



Solicitation/Contract Language (Policy §C-6) Lunch & Learn Q&A – October 3rd 2023

Q&A for October 3, 2023, Lunch ‘n Learn Meeting

1. Question: I was told that ALL sections of the bid document are important. Are you saying we should mark or note which sections are more important than others? I should add early in my career, I did highlight a few sections AND I was told NOT To highlight or draw attention to any section.

DES Response: It depends. Any single hard and fast rule is probably not wise in a subject matter area where there's a high premium on using critical thinking skills. So sometimes it makes a lot of sense to highlight things that you are looking for in a particular solicitation and to help vendors out. Other times it makes no sense at all.

There are times when solicitation sections should be highlighted during the prebid conference, especially a) a complex area or points of contention, and/or b) areas where the state is looking for input from the bidder community. This does not diminish the importance of the other sections, as the agency will require all topics to be addressed for a vendor to be deemed to be responsive and responsible to the solicitation. The highlighting is used to help the bidders understand what the agency is asking for, how the agency will evaluate bids, and obtaining potential bidder input regarding any clarifications needed, etc.

With complex solicitations, it is a best practice to include a summary of what you're looking for at the very beginning of the solicitation document. For example, consider a situation where an agency issues a very complex procurement where there's a lot of background information needed to understand what the agency is actually asking for. In this example, there was a secondary cost that was an important consideration for the agency that a couple of bidders hadn't seen. The secondary costs were buried pretty deep in the contract. So in instances like that where you know we expect delivery and the cost of delivery to be considered in the bid pricing, but it's only mentioned once in small print on page 12 – in that case, it is appropriate to highlight the item: “by the way, on this page to the solicitation, this is the thing that we're asking for, and that should be either within your capacity to make the deliveries or to have that noted in your bid price.”



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2. Question: "Solicitation interview questions"? Are those Bidder Conference questions?

DES Response: These are two separate concepts. Bidder Conference questions are asked – and answered – during the time that vendors are preparing their bids and before the bid deadline. Solicitation interview questions occur only if, as a part of the bid evaluation process, certain bidders are invited for an interview or for a product/service demonstration by the soliciting agency.

Solicitation interviews/demonstrations are not always necessary. In instances where the agency is buying a product like software, it makes sense to have a demonstration because you may have an amazing bid with an amazing price. But if your software isn't compatible with your agency's network, you'll want to know that. In cases where you are buying services, if you are soliciting to have somebody come and restructure your organization, it would make sense to do a demonstration interview to meet with the people to ensure that they can work with your agency. But in instances where you are hiring somebody to deice your sidewalks, an interview would be unnecessary because you don't have to have follow up questions for deicing a sidewalk.

When making any decisions related to conducting a solicitation, remember to ask, "what am I trying to accomplish with a particular solicitation?" and therefore, what is necessary here? Or am I doing things by rote? So, if your solicitation process template says to do an interview, don't just do an interview. Instead, ask yourself, are you getting any value out of it? Are the vendors able to display anything in an interview, or in a demonstration, that helps you decide which vendor to choose? And sometimes it's just simply not necessary. And the same goes for almost every single type of language or clause or requirement that can go into a solicitation. If it's not necessary, don't put it in there.

It's really a critical thinking exercise. If you don't need it, don't use it because it's not going to help anybody.

3. Question: For small agency assistance, DES typically provides documents like templates or example documents for Solicitations/Contracts. Do you know if those are being updated to better provide for the new policy requirements?

DES Response: Yes. But the difficulty with templates is that they are designed to be one size fits all. Because of this, you need to review the template document and delete the



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parts that aren't necessary. It is up to the agency to go through and assess whether or not a particular solicitation/contract clause is necessary. But DES is always available to help.

4. Question: As a side question, somewhat related to template. Are the contractor requirements for Access Equity use going to be added to the templates? We're anticipating push-back from the vendors on not wanting to use Access Equity, so we were hoping for language to use as enforcement.

DES Response: Yes. The current DES guidance is located [here](#).

5. Question: What resources are available to agencies that are just starting this process of working through this section of the policy and are struggling to identify barriers in their solicitations/contracts?

DES Response: Here is a link to some good starting points for small agencies: <https://www.des.wa.gov/services/small-agency-support/contracts-and-procurement-support>. We also have our contract liaison services page (for large agencies – over 100 FTE) on the DES website: <https://www.des.wa.gov/purchase/how-use-statewide-contracts/contract-liason-services>.

There are six phases of the procurement process that are addressed in detail at these websites: Planning, Solicitation Development, Posting, Evaluation, ASB and Award, and Administration. Each section contains templates associated with every phase of the process, and our small agencies services team are more than happy to help the small agencies (100 FTE or less) with their questions and procurements. And we've also got our contracts liaisons who are more than happy to help large agency personnel with their procurement questions.

6. Question: Do you have any words or ... of wisdom to help with the Internal Contracting Staff to understand the importance of this - even as a whole? I did listen to your



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opening statements today, however I just hoping for something like a big take away on the WHY the policy is a good thing and it's not just to add more work and not to add more steps to our process?

DES Response: Yes! Well, if you care about participation of small businesses in the state, and diversity, and working with veteran-owned businesses – it's easy to understand why this policy is a good thing. Small businesses, and people who are sole proprietors, and who run businesses with their families are at the heart of the American entrepreneurial spirit. We want energetic and innovative small businesspeople to participate in the stream of commerce and to be successful.

And our Governor and Legislature have said that our values as a society include encouraging everyone's participation in commerce. If you believe that small business is the lifeblood of America, then this is how we help it thrive.

Also, I do think that for competition, the more robust your bidding pool is, the more likely you are to have a better selection in order to do get the best value for the state. For example, what if you only have three big bidders that respond to a solicitation? That's your pool, and you've limited yourself to these big competitors whose work maybe you don't even like that much. Those are your limited options. But if you remove those barriers, you make it more accessible for smaller businesses, then you can end up with a vendor pool of 15 or 16 or 25. That usually results in a better pick for the state. You get better prices. You are in a better position to negotiate to look for value added. It's good for small business, good for Washington, good for people, good for families, good for the economy.

7. Question: When a large vendor subcontracts to a diverse vendor, did I hear you don't currently track that?

DES Response: Each individual agency tracks or has methods available where it can track subcontractor spending. However, as a state we don't currently have a standardized system for tracking subcontractor spend data. This is what Access Equity has been created for and is in the process of rolling out.



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8. Question: With NASPO contracts they are usually big corporations. Are there plans to add diverse vendors when NASPO does not have any?

DES Response: This is a good question. As you point out, there are certain disadvantages when using cooperatives such as NASPO:

- **Small business disadvantage.** Cooperative agreements tend to have broad scopes and requirements that favor large firms that can provide a wide range of products or services across many states. Even providing courtesy postings in WEBS to let Washington small businesses know about cooperative bidding opportunities is not likely to result in many of them participating in these opportunities.
- **Socio-economic challenges.** Most cooperative agreements will not be able to meet all of the state's socio-economic goals. Cooperative agreements tend to stay neutral or silent on some of the socio-economic goals that might not align with priorities of all participating states. When DES conducts its own Statewide Contract solicitations, it incorporates all procurement preferences and priorities that reflect Washington's priorities.
- **Additional administration fee.** All cooperatives charge some form of additional administrative fee, which increases the overall cost for our customers.

To achieve the best value for the state, and reconcile the need to provide our customers with access to the needed goods and services with the commitment to meet our state's priorities, such as increasing diverse business inclusion, DES is taking the following approach:

1. DES Contracts Specialists check availability of small, diverse, and veteran-owned businesses for the needed goods/services using WEBS and the OMWBE data bases. Once this information is gathered, these actions are taken:
 - a. For commodities, services, and/or markets that have a large availability of small and diverse businesses interested and able to do business with the state, DES will procure a Statewide Contract.
 - b. For commodities, services, and/or markets that do not have a large availability of small and diverse businesses, DES can join a cooperative agreement, provided it appropriately meets the other best value criteria, including:
 - Use of small and diverse subcontractors, resellers, or suppliers.
 - Competitive pricing, economies of scale, and efficiencies.



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- Consideration of human health and environmental impacts; and
 - Life-cycle cost.
- c. For commodities, services, and/or markets that are already covered by cooperative agreements, DES can consider doing a supplemental Washington state contract for the same commodity with large preference or reserved awards for Washington small and veteran businesses to expand access to SDV businesses.
2. After joining any cooperative agreement, DES works with the awarded manufacturers or large distributors to add WA small and certified businesses to their authorized resellers/partners network. A lot of cooperative contracts allow purchasers to place orders directly through an authorized reseller approved by the awarded manufacturer to process orders on their behalf. [Answer from Elena 2/23/24]

Furthermore, agencies are reminded that they “must use existing Statewide contracts, or DES approved cooperative contracts (i.e., NASPO), unless the contract cannot justifiably satisfy the agency’s needs.” See POL-DES-090-00(6)(a) Delegated Authority Policy. Recall that to determine that a Statewide contract or a NASPO contract “cannot justifiably satisfy agency needs,” an agency is directed to use its discretion and good, sound judgment. Examples include: the product does not meet the required performance specifications, the contractor’s delivery time does not meet the agency’s needs, the agency requires different terms (i.e., warranty provisions or insurance requirements), etc. In addition, all agencies have been encouraged to increase spending with certified small and minority-, women- and veteran-owned businesses. If a diverse spend option is not available on a statewide or DES approved cooperative contract and an agency has identified a diverse spend option that meets its needs and complies with all procurement rules, then the agency would be justified to purchase outside of a statewide or DES approved cooperative contract. The reasons justifying the off-contract purchase should be documented. Unless the purchase is a direct buy, it must be competed.