

The Solicitation – A Buyer’s Sharpest Tool

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Whether by invitation for bid (IFB) or request for proposals (RFP), a solicitation is our best chance to get more than just prices. A solicitation is an opportunity to get information that will help us select the best proposal and/or reject offerors who are likely to fail. Even in a very ridged IFB situation, procurement has an obligation to weed out offerors who are not responsible, not responsive and who do not understand the specification. We can do that if we have requested sufficient information to make that determination.

Specifications and boiler-plate solicitation language are often insufficient to differentiate between offers. In addition to a specification and request for pricing, experienced buyers will require data and information sufficient to demonstrate an offeror’s understanding, proposed solution, intent to comply with all of our requirements and precautions taken to avoid predictable impediments to successful performance.

Savvy buyers will take advantage of the solicitation process to weed out offerors who have a history of poor performance, ensure confusing specifications are clearly understood and obtain pricing information in sufficient detail to ensure offerors in the competitive range are equivalent. We can do this by adding “procurement-related” and administrative requirements to the IFB or RFP. As the requirement gets more sensitive, more valuable and/or critical to our success, the effort we put in to developing a comprehensive solicitation become more important.

Here are some ideas for enhancing a solicitation’s value:

- 1- Require the offerors to provide information sufficient to demonstrate that they are experienced with performing this type of contract and have done so successfully. A glossy brochure doesn’t do it. At the least, request a history of successful performance of similar work that is the same size and complexity. This is not a request for recommendations although in some cases we might also want them. This is a request for a list with enough details to demonstrate a proven capability and facts that can be verified or confirmed.

Good and experienced offerors will appreciate the chance to demonstrate how much better they are than the competition. Don’t let this turn into a tirade about the competition.

Example: Provide examples of your organization’s experience in performing this type of work. Include factual details showing successful completion of similar contracts and, on-time deliveries.

- 2- If delivery or timely performance is important, ask for detailed plans to meet the delivery. Not only “are the parts in stock” but also ask where, how are they stocked, what shipping method will be used, when shipment is planned and if it will be direct in one lot, etc. Anticipate all the various shipping problems and ask questions in the solicitation sufficient to preclude surprises. An offeror who is vague – should be a concern. An offeror who plans to perform as promised can easily explain exactly how.

Example: *Shipping is quoted as 2-4 weeks. I'd rather know when it will be delivered to my dock. I'd also want to know why the 2-week spread. Quote a firm delivery date to the buyers receiving dock and identify the shipping location, method, carrier if applicable and explain any variance or tolerance.*

- 3- For sensitive, obscure or commonly missed requirements, ask offerors to specifically describe how they will comply.

Explain how you plan to comply with section 4.3 covering worker background checks.

Identify the testing laboratory which will be used to perform tests in section 10.2

Describe the equipment you own which will be used to facilitate getting the job done.

- 4- Get samples of documents to determine that they will meet your requirements.

Submit a sample invoice, certification, progress report, analysis, etc.

- 5- If knowledgeable and key individuals are required for successful performance, ask that they be identified in the proposal. Get resumes, qualification statements and experience. Also require the contractor to commit to the person(s) who will be used to perform with a clause that penalizes the contractor if that person leaves. Don't forget to include giving the buyer the right to refuse an unqualified or unsatisfactory replacement.

Important: Generally all service contracts, particularly those which include work on buyer's premises should include general language giving the buyer the right to remove unsatisfactory people at any time, for any reason. If you don't already have a clause like this in your standard boiler-plate terms, chat with legal counsel about adding one.

Example: contractor's technician sexually harasses one of your employees, or is unsafe in work methods.

- 6- If the one or more offerors have a history of poor performance, tighten-up the requirement and tie it to responsibility determination. Offerors must provide convincing evidence of how delivery can be accomplished in the time quoted. Enforce realistic promises this by adding a late delivery penalty to the contract. Also consider specifying if partial shipments allowed or disallowed in your contract language.

Example: Payment will not be made until all items have been delivered and/or final certification has been received, and/or final inspection and acceptance has been accomplished.

If complete delivery/performance is not accomplished before October 1, buyer has the right to cancel the undelivered portion of the contract at no charge, cost or additional obligation.

- 7- If you are really concerned about delivery and/or a contractor who may not perform, require a performance bond.

- 8- Request pictures of the product, production facility, equipment or previous work.

- 9- Obtain a breakdown of the proposed price, sufficient to show that the contractor has planned on and priced key elements of the job. Sellers have to prepare their quotation by pricing key elements, so this type of a breakdown is already available. Even if a seller doesn't want to provide details, general estimates or allocations by percentage can turn up errors and provide valuable information in case of subsequent change orders.

Example: In the pricing breakdown, one offeror doesn't mention NDE or testing services. That could mean it was forgotten. In another case, one offer's estimated material costs are three times higher than the other. That could mean the specification is ambiguous and open to various interpretations.

Include a high-level breakdown of the proposed price, sufficient to demonstrate and understanding and plans to perform key elements of the job.

10- Once we have loaded up the solicitation with good criteria – establish clear guidelines for how proposals will be evaluated. Ensure that only responsive, responsible and qualified offerors are considered for award. Examples:

- a. *Go/no go criteria include: responsive to the solicitation, provide all information requested in section xyz, provide clear and convincing evidence of capability, demonstrate responsibility and clear understanding of requirements (including contract terms)*
- b. *Evaluated based on low price or delivery promise or technical review or ?*
- c. *Trade-off analysis will weight, price vs performance vs long term costs vs ??*

Concerns about the impartiality of your technical team can sometimes be headed off by involving them in the discussion about evaluation criteria before issuing the solicitation. In other words, get the technical team (including the funds manager) to commit to required features vs wish list items that will be weighed for cost-effectiveness. Under what circumstances will we positively not want to award to a specific supplier? Is there criteria in the solicitation to identify and differentiate for each of these issues? Sure, we could write our specs to get the Mercedes, but if the budget won't allow it, or if we end up with no competition, will we be able to justify buying it?

11- Ask for a presentation – and control what the offeror presents.

Example: Before the proposal is issued, potential offerors must schedule a time with buyer's personnel to present a detailed discussion about offeror's capabilities and experience in performing this type of contract. Once proposals are received, information from the presentation will be used to evaluate offerors capability to perform as quoted. This would be where you find out if they have ever sold one before, or if it needs 30 people to operate or takes years to install.

After proposals are received, offerors must schedule a presentation with the buyers to details of the proposal and plans to perform. The presentation will be a significant factor in determining the acceptability of the proposal and offerors understanding of the requirements.

Cautions:

12- Don't ask for an exorbitant amount of information. If it is too costly to produce it might prevent an otherwise valuable offeror from participating.

13- Be careful what you ask for. The expectation is that it will be read and reviewed. A contractor might be able to bring a claim based on requested data that was not or was misanalysed.

- 14- If you ask for it – but sure you get it. An incomplete proposal will disqualify a potentially good proposal as well as a poor one.
- 15- Get management and technical folks involved up front. Get them to articulate concerns and potential issues then make sure those are covered in the solicitation. A frank discussion of the things that have or could go wrong in the contract may yield elements that need to be clarified in the proposal or evaluated as part of the award criteria. Listen for assumptions, guesses and specification problems which, if uncorrected could lead to a defective contract.

One way to proceed is to analyze past actions looking for problems and misunderstandings. If it went wrong before, it will likely go wrong again. Look for opportunities to request information, explanations, samples and examples that might help surface potential problem for resolution before award. This is not a game of gotchas and it is just as important to the contractor that the requirement be fully understood before accepting a flawed contract.

Our goal is to end up with the best supplier who clearly understands our requirements, has the ability to perform and plans to be successful. The supplier's success is our success. The supplier's failure, is just one more mess I wish I had avoided.