SECTION 12: 
RFPs AND CONTRACTOR SELECTION

This section provides detailed instructions and guidance on how to prepare a request for proposals and how to select a contractor. Writing the RFP and going through the selection process is usually where most errors take place that cause the nightmares and problems with contracting.

What is an RFP?
A request for proposals (RFP) is a formal invitation to a potential contractor to submit a proposal to provide a solution to an agency identified problem or need. The RFP is also a procurement process where the state can judge if the contractor’s experience, qualifications, and approach will provide the best solution to the state’s problem.

When is an RFP Used?
- When the agency has defined a need and wants contractors to propose the best method for getting the need met.
- The total value of the contract will be $50,000 or more.
- The agency will consider factors other than lowest price when determining whether to make an award.
- When the problem or need is complex or detailed.
- When the contractor’s skills, expertise, or technical capability will be evaluated.

Formal v. Informal

A formal RFP is required for any contract of more than $50,000, unless you have an approved single source certification.

A formal RFP is a comprehensive written document that contains the minimum information outlined below. An informal RFP is a letter stating the needs of the state and requesting a proposal from selected contractors. However, in an informal RFP the level of detail of the task(s) to be accomplished, and outcomes SHOULD have the same detail as a formal RFP.

An RFP and the proposals received provide the basis for creating a contract, so the more care that is taken with the RFP, the less work will have to be done on the contract. The agency will still need to carefully and fully restate the expectations and work products expected in the contract.

DO NOT just attach the RFP and the selected proposal to the contract as the scope of work in order to avoid writing the contractor’s duties. The RFP is written as a request, not tasks to be completed. The same goes for the proposal, it is written as just that, a proposal. There are often conflicts between the RFP and a proposal. Attaching the RFP and the proposal to the contract only creates confusion about what tasks are to be completed. It is also an indication that there may not have been a meeting of the minds between the contractor and the state.
The RFP process provides agencies with the flexibility to negotiate certain aspects of the potential contract with the selected responder.

**Best Value**

“Best Value” is the method required by state statute for selecting contractors to perform professional and technical services. It consists of a combination of qualification-based selection and cost-based selection. Minn. Stat. § 16C.02, subdivision 4, defines “Best Value” as, “[A] result intended in the acquisition of all goods and services. Price must be one of the criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to, environmental considerations, quality, and vendor performance.” Each RFP based on “best value” should provide a balance between the need for quality and cost factors.

Your RFP should require a cost proposal in a separate, sealed envelope.

**Late Proposals – When is late too late?**

Any proposal not received at the place, date, or time designated in the RFP must be rejected. Even if the proposal is one minute late or received in the mail room instead of Room 200, it must be rejected regardless of cause.

**Trade Secrets**

All materials submitted in response to an RFP become property of the State and become public record after the evaluation process is completed. The evaluation period is complete when the governmental entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the Responder must follow certain criteria listed below in the sample RFP.

**Amendments to RFPs**

After you have announced and published the RFP you may have to make changes to it. To amend an RFP you need to simply prepare the changed/added/eliminated language in a memo or addendum format and send it to the people/firms to whom you sent the RFPs originally as well as those who requested the RFP. Make sure you send it to the SAME individual, address, etc., to whom you sent the original.

If the addendum changes/adds/eliminates ANY substantive requirements or changes the *response due date*, you are strongly encouraged to allow a minimum of an additional 21 days to respond from the day you send out the addendum. Since the goal is to get good proposals you need to give your responders reasonable time to respond. Likewise, when you issue a substantive addendum you need to allow reasonable response time.

**When are the proposals public?**

According to Minn. Stat. § 13.591, only the name of the responding contractors to all requests for proposals will be made public on the due date of the proposals. All other information contained in a contractor's response to a request for proposal, other than the name of the contractor, is classified as nonpublic data, as defined in Minn. Stat. § 13.02, and remains nonpublic data until the completion of
the evaluation process. The completion of the evaluation process occurs when the governmental entity has completed negotiating the contract with the selected vendor. (See, Minn. Stat. § 13.591.)

RFPs for Master Contracts

Master contracts are complex to institute and maintain. Contact your agency contract coordinator, your assistant attorney general, and the Materials Management Division very early in your planning process.

A Sample Request for Proposal (RFP) is available on the MMD website at:

http://www.mmd.admin.state.mn.us/pdf/samplerfp.pdf
http://www.mmd.admin.state.mn.us/doc/samplerfp.doc

Evaluation of Responses and Selecting a Contractor

Conflict of Interest
Since conflict of interest and ethical practices requirements are critical factors in the evaluation and selection of a contractor, you are strongly encouraged to review that section of the manual before you proceed with the rest of this chapter.

Conflict of Interest Memo
You might want each member of the selection panel to complete a conflict of interest memo prior to becoming a member of the selection panel. Obtaining these forms from your panel members not only provides an additional layer of protection from scrutiny, but it protects the selection process. Further, the memo furthers the intent of the Commissioner of Minnesota Management and Budget, that each employee is required to sign and have on file in their official personnel file with that employee’s human resources office a statement that he/she has read and understands Minn. Stat. § 43A.38 and Administration Policy 98.30.

The Selection Committee Conflict of Interest Form is available on the MMD website at:

http://www.mmd.admin.state.mn.us/pdf/conflictmemo.pdf
http://www.mmd.admin.state.mn.us/Doc/conflictmemo.doc

Evaluation Process

Agency staff must review all responses to the public notice, checking for compliance with the specifications in the RFP and consistency with the agency's stated contract goals.

An agency should use a selection panel to independently review and evaluate proposals. For an informal RFP--$5,000-$50,000--it may seem easier to just make a decision; however, it is always best if you run the alternatives by a couple of colleagues to make sure. This way the selection will
be easier to defend if there is a protest. For formal RFPs --over $50,000 -- a formal panel must be used. Sometimes, representatives of special interest groups or clients may be included in a selection committee.

When developing a selection panel it is recommended that you select members that are neither subordinates nor superiors of each other. This reduces the appearance of pressure to select a particular contractor.

The procedures, evaluation process, criteria, and methods can and should be, administratively reviewed and approved. Once these are in place, however, the actual decision should be left to the panel.

Criteria for selecting a contractor will differ from contract to contract, but several factors are important in the process. These include costs; experience and background of both the firm and its personnel; past work examples; level of understanding regarding the contract and its specifications; and overall strategy or methodology.

It may be useful to create an actual evaluation form listing criteria and weights associated with each. The format at the end of this section may serve as a starting point.

Selection of a contractor to provide professional/technical services must not be based exclusively on the lowest cost response. However, you cannot make a selection based on a proposal that differs materially from the specifications in the RFP. "Differs materially" is a subjective call, but it can have very definite meanings.

You asked for a study of a problem of how to produce checks. The response proposes to develop a system to produce checks. **You asked for a study, not a solution.**

You required that the task(s) take no more than six months to finish. The response proposes taking 12 months to do the same task(s). **Twelve months are materially different from six months.**

Situations like this can be fixed. IF only one prospective contractor materially deviated from your request, then it should be disqualified. If all materially deviate, you need to start the process over with a new RFP. This is not uncommon. You learn enough from the first RFP to make the second one really good.

Examples of things that might not differ materially could include changes in assumptions rather than actual requirements.

You assumed that the work would be done at one place. The response accomplishes the task(s) from/at another place. It does not require any additional effort on your part (be careful about your monitoring responsibilities). **This difference does not change any requirements, so it would not differ materially.**
You required that the task(s) be accomplished in six months. The response says it will take seven months, in part because data needed to accomplish the task is not available so that the six-month time frame can be met. No other responder points this out. **This difference impacts your getting the best product, and having good data is more important than the 6-month date.**

**Selection Using Best Value.** The primary selection and ranking of the RFP responses is made by the selection panel based on an analysis of the contractors’ qualification listed in the proposals. If any of the RFP responders are a Targeted Group Business as defined by Minnesota statute, a predetermined number of additional points may be given.

**Primary Selection and Ranking.** Based on these qualifications, each selection panel member independently gives each RFP responder points that comprise, for example, 80 percent of the final score. Then each selection team member ranks the proposals numerically from most to least qualified. At the meeting of the selection committee, the rankings are discussed, combined, and totaled to determine the most qualified RFP responders.

**Cost-Based Selection.** Next the cost proposals of the responders are opened, discussed, and, for example, a 30 percent consideration is given to the cost for each proposal. The lowest cost proposal is given the full 30 percent, each of the other two proposals is given a percentage of the 30 percent based on a ratio of its cost divided by the low cost proposal. These cost-based percentages are then added to the totals awarded for qualifications and the proposals are re-ranked.

**Negotiations.** The RFP permits agencies to negotiate with a selected responder. You should be very careful to choose a *winner* based on your criteria BEFORE you negotiate differences. Negotiating with any responder before you make the selection, unless it is done with ALL responders simultaneously, creates an unfair situation.

**Award.** The contract is then awarded to the RFP responder that gives the state the “Best Value” for the work. This is the proposal that scored the highest after consideration of the combined qualification-based and cost-based criteria.

**Sample Evaluation Worksheet**

A Sample RFP Evaluation Worksheet is available on the MMD website, under the tab for Professional/Technical Contracting, link to Contract Forms (log in required).