

New England Environmental EXPO
April 29, 30, May 1, 1997
World Trade Center, Boston, MA

PROCUREMENT FOR PUBLIC-PRIVATE PARTNERSHIPS FOR
WATER AND WASTEWATER FACILITIES:
HOW TO ELICIT TOP-QUALITY PROPOSALS

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ABSTRACT

Faced with the increased costs of permit compliance, aging facilities which require upgrading, the need for expanded facilities and the competing pressures for funds by other public programs, governments may be limited in their ability to finance water and wastewater treatment plant improvements and maintenance programs.

Public/private partnerships offer an alternative means of financing upgrades and operating water and wastewater treatment and residuals management facilities. A partnership is a contractual relationship between the local government and a private party to provide a treatment or management service. Each partnership is unique, with provisions designed to meet the particular needs of each community. Cost savings and risk reduction can result from such partnerships.

A successful procurement for public/private partnership results in receipt of competitive proposals by qualified respondents providing the service sought. This presentation will provide participants with information and examples to allow them to pursue a successful procurement.

This presentation describes and provides information on: types of public/private partnerships; objectives of the procurement process; role of consultants; traditional and alternative (hybrid) approaches for procurement, how to choose the most suitable approach and how to stimulate vendor interest; preparation and content of Requests for Proposals; procedures for communicating with prospective proposers during the procurement process; and the proposal evaluation process, evaluation criteria and means for selecting the best contractor.

INTRODUCTION

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DISCUSSION

Options for Public/Private Partnerships

There are many types of public/private partnerships – contract operations, lease, sale, design/build, design/build/operate. The most common for water and wastewater treatment facilities is contract operations, most of which until recently have been short-term; i.e., less than five years. The recent trend appears to be toward long-term, 20-year agreements. The first and only sale to date of a wastewater treatment facility was completed at the Miami Conservancy District, Franklin, Ohio, in 1995. There is no right or wrong level of private participation in a public/private partnership. It is based on the needs and objectives of the community. For those interested in cash in-flow to satisfy community infrastructure needs, a sale might be most attractive. If a community needs to maintain control through ownership, but reduce annual costs, a long-term operating contract may be most advantageous.

Definition of Procurement

Procurement is a multi-stepped process. It includes setting objectives, selecting a procurement strategy, defining the service required and key terms and conditions for business arrangements, preparing the Request for Proposals, interacting with the prospective proposers, evaluating proposal, selecting a party and negotiating a contract. A successful procurement will attract competitive proposals from qualified parties, obtain attractive terms that meet procurement objectives and result in an equitable contract that fairly serves both parties.

Role of Consultants

Most procurements require a level of technical, financial and legal expertise not available through municipal staff. Consultants can provide guidance and information that allows informed decision making (consultants often have the advantage of experience with similar projects and circumstances and can “steer” a client away from pitfalls). They also provide independent advice, considering both the public and private perspective. This is valuable in setting attainable goals, preparing the RFP, contract negotiations and in dispute resolution. Perhaps most significant, consultants provide the expertise necessary to achieve and even playing field in discussions and negotiations with proposers, all of which retain sophisticated and highly experienced assistance.

Procurement Approach

There are any number of procurement approaches available, These include: a Request for Qualifications (RFQ); a Request for Proposals (RFP); a combination RFQ/RFP (two steps); and various hybrid approaches such as a Request for Qualifications and Expressions of Interest (RFQEI). A Draft RFP (for comment)/Final RFP, and an Expanded RFP – Menu Approach. The objectives, advantages and disadvantages, and application of each is described below.

The RFQ is typically used to determine if there are a sufficient number of interested, qualified proposers in the marketplace. One can use this process to choose the most qualified proposer for contract negotiations or to “short list” proposers prior to requesting a cost proposal. The advantages of the RFQ process are that it allows a determination to be made the qualified proposers exist, it provides assurance that the service and terms requested will draw a sufficient number of cost-competitive proposals, and, if used to “short list” for requesting cost proposals, allows more attention to be focused on qualified proposers only for subsequent evaluation of technical and cost proposals. Another advantage is that it is less costly for proposers to respond to than an RFP, a factor which will be increasingly important as

more communities enter the marketplace and private companies, hoping to best utilize their resources, pick and choose where they will prepare responses.

Disadvantages to the RFQ process include the fact that technical and cost information is not provided, and if the RFQ is used to select a qualified proposer for contract negotiations, then there is not the benefit of having competitive cost proposals in that selection process. This shortcoming can be overcome by using the RFQ to “short list” for receipt of cost proposals or for simultaneous negotiations with more than one qualified proposer. This two-step process can, however, prolong the procurement schedule.

Today, the RFQ process is best suited to test the strength of the marketplace for “innovative” procurements; e.g., for a new service or business arrangement not commonly offered. In the future, with a larger number of contractors entering the marketplace, the RFQ process when used to short list qualified proposers for subsequent cost proposal preparation or simultaneous negotiations, may be the most advantageous means to attract proposers since it reduces their proposal preparation cost until they are part of a select, short list.

An alternative approach, the RFP, is most useful in situations where the marketplace is mature with an ample number of qualified proposers, where a community can clearly define the service needed and key business terms and conditions; i.e., you “know what you want,” and where it is most probable that a project will proceed. It should be kept in mind that there is a significant investment of resources by both the community and the private proposer in the RFP process.

The objective of an RFP is to seek both technical and cost proposals in a one-step process. This is advantageous in that it is typically shorter than a two-step process, allows for open, cost competition amongst all proposers, and provides the qualifications, technical, business and cost information needed to make a complete evaluation of proposals received. The disadvantages of the RFP process are that it requires greater effort and cost to prepare the RFP and for proposers to prepare a response, and it can be limiting in restricting a proposer’s flexibility and ideas.

As one would suspect, there are circumstances where the RFQ or RFP approaches do not quite fit a community’s needs. In such situations, several hybrid procurement approaches have been used. One, a Request for Qualifications and Expressions of interest (RFQEI) is a cross between an RFQ and an RFP. It provides in one response for qualification, technical approach, key terms and conditions of contract, and cost information (estimates, not guaranteed prices). Consequently, it is most useful when one is not certain regarding specific services or terms and conditions of contract, but wants more than just qualifications information to make a selection. The process can be particularly useful in that it allows proposers to present various approaches to assist a community determine what might be most advantageous from a technical and cost perspective. Evaluation of responses to an RFQEI might lead to subsequent selection of one or more proposers for negotiations or could be used as a precursor to requesting formal cost proposals. The RFQEI can offer the advantage of a less costly procurement process prior to selection of qualified detailed proposers or preparation of technical and cost proposals.

Another hybrid procurement approach is that of the DRAFT RFP/Final RFP process. It can be most useful when one knows most of the specifics of the service and business arrangement, but one wants to check with the marketplace to ensure that what is being asked for is realistic. It is also a useful process

to stimulate interest in one's procurement process amongst potential proposers, and it provides the opportunity to solicit comments from the marketplace that can be used to improve the Final RFP.

The last of the hybrid procurement approaches to be discussed is the Menu RFP. This is an expanded RFP approach that allows proposers to respond to more than one service or business option; e.g., sale, lease or contract operations. It is most useful when a community is not certain which marketplace option will be most advantageous, and it wants to have the advantage of formal proposals to assist in the evaluation process.

To choose the most suitable procurement approach one should inventory available information, know where one is regarding definition of services and key terms and conditions of contract, and identify one's procurement objectives. Are the objectives: to test the marketplace for qualified proposers; to establish a qualified proposer list; to seek technical cost information without a formal proposal effort; or to immediately seek formal technical and cost proposals from which to select a company for project implementation?

Content of RFP

The general content of an RFP should include the following elements:

- Introduction-background/objectives
- Facility/asset description (existing/proposed)
- Schedule requirements for supply/service
- Draft contract or key terms and conditions of such
- Procurement process and schedule
- Instructions to respondents: content of proposals to be submitted (technical and cost proposals)
- Rights of party requesting proposals
- Evaluation process/evaluation criteria
- Appendices (key information describing existing facilities)

The clearer and more precise the RFP, the better will be the responses. It is not uncommon (without Appendices) for an RFQ to be from 10 to 25 pages in length, an RFQEU from 10 to 50 pages, and an RFP from 50 to 200 pages, depending on the complexity of the project, and Federal, State and municipal procurement laws and regulations.

Communicating with Prospective Proposers

Ample advertising of the procurement document is advised. This should include placing of advertisements in newspapers with local and statewide readership and placing announcements in trade journals and magazines with national readership. In addition, most consultants maintain a list of active proposers in the industry. A direct mailing to such parties announcing the availability of the procurement document is advantageous.

After release of the RFP, frequent "user-friendly" communication with prospective proposers is recommended. This includes being responsive and timely to questions raised, hold a pre-bid" conference, making documents and facilities available for inspection at convenient times and preparing addendum to the RFP as is necessary.

Proposal Evaluation

Figure 1 lists the typical steps in proposal evaluation. As indicated in Figure 1, although not necessary, it is recommended that separate Technical and Cost Proposals be submitted to allow separate review. In this manner the technical evaluation and ranking can be completed first without cost bias. Cost proposals typically are reviewed on a life-cycle cost basis and by present worth analysis.

In establishing the evaluation criteria in the RFP process, one should avoid preferential treatment of any proposer. In conducting the proposal review, it is imperative to complete the evaluation in accordance with the evaluation criteria. It is also important to document the evaluation and selection process to clearly show how the proposal most advantageous to the municipality was selected. It is recommended that minutes of selection committee meetings be kept and that the ranking of proposals and the reasons for such rankings be documented. If requested, it is also recommended that debriefings for those not selected be held. This process will ensure a fair review process and, if necessary, provide the basis for a successful defense from a challenge by a disgruntled proposer not selected.

Procurement Schedule

Figure 2 illustrates a typical procurement schedule for an RFP process. In most cases, at least one should be allowed for the process.

Closing Comments

1. Be Cognizant of State Procurement Law

Many states have procurement laws and regulations that may limit the choice of and/or provide required structure to the procurement process. For example, in Massachusetts one cannot do a design/build procurement for publicly owned construction projects. To do so requires Special Legislation. It is essential that state procurement laws and regulations be understood prior to selecting a procurement strategy and then implemented as required. No to do so can lead to a successful challenge of the procurement process or to an invalid contract.

2. Consider Proper Procurement Incentives

Remember that private companies responding to your RFP will be spending considerable resources to do so. It is not uncommon in responding to an RFP (with design/construction of capital improvements and long-term contract operations) for a proposer to spend \$100,000 to \$200,000. Also, for a public/private partnership to be successful, one should recognize the relationship as a cooperative partnership, not an adversarial relationship. Recognizing that it is necessary to protect the interests of the community, it is also necessary to recognize that for a successful procurement and relationship one should:

- start with an attitude of “trust” necessary for a successful partnership;
- adopt an honest and sincere approach conveying that a contract will be let as a result of the procurement process;
- demonstrate that there is a fair and even playing field for all proposers; i.e., no favorites, no exclusionary evaluation criteria biased toward a particular vendor; and

- provide a setting for an attractive business relationship for both buyer and seller considering
 - a long-term contract (15 years plus)
 - realistic terms and conditions for contract; e.g., well defined work scope and division of responsibility, attainable performance guarantees, equitable risk sharing, realistic conditions for defaults and remedies, and fair termination clauses
 - financial terms that keep both buyer and seller financially whole.

Figure 1

PROPOSAL EVALUATION AND SELECTION PROCESS

- Establish selection committee
- Conduct non-cost review
- Conduct cost review
- Contact references
- Visit referenced facilities
- Short list
- Interview
- Selection
- Contract negotiations and execution

Figure 2

TYPICAL PROCUREMENT SCHEDULE FOR RFP PROCESS

<input type="checkbox"/> Set Procurement Objectives and Strategies	1-2 months
<input type="checkbox"/> Prepare/Release RFP	2-3 months
<input type="checkbox"/> Respondents Prepare Proposals	3 months
<input type="checkbox"/> Pre-Bid Conference, Response to Questions on on RFP, Issue Addenda to RFP	Concurrent with Preparation of Proposals
<input type="checkbox"/> Proposal Review and Selection of Proposer for Contract Negotiations	<u>2-3 months</u>
Subtotal	8-11 months
<input type="checkbox"/> Contract Negotiations	<u>1-6 months</u>
TOTAL	9-17 months