

TEXAS A&M UNIVERSITY-KINGSVILLE

Title: Negotiations
Procurement Rule No.: P-210

Approved by:
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I. Purpose

This policy provides the guidelines to be used in all procurement negotiations.

II. Scope

This policy applies to all employees.

III. When Direct Negotiation may be used in Lieu of Competitive Bidding

A. In almost all instances, purchases are based on competitive bids. Negotiations are prohibited when a competitive environment exists. However, negotiation of contracts is permitted and encouraged for non-competitive environments which included:

1. Purchases made using Catalog Purchasing Procedures through a Catalog Information Systems Vendor.
2. Emergency purchases when bidding is not practical.
3. Purchases of an item for which there is only one source of supply.
4. Purchases by means of a Request for Proposal.
5. Purchases when only one bidder responds to a competitive bid offer.
6. Purchases of services described in the Professional Services Act.

IV. General

Negotiation may be a formal or semi-formal process such as occurs in contract negotiations, or may be an informal process or activity that takes place in qualifying a vendor, evaluating a product, establishing a set of specifications, or undertaking any of the other aspects of the procurement function.

Negotiation demands a high degree of skill, experience, preparation and continuing practice to maintain peak performance levels. Both the vendor-negotiator and the buyer-negotiator must have final authority to effectively undertake the negotiation process.

The following is a list of procurement attributes that tend to escalate the need for skilled negotiation:

1. The product is to be designed and/or produced according to unique specifications.
2. Procurement time is “of the essence.”
3. Active price competition is lacking among an adequate number of able and willing suppliers.
4. Specifications are vague and indefinite.
5. Procurement is to extend over a long period of time.
6. Several design or specification changes are anticipated.
7. Larger future requirements are anticipated.
8. The procurement is sizable and involves a strong possibility of multiple awards.
9. The procurement involves a substantial initial investment by the supplier, or an extended period of preparation and/or engineering.
10. The quotation procedure of establishing fair and reasonable prices is subject to doubt.

Whenever doubts are raised, or could arise, as to the necessity or manner of negotiating, procurement personnel are advised to seek assistance from people with the requisite skills and experience in negotiating.

V. Negotiation Questions

The following checklist questions will help guide purchasing personnel in the majority of situations. Some of the questions will only apply infrequently in limited circumstances. The questions are grouped by subject area:

A. Buyer’s Knowledge of What He is Buying

1. Have the drawing and uses of parts or materials been reviewed?

B. Proposed Sources--Suppliers and Materials

1. Are quotations being secured from an adequate number of sources?
2. Are there alternate materials or sources?

C. Financial Responsibility

1. Has the supplier's financial and credit responsibility been considered in the light of the work to be performed?
2. Does he seem over-extended by current commitments?
3. Have his cash-flow needs been reviewed?

D. Facilities

1. Do suppliers have sufficient areas and equipment to perform in accordance with our delivery schedule?
2. Is it known exactly what operations the supplier intends to subcontract?
3. Is the bidder's proposed subcontracting advantageous to us, the buyer?
4. Does the supplier demonstrate ability to control his own subcontracting?

E. Performance

1. Are the proposed sources accustomed to manufacturing this item or similar items?
2. Do they demonstrate, on the strength of past performance, ability to meet this schedule?
3. Do their past rejection experience demonstrate ability to meet test and quality requirements?
4. Is a performance bond advisable?
5. Is a penalty clause advisable?
6. Should you obtain the right to use or acquire tooling, designs and/or materials to manufacture this item, in case of default?

F. Tooling

1. Is special tooling being purchased separately?
2. Are there any mating or interchangeability problems requiring special action?
3. Is it advisable to have tooling coded with our code numbers?
4. Have we distinguished between special tooling required for the contract and facility items?

G. Patents, Royalties and Development

1. Is this a patented item?

2. Can the article be reproduced through other sources without infringing on patent rights?
3. Are research and development costs set up as separate item, so that future procurements will not be affected?
4. Does the Buyer have a right to acquire any patents resulting from research and development?

H. Planning and Scheduling

1. Has the supplier's proposed sequence of work or operations been analyzed?
2. Are all necessary activities included?
3. Has the supplier established realistic control points and flow times, by activity or operation, consistent with the demands of this contract?
4. Has he balanced loads among activities?
5. Are there any special handling, packaging or shipping requirements that may delay delivery?
6. Are spares involved, test and engineering requirements fully understood?

I. Technical Requirements

1. Are all inspection, test and engineering requirements fully understood?
2. Is the item adequately described on the blueprints, specifications, purchase order, etc. so that no doubt exists as to what is ordered?
3. Are there any special test or quality control requirements the supplier must meet? Does he fully understand them, and does he have time facilities and know-how to comply

J. Ethical Considerations

1. Are the negotiations being conducted according to the requisite high ethical standards?

An "original" cost-cutting method developed by one supplier should not be exposed to the supplier's competition, nor should we reveal terms and prices to get another supplier to make a more advantageous agreement.