



State Procurement

Request for Proposal (RFP) Evaluator's Guide

N O R T H
Dakota
Be Legendary.

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INTRODUCTION

This guide is intended to be used by Procurement Officers to provide instructions to the RFP Evaluation Committee to ensure evaluators understand the RFP process. The RFP process is subject to N.D.C.C. § 54-44.4-10 and N.D.A.C. Chapter 4-12-08 and the specifics of the Request for Proposal. If you have any questions regarding these guidelines, please contact the Office of Management and Budget, State Procurement Office at 701-328-2740 or infospo@nd.gov.

EVALUATORS

You have been selected to serve on the proposal evaluation committee for a Request for Proposal (RFP). The RFP process measures the quality and cost of proposals when purchasing goods and services, and it ensures fair treatment of vendors desiring to do business with the State. It's important for you as an evaluator to know what will be expected of you before committing to this duty. Being on an evaluation committee will require long hours of concentrated effort. Please let the Procurement Officer know if you have any reservations before you start.

THE EVALUATION COMMITTEE

The Procurement Officer responsible for the procurement determines the number and makeup of the evaluation committee. Committees are usually comprised of three to five members, but they can be any size and an odd number is not required. The majority of members are usually State employees or public officials. The Procurement Officer may include a mixture of members from several departments of diverse backgrounds or include members who are not State employees or public officials.

- Role of the Procurement Officer: The Procurement Officer will be the evaluation committee chairman and may or may not award points for proposals. The Procurement Officer has overall responsibility for all matters involving the procurement and its procedures, and they are responsible for seeing that applicable state laws, rules, and policies are followed.
- Role of the Committee: The role of the evaluation committee is to ensure thorough consideration and evaluation of proposals received. The evaluation committee remains actively engaged in the various stages of the RFP process until an award is made or the procurement is canceled.
- Role of Committee Members: You will be one of several evaluators on the evaluation committee. Your duty is to apply judgment in awarding points to the proposals considering only the evaluation criteria published in the RFP. You must be able to meet the time requirements to evaluate proposals, attend committee meetings, and vendor presentations or demonstrations.

REPLACEMENT OF COMMITTEE MEMBERS

The Procurement Officer may replace any member on the committee or reconstitute the committee in any way the Procurement Officer deems appropriate. Any committee member may request to be replaced at any time. Replacement or removal may be suitable, for example, if an evaluator is unable to attend vendor demonstrations.

INITIAL MEETING OF THE EVALUATION COMMITTEE

It is recommended that the Procurement Officer meet with the evaluation committee before distributing the copies of proposals received. The meeting will cover the proposal evaluation process to ensure each committee member has a clear understanding of scoring and how points will be assigned. The Procurement Officer should provide evaluators with a copy of the RFP, each proposal received, these guidelines, and the

technical evaluation worksheet to be used when scoring proposals.

The Procurement Officer will develop a schedule for the evaluation process, based upon the tentative schedule laid out in the RFP. Remember, the committee members need to be given sufficient time to read and evaluate each proposal. Plan head for those members of the committee that need to travel to attend meetings; use telephone or video conferencing whenever practical.

Determine the Evaluation Process: The Procurement Officer will work with the purchasing agency to determine how proposals will be evaluated. Proposals will be evaluated by one of the following methods. Either method is acceptable, but your instructions to evaluators will vary depending upon the approach selected:

1. Consolidation of Individual Scores.
 - a. Each evaluation committee member reviews each responsive proposal and records their comments and scores on the evaluation worksheet.
 - b. The Procurement Officer compiles the resulting evaluations from all team members, resolves any factual oversights, makes sure the resulting team member notes are legible, and produces a summary that constitutes the evaluation committee's recommendation.
2. Group Evaluation.
 - a. Each evaluation committee member reviews each responsive proposal and makes notes about their observations and tentative scores on the technical evaluation worksheet.
 - b. The evaluation committee then meets as a group to review the individual proposals; the evaluation committee arrives at a group consensus as to the associated scoring and produces a summary that constitutes the evaluation committee's recommendation.

REQUEST FOR PROPOSAL

It is very important that all evaluators read the RFP and any amendments issued to the RFP before attempting to evaluate proposals. The RFP describes all the requirements of the project, how proposals must be prepared, and how proposals will be evaluated.

CONFLICT OF INTEREST

After proposals have been received and it is clear which companies are involved in the RFP, each evaluator must make sure that they do not have a potential conflict of interest. An example of a conflict of interest is a situation in which a state employee (or family member) owns a business that is competing for a state contract, and that state employee participates in the decision-making process to award that contract. It is important to avoid even the appearance of impropriety in the evaluation process. Disclose potential problems at the earliest possible time and make adjustments to keep the process fair to all competitors. Your awareness of a potential conflict may not arise until you are well into the evaluation process. If there is any question about a potential conflict of interest, notify the Procurement Officer immediately and consult legal counsel. If a conflict of interest exists, that person cannot be a member of the evaluation committee.

The RFP Technical Evaluation Worksheet normally requires the evaluator to certify that they do not have a conflict of interest regarding the offeror being evaluated.

NONDISCRIMINATION

Source selection may not be based upon discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation. [N.D.A.C. § 4-12-04-07]

RESPONSIVENESS

The Procurement Officer must review all proposals for responsiveness before distributing them to the evaluation committee. This will prevent the evaluation committee from reviewing a proposal that can't be considered for award. An offeror, an individual or firm that submits a proposal, is considered "responsive" if their proposal has been prepared in full compliance with the requirements of the RFP. The evaluation committee cannot evaluate proposals deemed non-responsive. "Minor informalities" are insignificant omissions or nonjudgmental mistakes that can be waived without prejudice to other offerors (see N.D.A.C. § 4-12-10-01).

NO PROPOSALS OR ONLY ONE PROPOSAL RECEIVED

If no proposals are received, the Evaluation Committee will need to consider why the competitive process failed. Consider contacting vendors on the bidders list to find out why they did not respond to the RFP. Consider whether the requirements were restrictive. Additional market research may be required to determine if the RFP requirements were appropriate and expand the bidders list. See the OMB website for templates for cancelling the solicitation.

If only one proposal is received, the evaluation committee should decide whether to proceed with the evaluation. See N.D.A.C. § 4-12-11-08.

COST PROPOSALS NOT REVEALED UNTIL AFTER INITIAL TECHNICAL SCORING

Usually, the Procurement Officer calculates the points for cost evaluation. Having someone else review cost proposals is also recommended as a "double check." If there are questions about the cost proposal, the Procurement Officer may need to have clarification discussions. It is best practice that the evaluation committee **not know** the price until after it has compiled its initial technical scoring. In general, this is done to avoid the possibility of the prices influencing the scoring when non-price criteria are being considered.

POINTS EARNED BEFORE EVALUATION COMMITTEE CONSIDERATION

In some cases, proposals may be presented to you that have had some points awarded before you receive them. For example, an accountant may review financials provided and provide financial stability scores. In these instances, such points are not subject to adjustment by the committee.

TECHNICAL EVALUATION WORKSHEET

A technical evaluation worksheet is used to guide the evaluation committee members in their review and evaluation of proposals. A technical evaluation worksheet provides a listing of individual evaluation criteria and the rating scale to be used when scoring the technical proposal. The resulting evaluation framework is very important because it:

- Provides a means for all evaluators to review and evaluate proposals in a consistent and objective manner;
- Helps the evaluators discuss differences in their initial review and, for those differences that are based on an incomplete or incorrect reading of the information presented, resolve them; and
- Documents the results of the evaluation committee's work and provides support for the

final recommendations.

Evaluators MUST provide comments on the technical evaluation worksheet which explain or supports their score for each evaluation criterion. Any notations made on the evaluation worksheet will become public record after contract award.

RATING SCALE

The rating scale establishes standards by which points are assigned to proposals, and it ensures that members of the evaluation committee score each proposal with consistency. Here is an example:

Experience and Qualifications RATING SCALE (20 Point Maximum)	
Point Value	Explanation
0-4	None. Not addressed or response of no value
5-8	Fair. Limited applicability
9-12	Good. Some applicability
13-16	Very Good. Substantial applicability
17-20	Excellent. Total applicability

A zero value typically constitutes no response or an inability of the vendor to meet the criteria. In contrast, the maximum value should constitute a high standard of meeting the criterion. Each intermediate value should be set to cover some intermediate condition. Sometimes, you may have a criterion that can only be evaluated as "yes" or "no" (e.g., offeror can submit an electronic report in required format by noon Friday), then the rating scale would have only two possible values (i.e., the maximum points or a zero).

NON-NUMERICAL SCORING SYSTEMS REQUIRE EXPLANATION

If the RFP uses a non-numerical rating system, for the sake of fairness to the competitors, it is necessary for you to explain in writing how you came to rank the individual offers the way you did. The evaluation must be rational and consistently applied from competitor to competitor.

COMMUNICATIONS WITH PROPOSER OUTSIDE COMMITTEE

If the Procurement Officer has provided for the offerors to have communication with the evaluators, it will normally be done while the committee is in session so all members can benefit from the communication at the same time. Sometimes, the Procurement Officer or designee may communicate directly with an offeror to obtain information to provide to the evaluation committee. It is not appropriate for an evaluation committee member to have direct communication with any of the offerors outside of the formal communications arranged by the Procurement Officer. Any attempt by one of the offerors to have direct or indirect communication with an evaluator outside of a committee session should be avoided and reported to the Procurement Officer.

INDEPENDENT JUDGMENT

In evaluating proposals, you must exercise "independent judgment." You have been entrusted with an essential part of an important public decision. Exercise your judgment in a manner that is not dependent on anyone else's opinions or wishes. You can seek to increase your knowledge before you award points by asking questions and seeking appropriate information. Ensure, however, that you do not allow your actions to be influenced by another person's wishes (i.e. a desire that you award more points to a particular offeror.)

It's possible you will hear from other persons not on the evaluation committee (even if you don't want to) about what you should do in awarding points to this or that proposal. For the most part these contacts by others will not rise to the level of serious concern unless you feel your independence is being compromised in some manner, or your decisions are being influenced to the point of being dependent on another person's desires. Report any attempts by others to improperly influence you to favor or disfavor a particular proposer to the Procurement Officer immediately.

The exercise of independent judgment applies not only to possible influences from outside the evaluation committee, but also to influences from within the committee. It's normal and acceptable for there to be debate, even passionate debate, within the committee about how well a proposal meets the evaluation criteria. As an independent evaluator, you may be swayed by debate in making your judgment about many points you wish to award, and that is perfectly OK. However, evaluators may not act in a concerted way to either favor or disfavor a particular proposal or group of proposals, as the evaluation would not be based upon the independent judgment of the individual evaluators.

Evaluators will have different scores because they are exercising independent judgements, so comments to support scoring decisions are important.

EVALUATING PROPOSALS

We recommend that evaluation committee members read each proposal twice—the first time for understanding, without evaluating. Then, review and evaluate each proposal to measure the quality and degree of compliance with the evaluation criteria.

Evaluators MUST provide comments that lend insight regarding the scores awarded for an evaluation criteria. Remember, the evaluation worksheets become open records after award, and offerors will read these comments to understand how their proposal was scored. Make notes and give initial ratings on the technical evaluation worksheet. Contact the Procurement Officer if you feel a proposal does not comply with a mandatory requirement (such as a minimum number or years' experience or a required license, etc.) or if you have questions about the scoring process.

COMPARING OFFERS

At first glance, it may seem obvious that proposals should be compared to one another in order to select the best one. While it's true that a certain amount of comparison naturally occurs during the evaluation process, proposals must be evaluated or scored using the criteria set out in the RFP. Use the rating scale to help you score.

REFERENCE CHECKS – PAST EXPERIENCE

Reference checks must be conducted if the RFP required offerors to provide references and those references were included as an evaluation criterion. At the initial meeting of the evaluation committee, decide who will be responsible for conducting reference checks. Reference checks may be conducted by a non-scoring staff person who reports the results to the evaluation committee. The reference checks must be conducted as soon as possible so the evaluation committee can consider the information received during the reference checks.

Commonly evaluators ask if they can consider their personal past experience with a vendor. For example, a proposal may be received from an incumbent. Relevant past experience may be considered and should be documented on the evaluation score sheets.

EVALUATION COMMITTEE DISCUSSIONS

After all evaluators have completed their initial proposal review and scoring, the evaluation committee should meet as a group to discuss the proposals and identify any areas needed for further clarification from an offeror. If aspects of a proposal need to be clarified, the Procurement Officer may communicate with an offeror to clarify uncertainties or eliminate confusion. This communication may not result in a material or substantial change to the proposal, but evaluators may modify their scores as a result of discussions and clarifications.

When the initial evaluation scores are finalized, the Procurement Officer will consolidate the individual scores and calculate the total score. If any scores appear unusual, the Procurement Officer should ask the evaluator to explain their scores, or reconsider if an error seems apparent. Evaluators should always have a reasonable, rational, and consistent basis for their scores, as the evaluator might be required to explain their scores in the event of a protest.

If a group evaluation is being conducted, the Procurement Officer will facilitate an evaluation committee meeting to make a group decision about the scores to be awarded for each evaluation criterion. The Procurement Officer must prepare a summary document that includes the comments regarding each proposal and the scores awarded.

OFFERORS REASONABLY SUSCEPTIBLE FOR AWARD

Proposals will be evaluated using a 100 point scale. The evaluation committee will award points based on the questions in the Technical Proposal Evaluation Worksheet. The technical proposal evaluation score and cost proposal evaluation score will be added together to determine the total evaluation score. After the initial evaluation, the evaluation committee may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those offerors. These offerors may be required to provide a presentation or demonstration for the evaluation committee.

The final evaluation score will consider information received by the State, including, but not limited to, discussions with offerors, demonstrations, presentations, site visits, reference checks, and best and final offers.

DISCUSSIONS WITH OFFERORS / DEMOS

The Procurement Officer or evaluation committee normally conducts discussions or demos with offerors for the purpose of clarification and ensuring a good understanding of the proposal. The Procurement Officer and evaluation committee will determine the structure of the discussions or demos and may limit these to specific sections of the proposals received or specific sections of the request for proposal.

Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion or demo and revision of proposals. The opportunity for discussions or demos, if held, must be extended to all offerors submitting proposals deemed reasonably susceptible for award. Do not use any "auction techniques" that reveal one offeror's price or technical information to another vendor.

THIRD-PARTY RISK MANAGEMENT

Third-Party Risk Management (TPRM) is a program led by North Dakota Information Technology (NDIT) to identify and reduce risks associated with outsourcing/contracting to third-party vendors or service providers. Third-party refers to vendors and any subcontractors with NDIT. TPRM reviews vendors' security controls through assessments to find any existing gaps. TPRM will mitigate undue risk and cost associated with third-party breaches and protect North Dakota citizen data.

If it is confirmed that TPRM is included in the solicitation, the procurement officer or the selected agency team member will submit a request to NDIT. Once review of the vendor has been completed by NDIT, NDIT will review the results with those necessary, which may include the Procurement Officer, vendor, Information Security Officer, Architect, and Customer Success Manager. If members of the agency or evaluation team would like to be included, they may join, but are not required. After all risks have been resolved or accepted, NDIT will provide signed documentation to the Procurement Officer or selected agency team member confirming the vendor has been reviewed and will be monitored by NDIT. The TPRM process is estimated to take 2 weeks depending on the complexity of the solicitation, response time of vendor, or if any critical findings are found.

BEST AND FINAL OFFER (BAFO)

The best and final offer process is used to obtain additional information and invite offerors to revise their proposals. Sometimes, the evaluation committee may not be satisfied with the proposals or feel that the proposals could be improved upon. The evaluation committee may also decide that it is necessary to provide more information, disclose budget, or change some aspect of the RFP requirements. The Procurement Officer must invite offerors that are determined to be reasonably susceptible for award to submit best and final offers. The BAFO process is not initiated by an offeror's request for an opportunity to submit a best and final offer. Best and final offers are not necessary when the evaluation committee is satisfied with the proposals received.

Document which offerors will be notified and provided the opportunity to submit best and final offers. Customize the Request for Best and Final Offer template to describe the specific areas to be covered and the date and time in which the best and final offer must be returned. The technical proposals, terms and conditions, or price of the proposal may be altered or otherwise changed, provided the changes are within the scope of the request for proposals and instructions contained in the request for best and final offer. However, the BAFO process cannot be used to make material changes to the RFP requirements that potentially impact the competitive process, such as waiving of a mandatory requirement. Best and final offers are usually only requested once, but multiple requests for best and final offers are sometimes necessary.

If an offeror does not submit a best and final offer or a notice of withdrawal, the offeror's previous proposal is considered the offeror's best and final proposal, unless otherwise noted in the BAFO. After best and final offers are received, final evaluations will be conducted. BAFOs are normally evaluated as an adjustment to the scores already awarded by the evaluation committee.

ADJUSTMENT OF INITIAL EVALUATION SCORES

Evaluators may make adjustments to their initial scores as a result of discussions with offerors, clarifications, demonstrations, presentations, reference check results, best and final offers, and further due diligence within the evaluation process. Use the RFP Adjustment of Initial Evaluation Score template to document the reasons for adjusting scores.

APPLYING PREFERENCE LAWS

The reciprocal preference law, N.D.C.C. § 44-08-01, was repealed effective August 1, 2023.

Before evaluating the cost proposal, the Procurement Officer must identify if any applicable preference laws apply. Visit the OMB website for more information about applying preference laws. Contact the State Procurement Office at 701-328-2740 for assistance.

N.D.C.C. § 44-08-02 defines a resident North Dakota bidder, seller, or contractor as "a bidder, seller, or contractor who has maintained a bona fide place of business within North Dakota for at least one year prior to the date on which a contract was awarded."

COST EVALUATION

The Procurement Officer completes the evaluation of cost points. It is recommended that cost be double-checked by at least one other person (either someone else in the department or one of the evaluators after completing the initial technical evaluation). Cost is typically shared and discussed with the evaluation committee members after the initial technical evaluation has been completed.

Cost will be converted to points. The proposal with the lowest cost receives the maximum points allowed. All other proposals receive a percentage of the points available based on their cost relationship to the lowest cost proposal. Divide the lowest cost proposal received by the cost of the proposal being rated and multiply the results by the maximum points. The result is the awarded points. This is determined by applying the following formula:

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Maximum points available} = \text{Awarded Price Points}$$

Example: The total points available for cost in the RFP is forty (40) points. The cost of the lowest acceptable proposal is \$100,000. Therefore, the lowest proposal cost of \$100,000 would be awarded forty (40) points. The second lowest acceptable proposal submitted a cost of \$125,000. The second lowest proposal cost of \$125,000 would be awarded thirty-two (32) points.

$$\frac{\$100,000}{\$125,000} = .80 \quad \times \quad 40 = 32 \text{ points}$$

The points awarded for cost are combined with the total points awarded for the technical proposal to determine the successful proposal.

On rare occasion, an RFP evaluation criteria will have a 0% weight on cost. This may be appropriate when the budget or compensation is fixed.

AWARD DECISION

Before making the award, the Procurement Officer must ensure the quality control of the evaluation process by checking any mathematic computations and ensuring only those criteria identified were considered. The integrity of the process and state procurement system is grounded upon the Procurement Officer and evaluation committee adhering to the procedures and evaluation requirements stated in the RFP.

NOTICE OF INTENT TO AWARD

After the successful proposal is selected, a notice of intent to award will be sent to all offerors and any other interested parties. The Notice of Intent to Award contains the following:

- Name of the purchasing agency
- Solicitation number and name
- Lists all vendors that submitted proposals

- Name of the successful vendor.
- Notice of the right to protest the award in writing to the Procurement Officer within seven days after the interested party knew or should have known about the award decision.
- Procurement Officer's contact information.

The Letter of Instruction for Successful Offeror provides the successful offeror(s) with notice about what is needed before a contract can be executed.

DEBRIEF

The Notice of Intent to Award template invites offerors to contact the Procurement Officer if they have questions. Offering to debrief offerors is a best practice, and Procurement Officers are encouraged to offer debriefs. The Procurement Officer may proactively contact vendors who were not selected for award and offer to schedule a debrief. A debrief is simply an explanation of the evaluation process, and may include a discussion of proposal scores, summary of evaluators' notes, and a "thank you" for taking the time to submit a proposal in response to the State's RFP. Helping offerors understand the evaluation process and the score they received may lessen the likelihood of protests.

REJECTION OF ALL PROPOSALS

On occasion, a decision may be made to reject all proposals received. Reasons might include: none of the responses met the specifications, the prices received were not reasonable or exceeded the budgeted amount, or competition was insufficient (e.g. few proposals received). Provide a written justification whenever a decision is made to reject all proposals. Notify all vendors that responded to the solicitation and explain why all proposals were rejected. The solicitation process may be repeated or canceled altogether.

REQUESTS FOR PUBLIC INFORMATION

After the Notice of Intent to Award is issued, the proposals and contents of the procurement file become subject to state open records laws. Procurement Officers will receive requests for copies of proposals and evaluation documents. Remember, information can only be confidential if determined to be so under state or federal law. Any requests for information received by an evaluator, should be directed to the Procurement Officer.

Offerors will very commonly mark their entire proposal as "confidential." Before releasing the proposal to the requestor, the Procurement Officer should contact the firm that submitted the proposal and inform them that a request for public information has been received. Inform the offeror that ND has an open records law, so information can only be kept confidential if it is determined to be so under North Dakota or federal law. If an offeror's entire proposal is marked "Confidential", ask the offeror to indicate specifically what information or sections they consider confidential. Requests for public information must be answered promptly, so give the offeror a deadline to respond to your request. You can also send the offeror the link to the Office of the Attorney General's open records guide: <https://attorneygeneral.nd.gov/open-records-meetings/manuals-and-guides>

If the request for public information includes the section that the offeror feels is confidential, contact your assistant attorney general to help determine whether or not that section can be made open or must be kept confidential.

PROTESTS, APPEALS, AND LAWSUITS

Protests, appeals, and lawsuits are a part of procurement life. It is possible that one or more of these

actions could occur over the procurement for which you serve as an evaluator. It is very common practice for a protesting offeror to review the scoring of individual evaluators. This is why it is essential that evaluators work hard to score the offers in a consistent and explainable manner. Protests are often the result of a lack of communication.

Thank you for your participation in this RFP process!