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A8.240     Competitive Sealed Proposals

1.     Conditions for Use

The competitive sealed proposal method of source selection may be used when it is determined that competitive sealed bidding is neither practicable nor advantageous to the University.

- a.     Factors to be considered in determining whether competitive sealed bidding is not practicable or advantageous include:
- 1)     Whether the primary consideration in determining award may not be price;
  - 2)     Whether the requirements for the goods, services or construction are unable to be as sufficiently described as in an invitation for bids;
  - 3)     Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
  - 4)     Whether offerors may need to be afforded the opportunity to revise their proposals, including price; and
  - 5)     Whether award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offer to the University. Quality factors include technical and performance capability and content of the technical proposal.

2. Preparing a Request for Proposals

- a. The request for proposals is used to initiate a competitive sealed proposal procurement and shall include:
- 1) The specifications, in as much detail as possible, for the goods, services, or construction to be procured, including a description of the objective of the procurement;
  - 2) All contractual terms and conditions applicable to the procurement;
  - 3) A statement as to the manner in which prices are to be submitted;
  - 4) A statement on whether the proposal shall be accompanied by a proposal security or other evidence of financial responsibility;
  - 5) The term of the proposed contract and conditions of renewal or extension, if any;
  - 6) Instructions and information to offerors, including pre-proposal conferences, and the date, time, and location where proposals are to be received;
  - 7) The specific evaluation criteria, and their relative weighting, to be used in the evaluation of proposals which may include but are not limited to:
    - a) Technical capability and approach for meeting performance requirements;
    - b) Competitiveness and reasonableness of price; and
    - c) Managerial capabilities.
  - 8) A statement that offerors may designate in writing those portions of the proposal that contain trade secrets or other proprietary data that are to remain confidential, subject to

disclosure as may be required by law, and that the material designated as confidential should be readily separable from the proposal in order to facilitate inspection of the nonconfidential portion of the proposal.

- b. Public notice for a request for proposals shall be made in the same manner provided for distributing an invitation for bids.

3. Amendments to a Request for Proposals

Amendments to requests for proposals may be made in the same manner as provided for invitations for bids.

4. Modifications or Withdrawals of Proposals

Proposals may be modified or withdrawn prior to the established due date as provided for invitations for bids. For the purposes of this section, the established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any.

5. Late Proposals, Late Withdrawals, and Late Modifications

Any proposal, withdrawal request, or modification received after the established due date may only be considered as provided for invitations for bids.

6. Receipt of Proposals

- a. Proposals and modifications shall be submitted to the OPRPM and held in a secure place until the established due date. Other methods of receipt may be used when in the best interest of the University.
- b. Proposals and modifications shall not be opened publicly, but shall be opened in the presence of two or more procurement officials.
- c. Proposals and modifications shall be shown only to University personnel having legitimate interest in them.

- d. After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals:
  - 1) The name of each offeror;
  - 2) The number of modifications received, if any; and
  - 3) A description sufficient to identify the goods, services, or construction offered.

7. Evaluation of Proposals

- a. The OPRPM, or an evaluation committee designated by the OPRPM, shall evaluate proposals.
- b. The evaluation of proposals shall be based only on the evaluation factors set out in the request for proposals. The relative priority to be applied to each evaluation factor shall also be set out in the request for proposals. Evaluation factors not specified in the request for proposals may not be considered. The evaluated ranking of the proposals shall be available for public inspection after the contract is signed by all parties.
- c. With respect to price as an evaluation factor, the proposal with the lowest cost factor should receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest should have a lower rating for cost. The points allocated to higher-priced proposals should be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.
- d. In the evaluation of proposals, consideration shall be given to all applicable preferences as provided under Chapter 103D and Chapter 3-124, HAR, at <http://www.hawaii.gov/spo/statutes-and-rules/>

8. Discussions with Offerors

- a. Based on the evaluation, a "priority list" of the offerors submitting proposals may be created as follows:
  - 1) In order to generate a priority list, proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.
  - 2) All responsive, responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list.
  - 3) If numerous acceptable and potentially acceptable proposals have been submitted, the OPRPM or the evaluation committee may rank the proposals and limit the priority list to at least three responsive, responsible offerors who submitted the highest-ranked proposals.
- b. Discussions should be limited to only "priority-listed" offerors and may be held to:
  - 1) Promote understanding of the University's requirements and priority-listed offerors' proposals; and
  - 2) Facilitate arriving at a contract that will be most advantageous to the University, taking into consideration the evaluation factors set forth in the request for proposals.
- c. Proposals may be accepted on the basis of the evaluation without discussion.
- d. Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.
  - 1) Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror.

- 2) If during discussions there is a need for any substantial clarification or change in the request for proposal, the request for proposal shall be amended by an addendum to incorporate the clarification or change.
- e. Addenda to the request for proposals shall be distributed only to priority-listed offerors who shall be permitted to submit new proposals or to amend those submitted.
- f. The contents of any proposal shall not be disclosed so as to be available to competing offerors during the discussion and negotiation process.

9. Best and Final Offers

- a. Priority-listed offerors may be afforded the opportunity to submit best and final offers on or before a date and time established by the OPRPM.
- b. If priority-listed offerors do not submit a new offer, their immediate previous offer should be considered as their best and final offer.
- c. After the best and final offers are received, final evaluations should be conducted for purposes of award of the contract.

10. Mistakes in Proposals

- a. When the OPRPM knows or has reason to conclude before award that a mistake has been made, the OPRPM shall request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn.
- b. If discussions are commenced or best and final offers are requested, any priority-listed offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
- c. If the date and time for best and final offers have passed, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended

correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

- d. If the date and time for best and final offers have passed, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if the OPRPM determines that:
  - 1) the mistake is clearly evident on the face of the proposal but the intended correct offer is not;  
or
  - 2) the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
- e. Technical irregularities that are matters of form rather than substance evident from the proposal document, and insignificant mistakes that have no effect on price, quality or quantity, may be waived or corrected by the OPRPM if either is in the best interest of the University.
- f. Mistakes shall not be corrected after award of contract.

#### 11. Cancellation of Solicitations and Rejection of Proposals

Cancellation of a request for proposals and/or rejection of proposals may be made when in the best interest of the University.

#### 12. Award of Contract

A contract shall be awarded under competitive sealed proposals to the responsive, responsible offeror whose proposal is determined in writing to provide the best value to the University taking into consideration price and the evaluation criteria provided in the request for proposals. Other criteria may not be used in the evaluation. The award shall be posted for five working days.

13. Receipt of One or No Proposals

- a. If for a given request for proposals, there is only one responsive, responsible offeror submitting an acceptable proposal:
- 1) An award may be made to the single offeror, provided that it is determined that the price submitted is fair and reasonable;
  - 2) The proposed procurement may be cancelled; or
  - 3) An alternative procurement method may be conducted to include, but not be limited to, direct negotiations with the sole offeror first, and then with any contractor or vendor should negotiations with the sole offeror fail, provided the OPRPM determines in writing that the need for the goods, services, or construction continues, but that the price of the one offer is not fair and reasonable.
- b. If for a given request for proposals, there are no proposals received or there are no responsive and responsible offerors submitting acceptable proposals, the procurement officer may determine that it is neither practical nor advantageous to issue a new solicitation. In the event of this determination, an alternative procurement method may be selected, to include but not be limited to, direct negotiations.

14. Public Inspection

- a. The existing contract file, except those portions which the offeror designates in writing as trade secrets or other proprietary data to be confidential, shall be available for public inspection upon posting of award. The contract file shall include but not be limited to the following:
- 1) The register of proposals received;



- 2) A listing of all vendors to whom copies of the request for proposals were distributed;
  - 3) Name of successful offeror and dollar amount of offer;
  - 4) The basis on which the award was made;
  - 5) A copy of the request for proposals;
  - 6) A copy of the successful offeror's proposal;
  - 7) A copy of all unsuccessful offerors' proposals; and
  - 8) A copy of the executed contract resulting from the request for proposals.
- b. If a person requests to inspect the portions of an offeror's proposal designated as confidential, the inspection shall be subject to written determination by the Office of the University General Counsel for confidentiality in accordance with Chapter 92F, HRS.
- c. If the Office of the University General Counsel determines in writing that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, subject to appeal by the offeror whose proposal is being inspected pursuant to Chapter 92F, HRS.

15. Debriefing

- a. The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and contract award.
- b. A written request for a debriefing by a nonselected offeror shall be made within three working days after the posting of the award of the contract.
- c. Debriefing shall be held by the procurement officer or designee, to the maximum extent practicable, within seven working days; provided the procurement officer or designee may determine whether or not to conduct individual or combined debriefings.