When a program or facility selects individuals to form an evaluation committee for a particular procurement, they should do so with the following factors in mind:

- 1) The relevance of the individual's education/experience to the subject matter of the solicitation.
- 2) The amount of time the individual would potentially be able to dedicate to the task relative to the amount of time needed to complete it, and
- 3) The possibility of any conflicts of interest with respect to the individual's relationship to potential offerors, i.e., their ability to maintain total impartiality throughout the selection process, as well as, their ability to focus on the best interest of the State and not merely their organization or perspective.

Evaluation Committee Members Responsibilities and Duties:

Responsibilities –

Serving as a member of an Evaluation Committee means that you will be entrusted with a great deal of responsibility on behalf of the State of Maryland to conscientiously evaluate the submitted proposals within the guidelines identified below. Evaluation Committee members are frequently required to devote considerable time in reading proposals, making site visits to offerors' or references' places of business, meeting to discuss proposals with other evaluators, and engage offerors in oral discussions. Acceptance of an invitation to serve on an Evaluation Committee should be construed as a commitment, within reasonable limits, to expend the time necessary to complete the **entire** process and to perform a thorough evaluation.

The following are responsibilities of each committee member for the duration of the evaluation.

- 1) To render a fair and impartial evaluation based exclusively upon:
 - a) The evaluation criteria contained in the RFP,
 - b) The contents of the offerors' proposal,
 - c) Information gained from clarification of proposals,
 - d) Oral presentations,
 - e) Discussions with offerors, or
 - f) Legitimate sources of reference.

- 2) Perform the evaluation to the best of your ability without prejudice or bias.
- 3) Have no conflicts of interest. If you are appointed to a committee because you represent a stakeholder in the performance of the contract, your comments and evaluation must always consider the best interest of the state, not your constituency. If upon receipt of the vendors' proposals, you find that a conflict of interest may exist, report it immediately to the procurement officer and the chairperson of the committee.

If a situation arises where it is necessary for a committee member(s) to recuse himself or herself, the procurement officer of record will determine if that person must be replaced or if the committee may proceed with the remaining members to complete the evaluation and make a recommendation.

- 4) **All** confidential information contained in proposals or obtained during the evaluation process is to be kept confidential.

Duties –

Duties of committee members include, but are not limited to the following:

- 1) Attend all meetings of the committee. At the first committee meeting a timeline is typically established for the entire evaluation. This should include the number and dates of future meetings, if oral presentations will be held and if so when, and where the meetings will take place. It is the responsibility of the individual members to arrange their work schedules to allow for full and complete participation.
- 2) Read the RFP and acquaint yourself with the nature of the requested services or equipment.

N.B. *Attend the Pre-Proposal Conference, if possible. It is often very helpful to hear the vendors' questions and to get a clearer picture of what to expect in the proposals.*

- 3) Each committee member shall read **all** proposals received and make appropriate notations directly on the evaluation forms provided. These evaluation forms, with your written comments, become a permanent part of the documentation of this procurement. In some instances these forms with evaluator's notes may be made available to a protesting offeror or its attorney. Therefore, notes should be factual, non-inflammatory and should contain neither offensive nor inappropriate remarks. Any questions should be directed to the procurement officer or to the chairperson of the committee.
- 4) Notes are to be consistent with the final overall ranking of all offerors. There should be a note for each significant area in which an offeror is either weak or strong. Frequently, a new evaluation form will be provided after orals discussions, and/or revised submissions. Although each set of evaluation forms is retained in the permanent procurement file, only the final one should be used for the final evaluation and ranking. Evaluations are not combined or averaged.

- 5) Clearly identify deficiencies/problems with each proposal. Vendors responding to an RFP, whose proposals are deemed to be reasonably susceptible of being selected for award of the contract, or potentially so, typically will be informed of problem areas identified by the committee and given an opportunity to resolve them.
- 6) Be prepared to openly discuss your findings on each proposal at the scheduled evaluation committee meetings. Also, freely discuss factors that might influence your evaluation, such as previous experience with an offeror or other unique aspects of your background or frame of reference. Seek clarification from the procurement officer on whether factors that influenced you are proper to use or might be inappropriate.
- 7) During the committee meetings, decide how many references will be checked, who will check which references (reference checking can be divided among the committee members), and what uniform questions will be asked.
- 8) Attend all oral presentations from all offerors (duration of oral presentations is pre-determined by the committee). Formulate questions regarding parts of proposals needing explanation or clarifications, and/or comments regarding those sections of a proposal that are regarded as having deficiencies or weaknesses that could be cured.
- 9) The committee must determine if a technical and/or financial best and final offer (BAFO) is appropriate and possibly its format. If more than one BAFO is to be requested, approval of the procurement officer with the concurrence of the agency head is required.
- 10) With the assistance of the entire committee, the committee chairman must make a recommendation to the procurement officer of:
 - a) The acceptability/unacceptability of each offeror,
 - b) The technical and financial ranking of each acceptable offeror,
 - c) The combined final ranking of the offerors,
 - d) A detailed rationale explaining why the recommended offeror is the most advantageous.

N.B. *The procurement officer is not required to accept these recommendations and may substitute his/her judgment for that of the committee.*

- 11) Be available for debriefing of unsuccessful vendors. Routinely, the committee chairperson and procurement officer attend debriefings, however, they may need to meet with members and review notes prior to the actual debriefing.
- 12) It is possible that after an offeror has been recommended for award, the committee members may be called upon to help the procurement officer respond to a protest. Rarely, committee members may be required to provide a deposition or appear before the Board of Contract Appeals concerning their comments and/or ranking of an offeror(s).

Evaluation Committee Cautions:

- 1) Once you have agreed to serve on an evaluation committee, ***do not publicize it***. No one outside the committee, issuing office, or procurement officer needs to know the composition of the committee or other information pertaining to the members' backgrounds, experience, etc. At the oral presentations you will be introduced to offerors, but until then the committee members should be anonymous.
- 2) Under no circumstances should any member of the evaluation committee give out information to any individual or group outside the committee, (this includes your co-workers, supervisor, friends, neighbors, legislators, and in particular, vendors.)

All information pertaining to the proposals or to the evaluation process is to be held in strict confidence by committee members both prior to and subsequent to final contract award. Any recommendation for award made by the committee is advisory in nature, in that it is subject to final approval by the procurement officer and the department head or designee. Premature release of any procurement information may least of all embarrass the department and worst of all compromise the procurement, possibly resulting in the need to terminate the solicitation and begin again. Likewise, disclosure of information about an offeror's proposals could be damaging to the offeror. Vendors could be reluctant to participate in the State's procurements if they do not believe the information provided to the State will be protected from improper disclosure.

- 3) Any attempts at communication or contact with any evaluation committee members by a vendor or other interested party regarding the evaluation process should be reported promptly to the procurement officer. Do not entertain questions from anyone, particularly vendors, or seek to provide any information, advice, directions, etc. All communication with offerors, prospective offerors, or others is to be through the procurement officer or other officially designated contact person.
- 4) After the evaluation process is completed, committee members must turn in all proposals to the Issuing Office as well as originals of evaluation sheets and any other materials related to their evaluations. Members may keep copies of their notes. Materials needed to help respond to a debriefing or protest, will be returned to involved Committee members.

Oral Discussions/Negotiations:

The intent of the process used to evaluate proposals solicited through the Competitive Sealed Proposals (CSP) procurement method is to obtain the best deal possible for the State. One way to assure this is by working with each offeror in an attempt to strengthen their technical proposals. A reasonable effort to consider the maximum number of proposals assures robust competition and deters some protests.

Often, there is a tendency on the part of evaluation committees to try to "get rid of" as many proposals as possible. This mindset may exist to minimize the time spent doing the evaluation or because of some strict standard concerning what offerors should have included in a proposal.

Neither rationale is defensible. First, the committee's purpose is to find the best offer, not minimize its effort. Those not prepared to evaluate the maximum number of proposals should withdraw from the committee. Second, this procurement method allows for protracted negotiation with offerors, including multiple submissions of technical and financial offers. There is no reason to find a proposal not susceptible on the basis of any missing item other than MBE Attachments A and B.

During oral discussions or in written responses, vendors should be apprised of those areas of their proposal that are deficient. Best and final technical offers give submitters the opportunity to strengthen the deficient areas through revision and resubmission. Proposals without major deficiencies are also given the opportunity to further strengthen their offer.

Some evaluation committee members may view this process as "unfair" to vendors who submitted strong proposals from the outset. They believe that identifying deficiencies and permitting revisions is "coaching" an offeror, and that such a process only encourages offerors to put forth minimal effort in constructing their initial proposal. There is no evidence to support any assertions that consideration of most or all proposals harms strong submissions or results in poor initial submissions.

Discussions should be held **whenever possible** for the following reasons:

- 1) It maximizes competition by keeping most or all offerors under consideration.
- 2) No vendor ever submits a perfect proposal. Even a good proposal can be, and should be, strengthened through the discussion process.
- 3) Even though every effort is made to write clear Requests for Proposals (RFP's), vendors may interpret an aspect of an RFP differently than how it was intended, or won't fully appreciate the importance attached to certain sections. Some offerors may completely miss areas they were required to address. Oral discussions allow for remediation of these ills.
- 4) Incumbent contractors may be given an advantage in discerning what the State wants even if the RFP does not clearly convey this. While there may be some value in retaining an incumbent, such practice can limit competition if new vendors are not given the opportunity to overcome the obstacle of incumbency. There are many examples of incumbent offerors who have become complacent in performance and have not felt compelled to be aggressive in their pricing.
- 5) Often, offerors are fully capable of performing the duties required in the RFP but misinterpreted the state's intent. In other words, they can do task B, as well as task A, if they had known that task B is what the state wanted. By telling the offeror that the state wants task B and permitting revisions, a maximum number of proposals can be considered.
- 6) The likelihood of a protest being filed may be reduced if meaningful discussions are held. Offerors who believe they have been given every opportunity to present their offer are less likely to protest award. Further, debriefings are made easier since deficiencies should have been noted during discussions (unless an offeror was eliminated before discussions were held.)

MDH CERTIFICATION OF IMPARTIALITY
FOR MEMBERS OF EVALUATION COMMITTEE

I, _____, agree to serve on
a committee appointed for the purpose of evaluating proposals for

_____.

In accepting this appointment, I acknowledge that I have read and understand the contents of the "Instructions for Evaluation Committee Members", and I hereby affirm that I will perform evaluations in a fair and impartial manner, on the basis of the criteria listed in the RFP and the specific submissions of each offeror, without any conflict of interest, bias or prejudice. Further, I affirm that I will hold all information pertaining to the evaluation process in strict confidence, agreeing to direct any and all inquires to the Procurement Officer of Record.

Signature

Date