THE **RFP** REPORT

ISSUE 44
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The newsletter of ideas, checklists, guidelines and information about the Request For Proposal

Michael Asner, Editor

NASPO GEMS
PROBITY MEANS GOOD PROCESS
JOHN NADLER'S THOUGHTS

This issue of The RFP Report deals with three topics.

The National Association of State Procurement Officers (http://www.naspo.org/) is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States.

Many of its members have great procurement web sites, containing valuable information. Many of these sites present highly innovative approaches, based on their experiences and developed at great expense. We have reviewed many of these sites and have identified some of the best, in terms of RFP information and best practices.

PROBITY means Good Process - Some public sector bodies, in order to ensure that the RFP process can survive public scrutiny, employ a Procurement Officer on the team. In some jurisdictions, this person is called a Fairness Monitor. In Australia, the term used is "Probity Auditor". This article deals with a 12-page "best practices" guide for "good process".

JOHN NADLER'S THOUGHTS - John is State Procurement Administrator for the State of Arizona and President-Elect of NASPO. John is an ardent campaigner for procurement reform and his articles are both easy to read and thought-provoking. We have included several of John's recent articles in this issue.

WANTED: ORGANIZATIONS TO POST *The RFP Report* ON THEIR WEB SITES FOR THEIR USERS/CLIENTS

We are looking for a partner to help increase the distribution of The *RFP Report.* We are now in our tenth year of publication. One of our goals in the last few years has been to increase the number of readers. We are looking for associations or organizations that would like to make this publication available to its clients/users/members from its web site. For a nominal fee, we will grant your organization the right to publish this product on your web site each quarter.

To learn more about this, give me a call or drop me a note.

Thanks - Michael Asner

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RFP's and the law of contracts

The process of issuing an RFP and receiving proposals does, by design or inadvertently, establish contractual rights and obligations. Each RFP and the associated process should be reviewed by your lawyer or legal department prior to issuing the RFP. The examples and sample RFP's used throughout this text have been used in many different jurisdictions in the past. The author makes no claim about the appropriateness, correctness, or legal consequences of these examples or sample RFPs. Competent legal advice should be obtained to review your Request For Proposal and the associated process.

Our Products

Reference Materials
- The Request For Proposal Handbook
- The RFP Report
- A Searchable Library of the Best RFP Practices

Video
- Creating A Winning Proposal (102 minutes)

Our Web Site

www.proposalsthatwin.com

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http://www.state.ak.us/local/akpages/ADMIN/dgs/policy.htm

The state of Alaska has produced some great documents to help with the RFP process. Their "Purchasing Documents" page has word and pdf files for 46 documents.

Advice of Change
Advice of Change Continuation
Appendix B1
Appendix B2
Authority to Seek Professional Svcs
Certification Program Description Document
Contract Award
Contract Award Continuation
Copier Evaluation Form
Delegation of Authority
Delivery Order
Delivery Order Continuation
Formal Procurement Matrix
How to do Business Guide
ITB - High Technology Ts & Cs*
ITB - Informational Amendment
ITB - Invitation to Bid Face Page
ITB - Invitation to Bid Body
ITB - Amendment (Mandatory Return)
ITB - Bid Log
ITB - Standard Terms & Conditions*
ITB - Written Determinations
Level 1 Procurement Manual
Negotiated Bid Abstract
Non-Conflict of Interest Statement
Notice of Intent to Award
PIM Index
PIMs - Procurement Information Messages
Preferences - RFP & Informal Proposal
Preferences- ITB & RFQ
Provisional Certification Application
Purchase Order
Procurement Report
Purchase Requisition
Purchase Requisition Continuation
Request for Alternate Procurement
RFP Evaluator's Guide
RFP Written Determination
RFP Shell
RFQ- Request for Quotations*
RFQ- Hi Tech boilerplate*
Small Procurement Matrix
Standard Agreement Form for Professional Services
Standard Agreement Form (Amendment)
Standard Contract Form for Goods and Non Professional Services
Standard Contract Form (Amendment)

"Formal Procurement Matrix" identifies essential information for procurements depending on the value of the contract. This information includes the following:

- Minimum Competition Requirements
- Forms used by Agency
- Public Notice Requirement
- Award Method
- Keep in Procurement File

"RFP Evaluators Guide" (7 pgs.) describes the role of the evaluators. It's written for first-time evaluators and explains the process, and the role of the evaluator. It discusses ethical considerations, legal issues, and conflicts of interest. Informative and easy-to-read.

"RFP Shell" has been described in detail in Issue #21, May, 1998. This is a great model RFP. It contains instructions for the

procurement officer to help in completion of the draft RFP document. One of the instructions which I particularly deals with Statement of Work and a twelve year old child:

Scope of Work

PROCUREMENT OFFICER NOTE: ENTER APPROPRIATE INFORMATION - ALTER, REVISE, OR DELETE AS REQUIRED.

INFORMATION YOU PROVIDE IN THIS SECTION TELLS THE OFFERORS WHAT YOU WANT DONE

BE AS SPECIFIC AND COMPREHENSIVE AS YOU POSSIBLY CAN

LET THE OFFEROR KNOW EXACTLY WHAT YOU WANT

DON'T PRESUME THAT THEY WILL "GET IT" IF YOU DON'T SAY IT

WRITE IT AS IF YOU WERE TRYING TO EXPLAIN IT TO A TWELVE-YEAR OLD CHILD

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http://sporas.ad.state.az.us/index.htm

I like the way they explain their procurement policies. A typical policy statement is 2-4 pages, easy-to-read, and follows the same format. First, there is a formal statement of the policy. This is followed by an explanation of the policy, examples of its application, and a detailed description of any related reporting requirements.

My favorite policy is the one dealing with "Impracticable procurements" – those cases where "fair and open" competition is not warranted, for example when you require an internationally-recognized expert on a topic as a keynote speaker. The policy statement is, in fact, a tutorial on impracticable procurements, what they are, how to recognize them, and how to do them. It includes a definition of "impracticable" as contrasted with "impractical".

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http://www.documents.dgs.ca.gov/pd/busmgmt/condstand.pdf

California, not unlike many other jurisdictions, is in the midst of major procurement reforms. On August 30, 2002, the Governor's Task Force on Contracting and Procurement Review issued its report. One of their recommendations was to develop standards of conduct for state procurement and contracting officials. Their 6-page draft identifies and establishes the expectations related to 19 standards of conduct:

1 Use the appropriate resources.

2 Act for the benefit of the State.

3 Seek training opportunities to increase your knowledge and skill level.

4 Routinely review all California laws that pertain to conflicts of interest and ethics in government, to ensure you are aware of changes and conduct business in accordance with the laws.

5 Read, understand and comply with your department's incompatible activity policy and other standard of conduct

6 File a FPPC Form 700 *Disclosure of Economic Interests*, provided you are required to do so, in accordance with filing procedures.

7 Avoid conflicts of interest.

8 Consult with your supervisor immediately if you are uncertain whether you may be violating a standard of conduct or an ethical obligation.

9 Report to the appropriate person in your chain of command any requests to conduct work or provide goods/services in the absence of a contract/order or anything that is contrary, or in addition, to the contract terms.

10 Conduct the State's business in an honest and impartial manner.

11 Consistent with the requirements of the law, policy and common sense, maintain confidentiality in both written and verbal communications.

12 Refuse special favors and gifts from people who engage in or who are seeking to engage in business with the State.

13 Avoid any outside employment or activity that interferes with your ability to perform your State job.

14 Report the involvement of a spouse, relative or a friend in a transaction on which you are working, to the appropriate person in your chain of command.

15 Request immediate assistance from your supervisor you believe that any aspect of your assignment is beyond your understanding or ability.

16 If you are a supervisor, routinely assess the training needs of your staff.

17 Supervisors, managers and executives must be able to resolve contracting and procurement issues effectively and ethically and must refrain from exercising any pressure on staff that could be perceived as trying to influence an inappropriate course of action or outcome.

18 Supervisors and managers must ensure that they immediately inform executive management of their department when procurement and contracting problems (or potential problems) could cause undue expense or waste, discredit and/or embarrassment to the department in particular or to the State government in general.

19 Executive management in all departments that engage in procurement or contracting is responsible for maintaining a positive and supportive work environment that fosters efficient and ethical procurement and contracting.

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http://www2.state.ga.us/Departments/doas/procure/formpdfs/RFP-GUIDE99e.doc

Like many other entities, Georgia has developed and published a manual dealing with RFPs. Theirs is entitled Request For Proposal Manual and its 67 pages. It contains the usual information related to the form and content of an RFP. It also contains some really useful information, not commonly found in similar documents.

The Guide To Developing A Statement of Work (8 pages) identifies and describes a 7-step program:

- Determine the Overall Objective.
- Establish the Tasks to be Performed.
- Establish Mandatory Project Specifications
- Determine the Products to be Delivered.
- Determine the Acceptable Performance Levels.
- Determine how you intend to Monitor Performance Levels.
- Determine the consequences of Unacceptable Performance.

The Guide to Determining the Considerations for Evaluation Methods identifies and describes a 9-step program:

- Determination of Cost/Technical Weighting
- Establishment of an Evaluation Team
- Development of Technical Evaluation Criteria
- Development of Technical Evaluation Questionnaire
- Development of Cost Evaluation Criteria
- Evaluation of Proposals for meeting Administrative Requirements
- Evaluation of Proposals for meeting Mandatory Requirements
- Evaluation of Vendors Proposed Solution
- Evaluation of Cost Proposals

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http://www.state.ky.us/agencies/adm/bips/BestValueOverview.doc

"Best Value" is often the focus of heated discussion. Which factors are used? How is it defined in a particular procurement? Is the definition easy to explain, easy to understand and easy to justify? Does it make good business sense?

Often, the devil is in the details. The precise definition, not the concept, comes under attack. The Division of Material and Procurement Services has published a 4-page example of how they calculated the 'best value' for a specific procurement. While not elegant, this example does provide precision.

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http://www.doa.state.la.us/osp/Publications/RFP/RFP-Intro.htm

The State has developed a 28-page RFP Manual that contains more than 20 exhibits and attachments dealing with a wide variety of RFP issues. Many of these documents can be used in other jurisdictions with little modification. For example, Exhibit 5 – RFP Review Questions contains about 35 questions which can be used to determine an RFP's clarity and completeness. These questions deal with the Statement of Work, Evaluation Factors, and Proposal Instructions. Here is a complete list of the Exhibits and Attachments:

- ★ Exhibit 1 - Act 692
- ★ Exhibit 2 - RFP directive
- ★ Exhibit 3 - Agency Request for RFP
- ★ Exhibit 4 - RFP Format Boilerplate
- ★ Exhibit 4A - Federal Clauses used when federal funds are involved
- ★ Exhibit 4B - Cooperative Purchase
- ★ Exhibit 4C - Insurance Requirements
- ★ Exhibit 4D - Generic Contract
- ★ Exhibit 5 - RFP Review Questions for SPO and Evaluation Committee
- ★ Exhibit 6 - Evaluation Committee Member Instructions
- ★ Exhibit 7 - Letter to Evaluation Committee member concurring with no conflict of interest and confidentiality
- ★ Exhibit 8A - Financial Evaluation Model
- ★ Exhibit 8B - Financial Evaluation Model
- ★ Exhibit 9 - Advertisement and Notice to Bidders
- ★ Exhibit 10 – Addendum sent after pre-proposal conference to all that received proposals
- ★ Exhibit 11 - Respondent's letter sent after proposal opening before competitive range is established
- ★ Exhibit 12 - Clarification letter after proposal opening before competitive range is established
- ★ Exhibit 13 - Letter to Schedule Oral Presentations
- ★ Exhibit 14 - Questions to Check Proposers References
- ★ Exhibit 15A - Committee recommendation letter from Agency Project Leader to Agency Management
- ★ Exhibit 15B - Award recommendation letter from agency management to SPO
- ★ Exhibit 15C - SPO recommendation letter to Assistant Director
- ★ Exhibit 16 - Intent to Award Letter
- ★ Exhibit 17 - Notice of Regret Letter
- ★ Exhibit 18 - Debriefing Topics
- ★ Exhibit 19 - Public Records Request Letter to Vendor
- ★ Exhibit 20 - Letter to Requesting Vendor for Public Records
- ★ Exhibit 21A - Contract Performance Evaluation
- ★ Exhibit 21B - Contract Performance Evaluation
- ★ Exhibit 22 - Steps of Evaluation Process
- ★ Attachment I - RFP Order of Events
- ★ Attachment II - RFP Buyer Checklist
- ★ Attachment III - Act 692 RFP Requirements
- ★ Attachment IV - Checklist for Agency Project Leader Checklist

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http://mass.gov/portal/index.jsp?pageID=agcc&agid=osd&agca=cp&agcc=cp_options

Several years ago, they produced a Procurement Policies and Procedures Handbook which includes step-by-step procurement instructions explaining procurement concepts, policies, processes, and guidelines to departments, procurement staff and the bidder community. (Version 07/20/2000). This 341-page book deals with the entire procurement process and is a source of lots of good information, not only about RFPs, but about negotiations, and contract administration. Their definition of "best value" is worth repeating:

The Operational Services Division follows a best value procurement philosophy. This means it is in the best interest of the Commonwealth for solicitation evaluation criteria to measure factors beyond cost. No one wants to save money on unit cost while encountering higher costs due to factors such as inferior quality, poor reliability, or complex administrative processes. A **best value** procurement should:

- **Support required performance outcomes** through a procurement process that obtains desired results in the most efficient and effective manner.
- **Generate the best quality and economic value** by considering factors such as quality, options and incentives, or a longer life span. Even if the initial expenditure is higher, considering the total value over the life of the procurement may result in a better value and long-term investment of public funds.
- **Be timely** by achieving results within the required timeframe. Best value is defeated if the procurement process is cumbersome and inefficient.
- **Minimize the burden on administrative resources** of both procuring departments and contractors. A department should devote staff and administrative resources proportionate to the complexity, priority and cost of a procurement.
- **Expedite simple purchases** that present little systemic risk by following expedited procedures, and allow eligible departments with the appropriate delegation authority to process all completed solicitations and contracts up to a specified dollar level without secondary transaction approvals.
- **Allow flexibility in developing alternative procurement and business relationships** such as the use of buying groups or longer-term relationships with contractors, as in multi-year contracting.
- **Encourage competition** and the positive benefits it achieves in pricing, quality, customer service and public benefit. Fostering healthy competition ensures that bidders will continue to strive for excellence in identifying and meeting department needs.
- **Encourage the participation of quality vendors** to do business with the Commonwealth, including small, minority and women-owned business (M/WBE) enterprises, firms owned by socially, physically or economically disadvantaged individuals, and contractors who provide environmentally preferable products and services (EPPs). If procurements are seen as too costly or too restrictive, vendors may be deterred from bidding and competition could be decreased, shrinking the pool of available quality vendors.
- **Support Commonwealth and department procurement planning** by seeking out the advice of OSD's Procurement Management Teams to identify other departments with comparable needs or existing contracts.

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http://www.discoveringmontana.com/doa/gsd/css/Resources/RFPProcess.asp

Montana has developed a 50-page RFP Manual that is easy to read and covers the entire process. This manual can be readily adapted for other, relatively small, jurisdictions. In addition to the manual, their RFP site contains a number of useful forms and templates.

Agency RFP Checklist

Offeror's RFP Checklist

RFP Contract

RFP Cost Evaluation Methods

RFP Evaluation Process - Instructions

RFP Flowchart

RFP Manual

RFP Process Information

RFP Process Q & As

RFP Reference Check

RFP Sample Scoring Guide

RFP Standard Statements

RFP Template 2003

RFP Short Form Template 2003

IT RFP Contract

IT RFP Template 200

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http://www.state.nm.us/clients/spd/rfpdevel.html

New Mexico's RFP Procurement Guide is a great resource! It's 212 pages provides solid information about the entire process. And it's filled with examples and samples. It contains lots of valuable information including the use of best and final offers, a discussion of evaluation factors and weights, and how to identify subfactors. The final chapter provides 18 actual examples.

CHAPTER FIFTEEN: EXAMPLES (80 pages)

Concept Memorandum
Procurement Request Letter
Procurement Initiation Memorandum
Evaluation Committee Appointment Letter
One Page Notice
Purchase Document
List of Possible Sources
Evaluation Subfactors
Reference Questionnaire

Pre-proposal Conference Log of Attendees
Response to Questions and RFP Amendments
Demonstration Agenda
Oral Presentation Agenda
Mandatory Requirements Worksheet
Clarification Letter
Disqualification Letter
Finalist Notification Letter
Non-finalist Notification Letter

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http://www.ogs.state.ny.us/procurecounc/default.asp

Chapter VII of Procurement Guidelines (Revised/Reissued) March 2001 deals with RFPs. In about 50 pages, organized into six sections, they cover the process. And they do it well, transmitting large amounts of direction and advice to the reader. The document identifies both essential and optional policies and procedures. Each essential element is coded with an "(M)", and the optional ones with "OM".

Using a Request for Proposal
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A. Awarding a Contract
B. Negotiating a Contract
C. Completing the Documentation Requirements for Control Agency Review and Approval

Section II, deals with procurement objectives and policy. In this section, they identify 11 essential obligations to offerers, and 9 rights that the state reserves. While other sections of this document are more detailed, the section reproduced below is typical of the style and format found throughout the document.

II. PROCUREMENT OBJECTIVES AND POLICIES GOVERNING THE PROCESS

Procurements of goods and services are not ends in themselves. Instead, the State's acquisition process aims to acquire commodities, services and technology to enable State agencies to fulfill their respective programmatic missions.

A. STATE'S MINIMUM ESSENTIAL OBLIGATIONS TO OFFERERS

(M) State acquisitions of services and technology to fulfill programmatic needs and to provide the State with the "best value" must ensure open and fair competition in which offerers of goods and services are accorded the following:

(M) 1. The State shall make every reasonable effort to apprise offerers of solicitation opportunities which could include, but not be limited to:

√ Notifications in the State's Contract Reporter;
√ Mailings to industry associations;
√ Notifications to known offerers;
√ Mailing lists maintained by OGS and other State agencies;
√ Contact with the Department of Economic Development to determine known M/WBE offerers;

(M) 2. Requests For Proposals (RFPs) shall set forth generic specifications or requirements that define the services or technologies needed but may not, knowingly, favor a particular offerer, product or service offering;

(M) 3. The RFP shall specify the required qualifications of offerers and the mandatory contract terms and conditions;

(M) 4. All information concerning the solicitation shall be conveyed in writing to all offerers participating in the process including, but not limited to:

√ Answers to offerer inquiries;
√ RFP clarifications and amendments;
√ Process rules;
√ Evaluation criteria;

(M) 5. Any changes to the RFP and/or the rules of the procurement shall be communicated, in writing, to each offerer participating in the process;

(M) 6. The agency shall maintain a Procurement Record which documents all decisions regarding the procurement process, particularly the quantification of the application of criteria to determine an award based on best value; or where not quantifiable, the justification which demonstrates that best value will be achieved;

(M) 7. Evaluation criteria and methodology shall be completed and secured prior to initial receipt of proposals;

(M) 8. The overall evaluation criteria shall not be altered after opening the proposals, with the exception of minor changes and only if the modifications are justified and evidence presented to ensure that the changes would not materially benefit or disadvantage an offerer;

(M) 9. Offerers shall be apprised of the relative importance or weight of the cost criterion compared with the overall non-cost criterion;

(M) 10. The evaluation criteria shall be applied equally and uniformly in the evaluation of proposals;

(M) 11. All offerers shall be notified as to whether they are successful or unsuccessful. Upon request, an unsuccessful offerer should be provided a debriefing as soon as possible after selection of the successful offerer, as to why its proposal was unsuccessful.

What Is Best Value?
John O. Adler, CPPO

Last week I received a letter from a customer requesting "not practicable to compete" authority because she did not want to contract with a "low bidder" for services. She said that the low bidder will most likely underbid, perform poorly and ask for more money. Maybe so. Although her request was not approved, she did make at least one good argument: Too often we award contracts based on the lowest price or some point scoring formula, without seeking best value.

In 2002 a large technology company developed a huge financial management system for a Philadelphia school district. After award, the cost soared from $15.6 million to $36 million. That must be one heck of a system! Chances are, the district did not negotiate a best value contract. Maybe they hardly negotiated at all. Probably every government can cite similar contract nightmares.

How does this happen? How did the price of a technology solution more than double? Better yet, how can we avoid such a disaster? Try thinking Best Value Procurement.

- Be involved. A purchasing clerk takes a customer's scope of work, fits it in the middle of a canned RFP (Solicitation Sandwich), receives the proposals and gives them to a committee to evaluate. A procurement officer is involved tactically and strategically in the entire procurement process from concept through award to contract close-out.

- Request proposals rather than bids. Complex purchases demand considerable procurement innovation. Technology cannot be bought low bid.

- The heart and soul of any procurement is the scope of work or specifications. Too often we attempt to design the product or service with very detailed specifications. If we design it, we suffer the consequences if it doesn't work. Instead, state your goals and objectives and give detailed performance requirements in your scope of work. Let the contractor design the system to meet your stated needs and let the contractor assume the risks. You may pay a little more up front but you will pay much less in the end.

- Pay for performance. Time and material technology contracts are prone to problems and failure. If the incentive is to work many hours, the contractor will work many hours. If the incentive is based on building a working system, the contractor will build a working system.

- Build performance measures and incentives into your solicitation. View profit as the cost of risk and base a portion of profit on meeting and exceeding performance factors. Some like to use liquidated damages, which amounts to taking government money back from the contractor. Think in terms of

incentives, which is essentially paying the contractor for quality and cost savings.

- Don't get hung up on scoring proposals. An RFP is not an Invitation for Bids with a scoring system. You are seeking best value! State your evaluation criteria and its relative importance in the solicitation. If you are buying technology, give offerors a spreadsheet, with every required and desired feature, to complete and return. They either provide the feature or they don't. Use the spreadsheet for negotiations and rate them on the percentage of features offered.

- Pay attention to the contract details. We don't use "boilerplate". There is a purpose for every term, condition and instruction. Each contract should be tailored to the specific procurement.

- Evaluate the true cost, not the acquisition cost. With technology, the acquisition cost is but a small portion of the total cost. What about long term license and maintenance costs? What about upgrades? What is the cost of external and internal staff support? Will you need to buy hardware? How about a guaranteed maximum cost?

- Use relevant evaluation criteria. Should you value a PhD. over an MBA? Is 35 years of experience more valuable than 28 years? Do you give more points to a 100 year old firm than a new "up and comer"? In many cases, these factors should not be scored at all. Either they have experience or they don't. Either they are responsible or they aren't. Either they are capable or they are not. Set reasonable minimum requirements and assign evaluation values to the factors that matter.

- Develop a negotiation plan and go after the features or value that are important. Negotiations are one of our most overlooked procurement tools. Look for deficiencies and opportunities for cost savings and negotiate, face to face! Don't request the Best and Final Offer until you are reasonably certain that every issue is addressed.

- A contract is only a stack of paper unless it is properly administered. Don't wander outside the confines of the contract. Never, ever make oral modifications and always negotiate every detail before issuing a contract modification.

Best value procurement is also known as competitive negotiations, competitive sealed proposals and RFP's. Our laws have allowed us to do best value contracts in Arizona since 1983. Want to learn more about best value? Check out the Federal Acquisition Regulation, FAR Part 15. The Arizona State Procurement Office and NIGP offer excellent workshops on best value procurement. See you in class!

Ethics, Morality, Common Sense, and Socks

John O. Adler, CPPO

I confess. About four years ago I accidentally tipped a cart carrying 70 proposals in the conference room just before public opening and the boxes and envelopes tumbled onto the floor. Undaunted, I piled them on a table and proceeded to open them in random sequence. I was clearly in violation of Arizona Procurement Rules, which require opening proposals in the sequence they are received.

During a discussion on the Sunset Rules Review I suggested that eliminating the rule that requires opening offers in order of receipt. A couple colleagues pointed out that the purpose of the rule is to protect us from the practice of holding a favored bid to the last and entering the lowest price. I cannot imagine a colleague risking jail time and a career to modify a bid in front of witnesses to help a favored bidder. There are much easier and more lucrative ways to break the law.

Should we make rules and policies to eliminate every possibility for unethical behavior, no matter how remote or impractical?

Remember the MASH episode when Hawkeye tried to requisition an incubator to help diagnose infections and save lives? After carefully justifying his request, he learned from a Captain from "Supply" that an incubator was not on the authorized equipment list. Instead, the Captain offered Hawkeye a popcorn machine.

When General Patton took command in North Africa during World War II, he found his army in a mess. Morale was low, inventories were lower and much of his equipment and weapons were inoperable. They were losing battles and ground to the advancing Germans and were being pushed to the sea. Patton surveyed his battle weary soldiers. Their primary complaint was the lack of decent shoes and socks, which are essential to the survival of infantry. General Patton assessed the situation, inventoried his depleted stores and prepared requisitions for repair parts, ammunition, food and uniforms. Many of his requisitions were returned with notes requesting written justification or simply stating that the materials were either not available, not authorized or needed elsewhere. In desperation, General Patton ordered several thousand pairs of socks from a Sears catalogue and sent a personal check. Imagine the purchasing officer laughing at Patton's request for reimbursement.

Around the dawn of the 19th century, the English government commissioned the construction of 40 warships to fight Napoleon and the French. At the time, compensation for government purchasing agents was based on commissions. The larger the contract, the greater the commission. Contracts were awarded to faithful friends of the nobility at exorbitant prices. Construction was shoddy and wealthy businessmen made huge profits. The ships quickly became known in

the British Navy as the 40 Thieves. They were unsafe and dangerous. Planks in the hulls often separated during rough seas, leaving large gaps below the waterline. Captains learned to use sails as "diapers" over the hull to keep the water out. Many of these ships sank in rough seas, taking hundreds of sailors to their deaths. Many sailors risked the firing squad to avoid conscription and went AWOL at the first opportunity. Who has the moral high ground? The shipbuilders who made their fortunes building unsafe ships? Purchasing agents? Or should we blame the sailors who violated their military code, risking prison or death to avoid serving on the death trap ships.

In both of these examples, government officials fully complied with the laws and regulations while "customers" committed the violations. General Patton violated government inventory and purchasing regulations to protect his troops and win the war. Our English sailors violated the Articles of War to avoid sailing on dangerous ships. The real culprits, the supply sergeants, purchasing agents and shipbuilders were in full compliance with the laws.

The next time you are confronted with a particularly challenging procurement problem are you going to say "no" and cite regulations and policy? Or are you going to say, "yes we can" and seek a solution that satisfies both your customer and the law? What good are those socks if they just sit in the warehouse?

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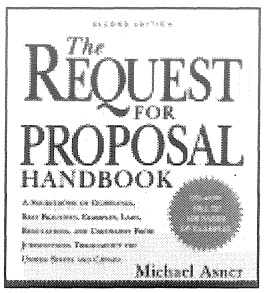

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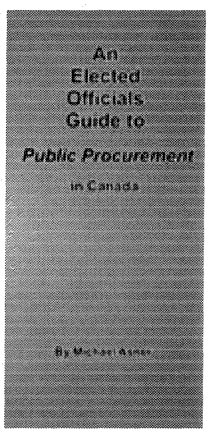

A Searchable Library of Best RFP Practices From More Than Sixty Jurisdictions (Printed and e-book version)

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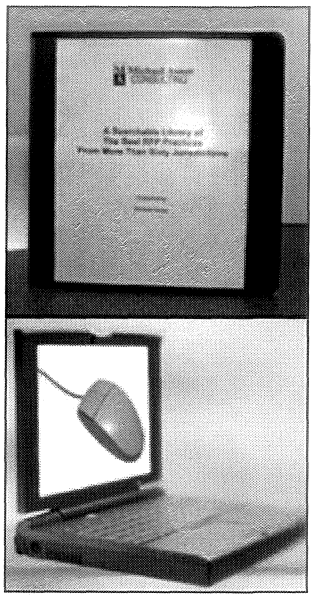

PROBITY means Good Process

RFPs are getting bigger, more complex, often more politicized, and subject to intense scrutiny by the vendors, the media and the public at large. Some public sector bodies, in order to ensure that the RFP process can survive public scrutiny, employ a Procurement Officer on the team. In some jurisdictions, this person is called a Fairness Monitor. For many years, Australia has employed a Probity Auditor on major procurements. Now, don't get intimidated by the word "probity".... The dictionary defines it as honesty, or proper and ethical conduct. Within government, it usually means "good process".

Victoria, a state in Australia, has developed a 12-page document describing "best practices" for "good process". This document can be adopted with only a few modifications in many jurisdictions in North America.

This person (they call a "Probity Auditor") is often needed when:

- the transaction is of high value (e.g. over $10 million;)
- the matter is highly complex, unusual or contentious; or
- the nature of the market place makes bidder grievances more likely (e.g. where commercial secrets are commonplace, or where competition is particularly fierce).

Probity auditors are often highly experienced consultants.

This person, the Probity Auditor, has three main roles:

- to provide advice to government during a tendering process on probity-related issues, in order to establish procedures which meet recognised probity standards and ensure that any problems or questions are dealt with satisfactorily;
- to provide independent scrutiny of the tendering process to ensure that prescribed processes are actually adhered to; and
- to provide a report at the end of the process which records an independent professional view of the way in which it was managed, from a probity perspective.

Their Best Practice Advice provides specific guidance on critical topics:

The section entitled "Managing a good process", deals with:

- probity plans;
- internal organisation and decision-making processes;
- confidentiality and disclosure;
- proprietary information;
- provision of information to bidders;
- the RFT;
- non-conforming bids;
- dealing with conflicts of interest;
- bid evaluation and selection;
- consultation within government;
- establishing a probity culture; and
- dealing with queries on probity.

Points to Watch & Areas of Risk deals with:

- The need for consistency and continuity
- Communications with bidders
- Storage and distribution of tender information
- Adherence to tender closing deadlines
- Probity checks on bidders
- Changing bid parameters
- Finalising the deal - legal risks
- Public announcements
- Establishing clear trails of documentation (paper and electronic)

Probity Plan

This web site also contains a link to a 25-page template for a Probity Plan to be completed as one of the first project tasks.

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1. DESCRIPTION OF THE PROJECT
2. PROBITY PRINCIPLES
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10. COMMUNICATION WITH BIDDERS
11. STAFF GUIDELINES
12. RECORD KEEPING

TO FIND THIS WEB SITE

1. Go to: http://www.vgpb.vic.gov.au/
2. Then, Click on: VGPB PROCUREMENT POLICIES
3. Click on: PROCUREMENT PLANNING POLICIES, Probity
4. Click on: Probity Best Practice Advice

Or go directly to:

http://www.vgpb.vic.gov.au/CA256C450016850B/0/8EF65B4FF0122063CA256C7E007D52A0?OpenDocument

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