

Tips on Avoiding Successful Challenges to Solicitations and Contract Awards

December 19, 2008

Advance planning and careful scrutiny of solicitation requirements will reduce the number of successful challenges to solicitations:



Plan in Advance

Advance planning will allow you to avoid unreasonable delivery times or performance schedules, which may reduce the pool of vendors.

Avoid Unduly Restrictive Specifications

- Discuss specifications with the end user to understand what is required as opposed to what is merely desirable.
- Avoid copying vendor's product sheets - as these may introduce specifications that are unique to a particular vendor but not necessary to satisfy the end user's needs.

Take Note of Vendor's Questions

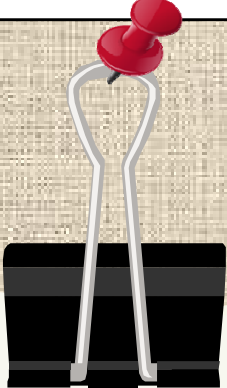
Sometimes vendor questions or inquiries will give notice that a solicitation is restrictive. This may give you an advance opportunity to correct problems prior to challenges/protests.

Do not impose mandatory qualification requirements which are unnecessary

Are the qualification requirements required by law or agency policy?

If not, ask yourself: if no vendor submitting a response met this requirement, would I still want to make an award?

Tips on Avoiding Successful Challenges to the Award



Challenge to awarded vendor's compliance with RFX

Tip

Review vendor's compliance with mandatory requirements carefully. If all vendors fail a mandatory requirement, the state must rebid (unless 50-5-67(c) is applicable).

Tip

Don't forget to review posted Q&A and/or Addenda which may have altered the requirements of the solicitation.



Allegation that fatal conflict of interest exists

Tip

Talk about possible conflicts of interests with evaluators. Seek legal advice as appropriate.

Tip

Think about the individuals assisting in the solicitation preparation (i.e. consultants, etc.). If a participating vendor already possesses a contract with the state, consider whether the new contract would create a conflict of interest.

Tips on Avoiding Successful Challenges to the Award



Challenge to State's compliance with award criteria



Tip

Do not deviate from the general distinction between RFQs and RFPs. For example, if two vendors responding to an RFQ are responsive and responsible, the award must be made to the lowest bidder unless the lowest bidder is clearly incapable of performing. In contrast, the lowest offeror may not be the winner resulting from an RFP, as both the technical and cost portions are scored.



Challenge to State's compliance with award criteria



Tip

Do not deviate from the stated award criteria. If the award criteria are flawed, a rebid may be unavoidable.

Tips on Avoiding Successful Challenges to the Award



Challenge to State's compliance with solicitation

Tip

Do not accept late responses.

Tip

Do not permit vendors to supplement responses after RFX closing except as permitted during DOAS hosted negotiations.

Tip

Do not grant impermissible contract exceptions.

Tip

Do not waive mandatory requirements.



Challenge to State's compliance with solicitation

Tip

All vendors must submit the proposal certification/non-collusion statement.

Tip

Do not accept conditional bids/proposals (e.g. price to the state will be X but only if state contract for at least two years and RFX states initial term is one year, etc.). This will be specific to the RFX – ask for assistance in determining whether a response is conditional.

Tips on Avoiding Successful Challenges to the Award



Challenge to State's evaluation



Tip

Ensure evaluation members understand the evaluation tool.



Tip

The evaluation tool should be consistent with the RFX.



Challenge to State's evaluation



Tip

Evaluate in a consistent manner (For example, if all vendors must include the response in the state section, do not award points to one vendor supplying the information in another section without doing the same for all vendors).

Exercise: Importance of Understanding the Evaluation Tool



Scenario:

Agency posts an RFP to solicit proposals to provide a software solution. As one of the scored requirements of the RFP, the RFP directed each offeror to describe the proposed software warranty. At a minimum, the RFP required each Offeror to provide a one-year warranty.

Offeror A submits a proposal but does not include any software warranty. During scoring, the evaluators determined Offeror A should receive zero points for this response. However, as Offeror A was otherwise the highest scoring offeror, Offeror A was selected for award. Offeror B filed a protest. How do you think the protest should be resolved?

Resolution?

- A. Sustained**
- B. Denied**

Exercise: Importance of Understanding the Evaluation Tool



Resolution?

A. Sustained

B. Denied

Discussion:

- **Why should this protest be sustained?**
 - Because the RFP contained a minimum requirement of at least a one year software warranty, Offeror A failed this requirement by providing no warranty. In the event an Offeror fails one or more mandatory requirements, that vendor must be disqualified. By failing to disqualify this offeror, the evaluation team waived the mandatory requirement, which is not permissible.
 - To avoid this situation, make sure evaluators understand that mandatory requirements must first be scored on a pass/fail basis. In the event points have been reserved, then all passing vendors may receive points in accordance with the evaluation tool. For example, all offerors providing the minimum of a one year warranty might receive a minimal score while offerors offering a more lengthy or robust warranty would receive a superior score.

Questions?



- For assistance with specific questions, please dial 404-657-6000 and ask to be connected with a SPD Group Category Manager
- For additional information regarding the informal complaint and formal protest procedures, please see the *Georgia Procurement Manual, Chapter 9, Section 1*