

Procurement Process
Required Steps, Optional Steps, and Issues to Consider

1. Develop Solicitation (*most important of all*)
 - a. Step 1 – Analysis and Research
 - i. Needs Assessment & Risk Analysis
 - ii. Market Research
 1. Can involve advertisement of a general request for information.
 - b. Step 2 – Solicitation Development
 - i. Draft Scope of Work, specifying what contractor is to do
 - ii. Draft Ts&Cs (many are standard provisions with options)
 - iii. Draft Bidding Instructions, including Evaluation Criteria and Weighting
 - iv. Evaluation Panel Identification
 1. membership should be confidential; forms to sign
 2. advise of restrictions on contacts, etc.
 - c. Key References
 - i. 11-35-2730
 - ii. 19-445.2140
2. Public Comment Period (*optional*)
 - a. Optional opportunity for business community to comment on a published draft solicitation
3. Pre-Qualification (*optional*)
 - a. Overview
 - i. Optional process to limit competition to pre-qualified vendors, usually some subset of all vendor's seeking prequalification (at least 2)
 - b. Steps
 - i. Develop Request for Qualifications ("RFQ")
 - ii. RFQ Advertised and Published
 - iii. Evaluate responses and rank from most qualified to least qualified
 - c. Key References
 - i. 11-35-1530(4)
 - ii. 19-445.2132
4. Advertise & Publish Solicitation
 - a. Provide Adequate Public Notice / Publish advertisement in South Carolina Business Opportunities
 - b. Key Reference
 - i. 11-35-1530(2) and consequently 11-35-1520(3)
 - ii. 19-445.2040
5. Question and Answer (*optional*)
 - a. In almost every RFP, potential offerors are provided a meaningful period of time to learn of the solicitation's advertisement, review the contents, evaluate internally, develop questions regarding ambiguities or other perceived deficiencies in the solicitation, and submit them to the procurement officer.
 - b. As appropriate, an amendment to the solicitation is issued in order to respond to or answer questions submitted.
6. "Pre-Proposal" Conferences (*optional*)
 - a. Overview
 - i. Opportunity to meet with all interested offerors prior to opening. Often occurs as part of the Question-and-Answer process.
 - b. Timing
 - i. Decision made at beginning of process; notice of conference must be provided in original advertisement.
 - c. Key References
 - i. 19-445.2042
7. Opening

- a. Basics
 - i. All proposals must be opened at a time specified in the solicitation
- b. Key References
 - i. 19-445.2095(C)(1) (*a must-read*)
- 8. Evaluation & Ranking of Vendor & Its Offer
 - a. Only “responsive” proposals are ranked.
 - i. State has option to give non-responsive vendors opportunity to become responsive, but all must be treated fairly.
 - b. All offerors must be ranked highest to lowest.
 - c. Only published evaluation factors may be considered.
 - d. Any weightings in the evaluation criteria must be adhered to.
 - e. Ordinarily, price should be at least 20% to avoid other problems.
 - f. State can award to highest ranked offeror or elect to conduct either negotiations or requests for Best and Final Offers.
- 9. *Orals / Demos (optional)*
 - a. Possible, but can be fraught with potential pitfalls
- 10. Evaluation of Responsibility
 - a. State must evaluate offeror’s financial circumstances, capability to perform, history of performance, etc., prior to award
- 11. *Discussions & Negotiations (optional)*
 - a. State can negotiate, beginning with highest ranked offeror. Negotiations limited by solicitation’s mandatory requirements and scope of work competed.
 - b. Reason for unsuccessful negotiation must be documented.
 - c. State has means to clear-up ambiguities in an offeror’s proposal
 - d. Key Resource
 - i. 11-35-1530(6)and(8)
- 12. Award
 - a. Key Resource
 - i. 11-35-1530(9) and consequently 11-35-1520(10)
- 13. FOIA
 - a. Meeting Rules
 - i. Meeting rules apply generally and, specifically, to evaluation panel meetings.
 - ii. Failure to comply can result in defective contract.
 - iii. Guidelines available
 - b. Document Rules
 - i. To oversimplify, documents we have not intentionally issued do not go out until an award is posted.
- 14. Confidentiality
 - a. Basics
 - i. The law requires a high degree of confidentiality regarding the identity of offerors, the number of offerors, the content of every offeror’s proposal, (price, terms, etc.), the evaluation and negotiation process, and almost everything else.
 - ii. Reference the Procurement Integrity and the Non-Disclosure forms, which must be signed by everyone that sees any such information – including every evaluator, negotiator, or decision maker.
 - b. Key Resource (*recommended reading*)
 - i. 19-445.2010
- 15. Communications
 - a. After publication and prior to issuance of an award notice, the Procurement officer must control all communications with vendors, no exceptions

Integrity Obligations / Rules of Conduct: ▪ I acknowledge that my participation in this procurement may be subject to intense scrutiny and that my misrepresentation or failure to abide by the applicable rules of conduct could irreparably damage the integrity of this procurement. By signing this agreement, I agree to abide by the following rules of conduct until an award or notification of intent to award has been issued by the procurement officer: ▪ I agree to conduct myself in such a way as not to adversely affect the confidence of the public or competing offerors in this procurement process. ▪ I agree to avoid any action that could result in the appearance that I lack independence or impartiality. ▪ I agree not to engage in any activity, or enter into any financial transaction, that involves or appears to involve the direct or indirect use of "inside information" to further a private gain for myself or others. ▪ I agree to comply with applicable provisions of Title 8, Chapter 13 of the South Carolina Code of Laws, known as the State Ethics Act. If the State Ethics Act requires me to furnish or file a statement or form that has any bearing on this acquisition process, I agree to immediately provide the procurement officer with a copy. [▪ If you are not a public official, public member, or public employee (as defined by the State Ethics Act) and you are participating in this evaluation pursuant to a contract with the State, (a) you affirm that your employer does not have any direct or indirect financial interest or any other beneficial interest in any offeror, and (b) you agree to file a statement as required by Section 8-13-1150 and to simultaneously provide a copy to the procurement officer.]

Continuing Obligation: My representations and obligations under this agreement are of a continuing nature. If subsequent events cause any change to the representations made above, create an actual or apparent conflict of interest, or create a violation of any rule of conduct contained in this agreement, I agree to inform the procurement officer promptly and to take no further action concerning the procurement pending receipt of the procurement officer's instructions.

Exceptions: Check this box if you take any exceptions to any of the above representations. Please provide a thorough explanation of any exceptions on a separate sheet of paper, sign each page, and provide them to the procurement officer with this form. In the event that you note any exceptions, the procurement officer will advise you whether you may still participate in this procurement process.

Certification: I certify that I have read and understand the above. I further certify that the representations and statements made herein (or attached) are true and correct. I agree to the above terms.

Printed Name

Signature

Date

only for my official duties regarding this procurement as assigned by the procurement officer and only in a manner consistent with the rules of conduct stated herein. ▪ I acknowledge that state law may prohibit the public release of some proposal information even after award. ▪ If anyone communicates with me, directly or indirectly, regarding this procurement prior to award, I agree to immediately report the time, place, manner, content, and originator of the communication to the procurement officer. Prior to award, I will forward or refer all requests for information regarding the procurement to the procurement officer. ▪ If any information or allegations concerning improper or illegal conduct regarding a procurement comes to my attention, I will give immediate notice of the relevant facts to the appropriate chief procurement officer.

Continuing Obligation: My obligations under this agreement are of a continuing nature. If I violate any of the above restrictions, I agree to inform the procurement officer immediately and to take no further action concerning the procurement pending receipt of the procurement officer's instructions.

Certification: I certify that I have read and understand the above agreement. I agree to the above terms.

Printed Name

Signature

Date

19-445.2010. Disclosure of Procurement Information.

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E. Prior to the issuance of an award or notification of intent to award, whichever is earlier, the procurement officer shall not release a proposal to a person without first obtaining from that person a written agreement, in a form approved by the responsible chief procurement officer, regarding restrictions on the use and disclosure of proposals. Such agreements are binding and enforceable.

B. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall forward or refer all requests for information regarding the procurement to the responsible procurement officer. The procurement officer will respond to the request.

D. Throughout the competitive sealed proposal process, state personnel with access to proposal information shall not disclose either the number of offerors or their identity, except as otherwise required by law.

C. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (1) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (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, (8) reports, evaluations of source selection committees or evaluations panels, (9) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

19-445.2095. Competitive Sealed Proposals.

C. Receipt of Proposals.

(1) . . . Proposals and modifications shall be shown only to State personnel having a legitimate interest in them and then only on a "need to know" basis . . .