

THE RFP REPORT

ISSUE 45
MAY, 2004

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

Michael Asner, Editor

A trail of great documents intimidates their lawyers!!!

Over the last ten years, I've spent a lot of time discussing legal issues with public sector procurement executives. We've discussed laws and regulations, best practices, and litigation. We've discussed "avoiding litigation" as a significant yet unwritten part of the procurement function.

These discussions often deal with "best practices" – things that we can do which will reduce the probability of being sued. Or, if we are sued, increase the probability that it will never get to trial because we did no wrong and could demonstrate the soundness of our process.

This issue of *The RFP Report* deals with things you can do as part of the competitive process to ensure that your actions can survive scrutiny by the vendors' lawyers and the courts. Now, as we all know, litigation cannot be totally avoided. Anyone can sue you, for any reason. And sometimes, organizations get sued, not because they have erred, but because one particular vendor was truly angry, or the vendor wanted to ensure that next time, the procurement people would be very careful in how they treated that vendor.

There are lots of activities which improve the RFP process; for example, issuing a draft RFP, using outside experts, or employing Best and Final Offers.

Here are some of the document-driven activities which, if done properly, make it extremely difficult for the vendors' lawyers to be enthusiastic about their chances of winning in court. These activities when completed as part of the RFP process help ensure that the competition is "fair and open". And just as importantly, the documents which are part of these activities, when viewed by a lawyer after the award has been made, demonstrate that the process was well-planned and micro-managed to ensure that each vendor was treated fairly.

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

In our last issue of this publication, we announced this offer. Since then, we have had discussions with several NIGP chapters, and state procurement associations. In the next issue, we will announce those organizations that have signed on.

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 low nominal fee, \$1 per member per year, we will grant your organization the right to publish this product on your web site.**

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

604/530-7881

asner@compuserve.com

The RFP Report is published by
Michael Asner Consulting
Suite 212 - 1450 Merklin St.
White Rock, B.C. Canada V4B 4C3
Phone / Fax (604) 530-7881
ISSN 1192-392X
Printed in Canada.

Copyright © 2004 Michael Asner Consulting. All rights including translation into other languages, reserved by the publishers. No part of this publication may be reproduced in any form, by microfilm, xerography, or otherwise, or incorporated in any information retrieval systems without the written permission of the copyright owner.

RFPs 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 RFPs 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.rfpadvisor.com

Six Great Documents

1. Follow an RFP road-map.

Use this document to demonstrate that the entire process was properly planned.

Developing and issuing an RFP, and selecting the “best value” proposal is a common process based on “fair and open competition”. Many jurisdictions base their process on the Model Procurement Code developed by the American Bar Association in the 1980s and recently revised. The State Procurement Bureau, State of Montana provides Montana Agencies with a good road map based on a 22-step RFP process and a 50-page RFP Manual.

2. Specify the activities of the Evaluation Committee.

Use this document to demonstrate that the Evaluation Committee was properly organized and directed to ensure fairness.

Members of the evaluation committee are usually selected because of their knowledge or expertise related to the procurement. In some organizations, members of the evaluation committee may have pre-existing, informal relationships with contractors. It is important that each person on the evaluation committee understand their role and the critical nature of their activities and behavior during the process. In many jurisdictions, care is taken to ensure that there are no conflicts of interest and the proposals and deliberations are kept confidential. Committee members are provided written instructions and are often required to sign agreements on how they will behave. In Arizona, there is a State law requiring a declaration from each committee member. In Alaska, each prospective member of an Evaluation Committee is provided with RFP Evaluators Guide.

3. Develop a fairness plan.

Use this document to demonstrate that you have taken steps to ensure that your process is equitable, justifiable and sound and provides equal opportunity for all proposers.

The Victoria Government Purchasing Board (Australia) has produced some excellent documentation related to the entire procurement process. Probity, defined as “unimpeachable honesty and virtue” or “complete and confirmed integrity”, is a critical issue. They have developed and published a policy which is accompanied by a Probity Plan Template. This 28-

page document contains a list of 40 tasks which, when executed, help ensure compliance with public policy. Once the process is finished, this document can be used to prove that the entire process complied with public policy and the law.

4. Publish an Evaluation Guide.

Use this document to demonstrate that the Evaluation Committee was briefed on their responsibilities and that the step-by-step evaluation procedure was established before the proposals were opened.

The evaluation process often becomes the center of controversy and intense scrutiny. It is a common practice to define the details of the evaluation process while the RFP is being developed. In most organizations, the Project Manager or Procurement Officer reviews the evaluation procedure with the Evaluation Committee just before the proposals are distributed. They want to ensure that each evaluator understands the process and performs accordingly.

Some organizations provide the evaluators with score sheets; others, with a description of their responsibilities. Some organizations provide each evaluator with a Guide, a detailed description of the evaluation process based on the RFP itself. While these Guides take time and effort to prepare, they are worth it! These Guides help the evaluators understand the process and their responsibilities. They simplify the work of the evaluators and they are a great tool in defending the process from criticism.

The Atlantic Lottery Corporation's Evaluation Charter is one of the best I've seen.

5. Publicize an effective debriefing procedure.

Use this document to demonstrate your sense of fairness, and your organization's willingness to deal with suppliers' concerns (without litigation).

The existence of a well-written reasonable debriefing procedure will re-enforce the idea that the entire RFP process was done properly. It will also convince some disgruntled vendors to seek more information before talking to their lawyers. And finally, an inviting and open debriefing process permits you to find out which vendors are really, really angry and gives you an opportunity to defuse the situation.

6. Document the protest procedure.

Use this document to inform vendors that you will attempt to resolve their issues through discussions and negotiations, rather than litigation.

A written protest procedure can direct (and control) the vendors' activities, promote confidence in the process, promote the resolution of grievances, and restricts or discourages frivolous protests. There are many examples of protest policies and procedures. Some are statutes; others, policies or guidelines. They all deal with the same set of issues: Who can protest? When? What is the procedure? Who decides if the claim has merit? What are the remedies? What happens to the pending contract during the protest process?

WE'VE MOVED.
OUR PHONE, FAX, AND
EMAIL ARE UNCHANGED.
PLEASE NOTE OUR NEW ADDRESS.

Michael Asner Consulting
Suite 212, 1450 Merklin St
White Rock, BC
Canada V4B 4C3

Phone/fax: (604) 530-7881
asner@compuserve.com

1. Follow an RFP road-map.

Use this document to demonstrate that the entire process was properly planned.

Developing and issuing an RFP, and selecting the “best value” proposal is a common process based on “fair and open competition”. Many jurisdictions base their process on the Model Procurement Code developed by the American Bar Association in the 1980s and recently revised. The State Procurement Bureau, State of Montana provides Montana Agencies with a good road map based on a 22-step RFP process and a 50-page RFP Manual.

Montana’s road map consists of 22 steps:

1. Project need is identified by agency and SPB and/or procurement officer is contacted for assistance.
2. Agency prepares specifications and Scope of Project/ Statement of Work using the RFP Template.
3. For information technology (IT) procurements, prepare and submit IT procurement request to the Information Technology Services Division (ITSD).
4. Evaluation factors prepared by agency.
5. Agency sends requisition to State Procurement Bureau (SPB).
6. For IT procurements, agency must have IT procurement request approval from ITSD before moving forward.
7. Agency sends draft RFP and suggested vendors to SPB.
8. SPB finalizes RFP document for agency approval.
9. SPB establishes mailing list.
10. RFP is posted on the State’s solicitation website and notice is faxed or mailed out.
11. Pre-proposal conference if required.
12. Question and answer period for offerors.
13. Agency and SPB develop scoring methods. (Ties in with #4.)
14. Evaluation committee should meet to discuss proposal review and scoring process.
15. Proposals received, inspected, and distributed to evaluation committee.
16. Evaluation committee meetings. Meeting notification posted on the State’s solicitation website.
 - a) initial determination if proposals are responsive
 - b) clarification questions sent out if required
 - c) interviews, demonstrations if required
 - d) best and final offers requested if required
 - e) final evaluation
 - f) completed scoring matrix and committee recommendation submitted to procurement officer for approval
17. For IT procurements, get final approval from ITSD on selection of solution.
18. SPB sends out Request for Documents Notice to highest scoring offeror.

19. Agency conducts final negotiation with offeror if required.
20. Contract reviewed and signed off by SPB and agency. IT contracts require Chief Information Officer signature.
21. Contract issued when required documents are in. Signed copy sent to SPB.
22. Agency begins contract performance monitoring.

Montana has provided direction in a series of documents, each dealing with a different element of the RFP process. Here is a list of these documents:

Document Name
Agency RFP Checklist
Contractor Assessment Program Template
Offeror's RFP Checklist
RFP Contract
RFP Cost Evaluation Methods
RFP Evaluation Process - Instructions
RFP Flowchart
RFP Manual (50 pages)
RFP Process Information
RFP Process Q & As
RFP Reference Check
RFP Sample Scoring Guide
RFP Standard Statements
RFP Template 2004
RFP Short Form Template 2004
IT RFP Contract
IT RFP Template 2004

The roadmap described above is "RFP Flowchart". All of the documents can be found at:
<http://www.discoveringmontana.com/doa/GSD/css/Resources/RFPProcess.asp>

2. Specify the activities of the Evaluation Committee.

Use this document to demonstrate that the Evaluation Committee was properly organized and directed to ensure fairness.

Members of the evaluation committee are usually selected because of their knowledge or expertise related to the procurement. In some organizations, members of the evaluation committee may have pre-existing, informal relationships with contractors. It is important that each person on the evaluation committee understand their role and the critical nature of their activities and behavior during the process. In many jurisdictions, care is taken to ensure that there are no conflicts of interest and the proposals and deliberations are kept confidential. Committee members are provided written instructions and are often required to sign agreements on how they will behave. In Arizona, there is a State law requiring a declaration from each committee member. In Alaska, each prospective member of an Evaluation Committee is provided with RFP Evaluators Guide.

Both Arizona and Alaska provide strong, specific directions to members of any Evaluation Committee. In Arizona, the issue is dealt with in the Procurement Code.

In Arizona, the State has established a law to restrict the activities on members on an evaluation committee. Title 41, Chapter 23, Arizona Procurement Code.

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=41>)

C. A person who serves on an evaluation committee for a procurement shall sign a statement before reviewing bids or proposals that the person has no interest in the procurement other than that disclosed and will have no contact with any representative of a competing vendor related to the particular procurement during the course of evaluation of bids or proposals, except those contacts specifically authorized by sections 41-2534, 41-2537, 41-2538 and 41-2578. The person shall disclose on the statement any contact unrelated to the pending procurement that the person may need to have with a representative of a competing vendor and any contact with a representative of a competing vendor during evaluation of bids or proposals except those contacts specifically authorized by sections 41-2534, 41-2537, 41-2538 and 41-2578. A person who serves on an evaluation committee and who fails to disclose contact with a representative of a competing vendor or who fails to provide accurate information on the statement is subject to a civil penalty of at least one thousand dollars but not more than ten thousand dollars.

In Alaska, the Division of General Services has developed an 8-page guide to help evaluators understand their role and responsibilities.

www.state.ak.us/local/akpages/ADMIN/dgs/pdf/rfpguide.pdf

This short publication deals with significant issues and emphasizes the required behavior of an evaluator. It deals with many common issues including ethical considerations, procurement code considerations, protests, and conflicts of interest:

- ▶ Neither the Procurement Officer nor the evaluation committee are allowed to deviate from the procedure and evaluation requirements of the RFP.
- ▶ Your duty is to apply judgment in awarding points to the proposals for the purpose of ranking them. You will be limited to considering only the evaluation criteria published in the RFP.

It is recommended that each evaluator complete and sign a Non-Conflict of Interest Form.
<http://www.state.ak.us/local/akpages/ADMIN/dgs/policy.htm>

NON-CONFLICT OF INTEREST STATEMENT



I certify that neither I nor any member of my immediate family has a material personal or financial relationship with any offeror, or to a direct competitor of any offeror under consideration by this proposal evaluation committee. I further certify that no other relationship, bias or ethical conflict exists which will prevent me from evaluating any proposal solely on its merits and in accordance with the Request for Proposal's evaluation criteria.

Furthermore, I agree to notify the Procurement Officer if my personal or financial relationship with one of the offerors is altered at any time during the evaluation process. If I am serving as the Procurement Officer of record I agree to advise my supervisor of any changes that could appear to represent a conflict of interest.

3. Develop a fairness plan.

Use this document to demonstrate that you have taken steps to ensure that your process is equitable, justifiable and sound and provides equal opportunity for all proposers.

The Victoria Government Purchasing Board (Australia) has produced some excellent documentation related to the entire procurement process. Probity, defined as “unimpeachable honesty and virtue” or “complete and confirmed integrity”, is a critical issue. They have developed and published a policy which is accompanied by a Probity Plan Template. This 28-page document contains a list of 40 tasks which, when executed, help ensure compliance with public policy.

Probity Plan Template

This is a great document. It presents a plan for doing it right! And it can be easily adapted for use in other jurisdictions since the procurement process in Australia is very similar to that followed in the U.S. Go to: www.vgpb.vic.gov.au and search for “Probity Plan Template”.

[http://www.vgpb.vic.gov.au/CA256C450016850B/WebObj/ProbityPlan/\\$File/Probity%20Plan.doc](http://www.vgpb.vic.gov.au/CA256C450016850B/WebObj/ProbityPlan/$File/Probity%20Plan.doc)

Probity tasks and steps

The following tasks are generally in chronological order.

	Task
1.	Ask for conflict of interest declarations
2.	Obtain confidentiality agreements
3.	Check budget approval obtained
4.	Ascertain if a probity auditor or adviser is required
5.	Determine if it is necessary to go to public tender
6.	Check procurement team members' credentials.
7.	Settle details of the Probity Plan
8.	Check procurement team members are familiar with and have access to all relevant policies
9.	Ensure that all tenderers have access to the same information
10.	Set up confidentiality procedures
11.	Set up proprietary information procedures
12.	Brief all staff involved

	Task
13.	Review probity at completion of PLANNING milestone
14.	Settle invitation documents (RFT)
15.	Review probity at completion of TENDER PREPARATION milestone
16.	Set up process for receipt, recording and acknowledging bids
17.	Check advertising arrangements This includes press advertisements, registration on website etc
18.	Arrange tender briefing meetings Record who attended. Prepare a summary report and post it on a website or make it available in hard copy.
19.	Check tenders are received according to Conditions of Tender
20.	Secure documents
21.	Review probity at completion of TENDER INVITATION STAGE milestone

	Task
22.	Notify bidders of any significant alternations that may occur in the future due to change of circumstances
23.	Assess bids as quickly as possible
24.	Ensure all bids are compared on the same basis
25.	Notify shortlisted tenderers of interview
26.	Notify tenderers not shortlisted
27.	Document interviews and post tender negotiations
28.	Perform due diligence of short listed tenderers
29.	Plan and document site visits (if conducted)
30.	Brief Reference Group (if appropriate)

	Task
31.	Review probity completion of EVALUATION milestone
32.	Prepare Supplier Selection Report
33.	Review probity at completion of SUPPLIER SELECTION RECOMMENDATION REPORT .
34.	Prepare Supplier Selection Report for Ministers' or Secretaries' approval
35.	Submit Supplier Selection Report to APU or VGPB for approval
36.	Notify the successful tenderer.
37.	Notify unsuccessful tenderers their offers are not accepted
38.	Debrief unsuccessful tenderers
39.	Settle transition arrangements
40.	Store all documents

4. Publish an Evaluation Guide

The evaluation process often becomes the center of controversy and intense scrutiny. It is a common practice to define the details of the evaluation process while the RFP is being developed. In most organizations, the Project Manager or Procurement Officer reviews the evaluation procedure with the Evaluation Committee just before the proposals are distributed. They want to ensure that each evaluator understands the process and performs accordingly.

Some organizations provide the evaluators with score sheets; others, with a description of their responsibilities. Some organizations provide each evaluator with a Guide, a detailed description of the evaluation process based on the RFP itself. While these Guides take time and effort to prepare, they are worth it! These Guides help the evaluators understand the process and their responsibilities. They simplify the work of the evaluators and they are a great tool in defending the process from criticism.

The Atlantic Lottery Corporation's Evaluation Charter is one of the best I've seen.

Many jurisdictions have created guidelines to help the evaluators. Issue 43 of *The RFP Report* identified two good documents: the one produced by the State of Alaska, and the one from the Federal Transportation Authority.

Issue 43 also discussed the Atlantic Lottery Corporation's Evaluation Charter. This 13-page document is one of the best guides I've seen. It's well organized. It's synchronized with the RFP. It deals with critical issues including Project Strategy, Responsibilities, and Risk Management. Risk management is a topic which should routinely be part of every evaluation but one which is rarely included.

Table of Contents

1	RFP Objective
2	Evaluation Charter Goal/ Purpose
3	Evaluation Charter Deliverables
4	Project Scope
5	Project Strategy and Process Flow
	5.1 Strategy
	5.2 Project Process Flow
6	Project Team Roles and Responsibilities
	6.1 Responsibilities for All Team Members
	6.2 Evaluation Team
7	RFP Evaluation, Criteria Percentage And Description
	7.1 RFP Evaluation
	7.1.1 Initial Review
	7.1.2 Supplier Presentations
	7.1.3 Second Review
	7.1.4 Recommendation Report
	7.2 Criteria Percentage Summary
8	Risk Management
	8.1 Critical Success Factors
	8.2 Risks
9	Quality Management
	9.1 Project Quality Management
	9.1.1 Lists of Pros, Cons, Issues, Questions
	9.1.2 RFP Evaluation Report
10	Evaluation Charter Approval
	10.1 Approved by:
	10.2 Reviewed by:

5. Publicize an effective debriefing procedure.

Use this document to demonstrate your sense of fairness, and your organization's willingness to deal with suppliers' concerns (without litigation).

The existence of a well-written reasonable debriefing procedure will re-enforce the idea that the entire RFP process was done properly. It will also convince some disgruntled vendors to seek more information before talking to their lawyers. And finally, an inviting and open debriefing process permits you to find out which vendors are really, really angry and gives you an opportunity to defuse the situation.

Debriefing is often looked upon as the crumbs given to losers to offset, at least in the purchaser's mind, the cost of submitting a losing proposal. It is an attempt by the Purchasing Organization to provide some value to the suppliers. It is also a means by which the Purchaser can determine which suppliers are really mad and intend to challenge the results, either through senior management, the political process or the courts.

Most jurisdictions provide an opportunity for suppliers to obtain details about their proposals and why they didn't win. The suppliers are offered some information as a 'thank you' for the cost and effort of preparing a proposal.

Under many different access to information laws in many jurisdictions, a large amount of information is available about an RFP and the proposals:

- ▶ Project authorization
- ▶ The RFP document
- ▶ The Evaluation Process
- ▶ The Evaluators' notes
- ▶ Memo recommending the winner
- ▶ Suppliers proposals, except for competitive information
- ▶ Evaluation summary sheets.

While there are lots of examples of documents dealing with this topic, I've selected three for inclusion here. Each of these demonstrates some element of excellence. Each reflects a serious commitment to a transparent process. And each, in its own way, argues against initiating a legal action until the debriefing is completed.

Example #1 - The Federal Acquisition Institute provides tools to promote acquisition workforce skills and knowledge. <http://www.fai.gov/prodev/pdfs/Unit47.pdf>

Unit 47 deals with this topic and is a good model for a debriefing document. It first defines the skills and abilities required in a debriefing and then provides the details of a 9-step procedure:

1. Determine whether to debrief an offeror.
2. Identify Government personnel for debriefing participation.
3. Schedule debriefings.
4. Determine the method of debriefing.
5. Prepare for preaward debriefing.
6. Prepare for post-award debriefing.
7. Conduct the debriefing.
8. Document debriefing session.
9. Provide debriefing information on the successful offeror's proposal to interested parties.

Example #2 - The Federal Transit Administration's Best Practices Procurement Manual contains two pages on this topic. <http://www.fta.dot.gov/library/admin/BPPM/toc.html>

It defines the value of a debriefing and its role in discouraging offerors from taking legal action:

Debriefing of unsuccessful offerors can be valuable to both the offerors and the procuring agency. A debriefing can be helpful for a number of reasons:

- It communicates a sense of fairness and appreciation to offerors who have made sizeable investments of time and resources in preparing bids or proposals for your program.

- It may avoid a protest by convincing a disappointed offeror that your agency's decision was carefully made, factually well supported, and the best one for your agency.
- Of most importance, it can help offerors improve their future proposals, which is a definite advantage to them and to your agency.

Example #3 - The Office of Government Commerce in the United Kingdom has published a 21-page Supplier Debriefing memo.

http://www.ogc.gov.uk/sdtoolkit/reference/ogc_library/generic_guidance/supplierdebrief.pdf

This text is easy to read and deals with many facets of this topic.

Contents	
One	Introduction
Two	Benefits of effective debriefing
Three	When to debrief
Four	Where debriefing takes place
Five	Approach to debriefing
Six	Who should attend?
Seven	The debriefing meeting
Eight	After the debrief
Nine	Further advice and tips

It also contains a Supplier Questionnaire dealing with the solicitation package, interaction with the Government Department, the Advertisement, the Workload in preparing a response, and the debriefing.

6. Document the protest procedure.

Use this document to inform vendors that you will attempt to resolve their issues through discussions and negotiations, rather than litigation.

A written complaints procedure can direct (and control) the vendors' activities, promote confidence in the process, promote the resolution of grievances, and restricts or discourages frivolous protests. There are many examples of protest policies and procedures. Some are statutes; others, policies or guidelines. They all deal with the same set of issues: Who can protest? When? What is the procedure? Who decides if the claim has merit? What are the remedies?

The City of Miami has a 3-page procedure.
<http://www.ci.miami.fl.us/Procurement/docs/BidProtest.pdf>

Protests must be initiated within two days of the notice of award of a contract. Only proposers can protest. Protests may not challenge the evaluation criteria or weights. And protests are first dealt with by the Chief Procurement Officer.

The State of Nebraska has a one-page protest procedure that identifies the timing (within ten days of intent to award), the official in charge (Materiel Division Administrator), and the tasks.
http://www.das.state.ne.us/materiel/purchasing/rfpmanual/form_protestprocedures.pdf

The City of Orlando has a two-page Bid Award Disputes procedure. Protests often cause the contract award to be suspended until the protest is resolved.

<http://www.ci.orlando.fl.us/admin/purchasing/appealofpurchagentdecision.htm>

G. In the event of a timely protest and/or appeal, the City shall not proceed further with the solicitation or with the award of the bid/contract unless the Director, after consultation with the head of the using agency, forwards to the Chief Administrative Officer a written request to award the bid/contract without delay in order to protect the public health, welfare or safety.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

GUIDE FOR PROCUREMENT SYSTEM REVIEWS (PSR)

This 100-page Guide “documents the process for conducting a PSR, describes the required procurement elements, provides the standard forms and checklists, and includes copies of key reference documents.”

A detailed review of this document is beyond the scope of this report. However, the Table of Contents presented below indicates its structure and major topics:

TABLE OF CONTENTS

I.	Procurement System Review Overview and Approach
I.1.	PSR Objectives
I.2.	Procurement Assessment Phase
I.3.	Contract Review Phase
I.4.	Reporting
I.5.	Sample Selection Matrix
I.6.	Contract File Summary Sheet
II.	Required Procurement Elements and Suggested Best Practices

II.1.	Systemwide Elements
II.2.	Individual Procurement Elements
III.	Questionnaires and Check Lists
III.1.	Assessment Phase Interview Questionnaires
III.2.	Review Findings Check Lists
III.3.a.	Sample Report Format
III.3.b.	Report Summary Table
IV.	Authorities
IV.1.	Common Grant Rule (Part 49 CFR 18)
IV.2.	Circular 4220.1E "Third Party Contracting Requirements"
V.3.	Circular 5010.1C "Grant Management Guidelines"
IV.4.	Master Agreement

The document contains interview questionnaires for most stakeholders including:

- Chief Executive Officer
- Attorney
- Grants Personnel
- Finance Personnel
- Head of Procurement
- Procurement Staff
- Program Manager
- Disadvantaged Business Enterprise (DBE) Representative
- Internal Auditor

The suggested questions are quite extensive. For example, there are 27 topics covered for the Program Manager and the questions include: What is your role in the initial acquisition process? Do you have a copy of the Procurement Procedures Manual? What can your Department do to improve procurement? Are you aware of the policy regarding acceptance of gifts, gratuities, favors or anything of monetary value from contractors or potential contractors?

Chapter III contains an evaluation checklist of best practices related to RFPs. This checklist deals with 30 different aspects of RFPs. Many organizations could improve the RFP process by adopting some of these.

For example, item 7 requires that independent cost estimates be established before you open the proposals. In fact, issuing an RFP without a cost estimate often leads to all the proposals being over budget. Prior to creating an RFP for a new, or complex service, outside consultants are sometimes hired to define the scope of work and estimate the costs.

Item 13 ensures that "brand names" are only used to establish specifications and not to restrict competition.

Item 16 ensures that a competent vendor relying only on the information in the RFP (requirements and the evaluation process) can produce a proposal which could win the competition.

Item 44 ensures that contract changes not within the original scope are treated as sole source procurements.

Here is the entire check list.

COMPETITIVE PROPOSALS (RFP) Check list	
7) Independent Cost Estimate [FTA C 4220.1E 10.]	The grantee made and documented an independent cost estimate before receipt of proposals.
9) Unreasonable Qualification Requirements [FTA C 4220.1E 8.a.(1)]	This solicitation did not contain unreasonable requirements placed on firms.
10) Unnecessary Experience and Excessive Bonding [FTA C 4220.1E 8.a.(2)]	Unnecessary experience and excessive bonding requirements were not included in this solicitation or contract documents.
11) Organizational Conflict of Interest (OCI) [FTA C 4220.1E 8.a.(5)]	There is an apparent or potential OCI and the solicitation contains provisions to eliminate or mitigate the conflict (e.g. by inserting a clause that prohibits the contractor from competing for the follow-on contract to the current design or research contact). If there is no apparent or potential OCI, check NA.
12) Arbitrary action [FTA C 4220.1E 8.a.(6)(c)]	There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the grantee's requirements as specified in the solicitation and as evaluated by staff.)
13) Brand Name Restrictions [FTA C 4220.1E 8.c.(1)]	A "brand name or equal" specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the grantee. If the solicitation specifies "brand name" only without specifying an equal or listing the physical or functional characteristics needed, check Deficient. If the procurement does not specify a "brand name", check NA.
14) Geographic Preferences [FTA C 4220.1E 8.b.]	The solicitation contains no in-State or local geographic preferences except where Federal statutes expressly mandate or encourage them.
15) Contract Term Limitation [FTA C 4220.1E 7.m.]	The contract period of performance for rolling stock and replacement parts does not exceed five (5) years inclusive of options without prior FTA approval. For all other types of contracts, the procurement file contains evidence that the contract term is based upon sound business judgment.
16) Written Procurement Selection Procedures [FTA C 4220.1E 8.c.]	The grantee has written selection procedures and the solicitation also identifies all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.
17) Solicitation Prequalification Criteria [FTA C 4220.1E 8.d.]	The solicitation required prequalification of persons, firms, or products. The list is current, includes enough qualified sources to ensure maximum full and open competition, and potential bidders are not precluded from qualifying during the solicitation period from issuance of the solicitation to its closing date. If the solicitation does not contain a prequalification requirement, check NA.
18) Award to Responsible Contractor [FTA C 4220.1E 7.h.]	The grantee made a determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

19) Sound and Complete Agreement [FTA C 4220.1E 15.a. & b.]

This contract is a sound and complete agreement. In addition, it includes remedies for breach of contract and provisions covering termination for cause and convenience.

24) Clear, Accurate, and Complete Specification [FTA C 4220.1E 9.c.(1) & 9.c.(2)(b)]

A complete, adequate, and realistic specification or purchase description was available and included any specifications and pertinent attachments which define the items or services sought in order for the bidder to properly respond.

25) More Than One Source [FTA C 4220.1E

9.d.]

For this procurement, more than one qualified source submitted offers, i.e. proposals. (If not, the reviewer should review the contract as a noncompetitive negotiation.)

29) Publicized [FTA C 4220.1E 9.d.(1)]

For this procurement, the Request for Proposals was publicized.

30) Adequate Number of Sources Solicited [FTA C 4220.1E 9.d.(2)]

For this procurement proposals were solicited from an adequate number of qualified sources.

36) Evaluation [FTA C 4220.1E 9.d.(3)]

A method is in place for conducting technical evaluations of the proposals received and the solicitation has evaluation factors identified along with their relative importance.

37) Price and Other Factors [FTA C 4220.1E 9.d.(4)]

For this procurement, award was made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered.

40) Evaluation of Options [FTA C 4220.1E 9.i.(1)]

The option quantities or periods contained in the contractor's bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.)

If the contract does not contain options, check NA.

41) Cost or Price Analysis [FTA C 4220.1E 10.]

Either a cost analysis, with associated profit negotiation, or a price analysis was performed and documented in the procurement file with respect to the initial contract award. Also cost analysis was performed when negotiating contract modifications unless price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

42) Written Record of Procurement History [FTA C 4220.1E 7.i.]

The file contains records detailing the history of this procurement. At a minimum, these records include:

- (1) the rationale for the method of procurement,
- (2) selection of contract type,
- (3) reasons for contractor selection or rejection, and
- (4) the basis for the contract price.

43) Exercise of Options [FTA C 4220.1E 9.i.(2)]

The grantee exercised an option on this contract adhering to the terms and conditions of the option stated in the contract and determined that the option price was better than prices available in the market or that the option was a more advantageous offer at the time the option was exercised.

If an option was not exercised under this contract, check NA.

44) Out of Scope Changes [FTA C 4220.1E 9.h.]

The grantee amended this contract outside the scope of the original contract. The amendment was treated as a sole source procurement (complying with the FTA requirements for a justification, cost analysis and profit negotiation). If the contract was not modified or if all modifications were within the scope of the contract, check NA.

45) Advance Payment Provisions [FTA C 4220.1E 12.a.]

The contractor did not receive an advance payment utilizing FTA funds and the contract does not contain advance payment provisions or, if it did, prior written concurrence was obtained from FTA.

46) Progress Payment Provisions [FTA C 4220.1E 12.b.]

The contract contains progress payments based on costs incurred (as opposed to percent of completion) and the contract contains a provision giving the grantee title to property (materials, work in progress, and finished goods) for which progress payments are made. The contract may contain other security in lieu of obtaining title.

If the contract does not contain progress payments, check NA.

47) Time and Materials Contracts [FTA C 4220.1E 7.j.]

This is a time and materials contract; the grantee determined that no other type of contract is suitable; and the contract specifies a ceiling price.

If this is not a time and materials contract, check NA.

48) Cost Plus Percentage of Cost [FTA C 4220.1E 10.e.]

This is not a cost plus a percentage of cost type contract.

49) Liquidated Damages Provisions [FTA C 4220.1E 13.]

This contract contains liquidated damages provisions and the assessment for damages is specified in the contract at a specific rate per day for each day of overrun in contract time.

If this contract does not contain liquidated damages provisions, check NA.

50) Piggybacking [FTA C 4220.1E 7.e.(3)]

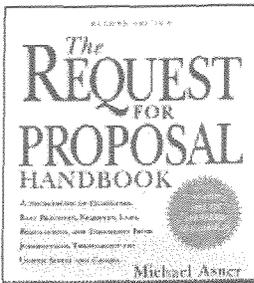
- 1) This file contains: Assignability provisions [FTA C 4220.1E 7.p.]
- 2) The procurement file contains: Price reasonableness determination [FTA C 4220.1E 7.e.(3)]

If this is not a "Piggybacking" contract, check NA.

56) Clauses [FTA C 4220.1E 16.]

This contract contains the appropriate FTA required clauses.

The contract clauses located in the Master Agreement should be used to determine the applicability of the clauses to the procurement type. The Best Practices Procurement Manual can be used to determine the applicability of the specific language of a clause that a grantee may use.



We've acquired the last 250 copies from the publisher.

More than 2500 sold for \$295. Now available for \$295 less 50%.

Available to our readers at 50% off - for \$147.50

YES

TO ORDER THE RFP REPORT

Enter my 1-year subscription (4 issues) to The RFP Report
In US \$60.00 In Canada \$79.18

Payment Enclosed: VISA MC. AMEX

Card #: _____ Exp. Date _____

Please Invoice me. My purchase order number is: _____

Name _____

Title _____

Company _____

Address _____

Phone _____ Fax _____ Email _____

Mail to: Michael Asner Consulting
Suite 212 - 1450 Merklin St.
White Rock, B.C. Canada V4B 4C3
To order immediately please
Phone / Fax (604) 530-7881
asner@compuserve.com

I understand I may cancel at anytime if I am not satisfied and receive refund for the mailed portion.