



IT Procurement Modernization

NASCIO

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General Procurement Goals for IT Systems

- Obtain quality, responsive and competitive bids based on solid understanding of requirements and business commitments
- Secure IT systems that:
 - ✓ Maximize the benefit of the State's investment
 - ✓ Minimize the risk of project failure
 - ✓ Create a framework for future product growth
 - ✓ Establish long term responsible partnership with the vendor
- Minimize the ability to successfully challenge the procurement

Does One Procurement Size Fit All?

- Business and technical requirements will vary from State-to-State – no 2 States are alike, thereby driving different business and project terms
- Legacy application and back end systems vary from state to state, and from agency to agency
- State objectives – such as software as a service vs. software license solutions; hosting – may be different
- Prior experiences with vendors or a vendor's history in handling key issues, such as data and security breaches suits, may be different
- Mid-sized and smaller IT vendors are often sold to larger IT vendors, creating potential disruption in the previously created long-term partnerships

Procurement Best Practices

- Procurement should recognize the unique business and technical needs of the State and be specifically tailored to meet those needs
- Consider adopting procurement processes that require upfront project planning to reduce the risk of project failure
- Clearly articulate long-term partnering goals and principles, and identify long-term financial protection for the State, in such areas as:
 - *Predictable expansion pricing*
 - *Long-term support of the solution*
 - *Protection against product obsolescence*

Procurement Best Practices

- Use a well-defined, multi-staged procurement process which permits the State to exercise leverage during the entire procurement process
- Require the Bidders to work with State contract documents not the vendors' standard customer contract forms
- Include as part of the RFP key project documents such as the SOW and project terms so that the vendors are fully informed of the level of commitment and business requirements when they submit their bids
- Require key project documents to be negotiated during the procurement process when the State has leverage, and not after the contract is signed when leverage is lost

Procurement Best Practices

- Key project documents include:
 - ✓ Statement of Work
 - ✓ Project Plan (Project Schedule)
 - ✓ Joint Resource Plan
 - ✓ Organizational Change Management, Education and Training, and Knowledge Transfer Plan
 - ✓ Technical Architecture
- Maintain and manage control of all aspects of the procurement, including making changes to the contract and project documents

Surfacing Contract and Commitment Issues Early in the Process

- Contract Issues – Opportunity for Bidders to surface contract / project issues early in the process
- Require Bidders to submit a ***binding*** “Issues List” as part of the RFP Response
- Objective = State needs to know whether there is a large or small gap between key business and technical terms

Best Practices for the Issues List

Differs from traditional forms of issues lists:

- All issues/concerns must be identified on the Issues List. Any issues/concerns not initially raised in the RFP response ***are precluded from being raised later during the procurement.***
- No general statements – must be specific by section/paragraph number
- Issues must be described in ***business, not legal terms***
- Issues/concerns must be accompanied by a reason or rationale describing the issue or concern
- No redlined documents or legal proposals; no vendor form contracts

An Issues List developed under a best practices model provides the State with the basis to understand the issue/concern and address them during negotiations

Sample Issues List Clause

- Bidder's issues, concerns, exceptions or objections to any of the terms or conditions contained in the contract and project documents must be documented in an Issues List. The Issues List prepared by Bidder must set out by section or paragraph a description of each issue, concern, exception, and/or objection. Response Form XX, Issues List, sets forth the Issues List template to be used for the response.
- If a Bidder objects to a particular term or condition, then Bidder will need to further describe, in business terms and not in proposed contract or legal language, Bidder's concern and what compromise terms Bidder is willing to accept. The Issues List must provide the reason or rationale supporting the item of concern and/or business counterproposal. Simply stating that a paragraph is "not acceptable" or supplying Bidder's proposed contract terms without describing (in business language) Bidder's reason or rationale will be considered non-responsive. If Bidder does not identify specific concerns with a particular term or condition, the term or condition will be deemed accepted by Bidder, and State will not negotiate further changes to such accepted or non-commented on terms or conditions. Attachment XX, Issues List Example, illustrates an acceptable form of response for the Issues List. The Issues List provided to State must be attached to Bidder's Proposal in an unrestricted, editable Microsoft Word format.
- State reserves the right to require Bidder to supplement its Issues List with more detailed explanations and to discuss the Issues List submission with the Bidder starting in Evaluation Stage 2 (See Section XX Evaluation Approach) and any time thereafter. Any changes to the Issues List will require Bidder to resubmit the Issues List.

Negotiation Rules and Procedures

- Design to maintain control over the negotiation process
- Clearly identify all the rules and procedures that will be used to negotiate the contract and project documents
- Bidders must certify compliance with the rules/procedures
- Consider the following:
 - ✓ Only the State contract and project documents will be used
 - ✓ Bidders are not to submit their own contract forms – explicitly state that if submitted, they will not be used for purposes of evaluation or negotiations
 - ✓ Bidders cannot provide redlined documents, only the Issues List
 - ✓ The State manages all changes to the contract and project documents – State maintains control over all changes

Negotiation Rules and Procedures

- Additional rules and procedures to consider:
 - ✓ Bidder must source experienced negotiation team that can address all contract and project issues raised in the Issues List, including risk allocation issues involving data security breaches, indemnities and limitations of liability
 - ✓ Senior counsel must have signed off on the Issues List and be a part of the negotiation team
 - ✓ At the request of the State, all negotiations to be conducted in-person by Bidders' whole negotiation team

Include as a mandatory RFP submission requirement a signed Certification Compliance Form agreeing to the Negotiation Rules and Procedures, to be signed by a corporate officer

Structured Procurement Process

**Level of Detail
& Commitment**

**Minimum &
Mandatory
Requirements**

Stage 1

**Requirements Review
Interviews
Review Contract Issues**

Stage 2

**Product Demonstrations
Contract Negotiations**

Stage 3

**Implementation Planning Study (IPS)
Workshops (Project Planning)**

Stage 4

The Implementation Planning Study Workshops

- Formalized process facilitated by G&O to assist in the project planning effort
- Project planning performed typically with 1 preferred finalist Bidder
- Engage in IPS workshops to discuss and finalize the SOW, Project Plan, Joint Resource Plan, Organizational Change Management, Education and Training and Knowledge Transfer Plan, and Technical Architecture

The Implementation Planning Study Workshops

- G&O developed templates include:
 - ✓ Technology Agreement (the master terms and conditions)
 - ✓ Project Agreement terms and conditions
 - ✓ Detailed Statement of Work (75+ pages, including detailed responsibility grid charts for each phase of the project along with detailed deliverable templates)
 - ✓ Detailed Hosting/SaaS terms and conditions
 - ✓ Comprehensive Project Plan Checklist
 - ✓ Comprehensive Joint Resource Plan Checklist

The Implementation Planning Study Workshops

- Process includes:
 - ✓ Formal IPS Workshop kick-off meeting
 - ✓ Walkthrough of all key project documents
 - ✓ Address project-related issues identified on the Issues List
 - ✓ Creation of separate IPS workstreams to continue discussion on and development of key documents
- Typical timespan = 8 – 10 weeks
- State is not charged for this effort by the finalist Bidder, but the initial implementation fees likely to factor in IPS/project planning effort

Ultimate Goal of the IPS Workshops

At the conclusion of the IPS Workshops, can the Bidder make the following representations?

- ✓ *Bidder had a sufficient opportunity to conduct all due diligence required to develop the project documents;*
- ✓ *The project documents are complete, accurate and sufficient in order to complete the project within the agreed to fixed fee;*
- ✓ *Bidder has reviewed and performed all necessary due diligence on the business and technical requirements and, based on such due diligence, affirms that Bidder has advised the State of all software, services and other items needed to implement the solution to meet the State's requirements and complete the project within the timeframes set forth in the project documents;*
- ✓ *All such solutions, services and other items are included in Bidder's Proposal and project documents;*
- ✓ *The number and amount of time allocated to State resources identified by Bidder in the Joint Resource Plan are the only resources needed by the State to complete the project in accordance with the terms of the project documents; and*
- ✓ *The number and amount of Bidder personnel resources identified in the Joint Resource Plan is an accurate representation of the amount of resources needed by Bidder to complete the services set forth in the Statement of Work.*

Procurement Modernization - Benefits and Expected Outcomes

- Establish vendor senior executive buy-in to the relationship and project success
- Key and critical project-related commitments are discussed, finalized and then clearly detailed in the project documents
- Reduce ambiguity in expectations, and by doing so, reduce the risk of project failure
- Obtain more favorable financial terms
- Secure comprehensive, firm commitments to the project and relationship

Lessons Learned from Recent Public Entity Procurements

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- **Case Study #1 – Signing Certification Forms**

- ✓ Public entity required all bids to be signed by a corporate officer with authorization to bind the corporation
- ✓ Person signing the RFP was not an officer, but a family member of the owner
- ✓ Issue was not flagged at the initial administrative review stage
- ✓ Parties negotiated key business terms during Stage 2
- ✓ Bidder executives later reneged on all important terms

Lessons Learned from Recent Public Entity Procurements

- **Case Study #2 – Minor vs. Major Deviations from the RFP Procurement Rules**
 - ✓ Public entity required strict compliance with negotiation rules and procedures
 - ✓ Bidders submitted certification forms “reserving the right” to propose alternative negotiation rules and procedures
 - ✓ Public entity proceeded without requiring the Bidder to remove the reservation of rights exception
 - ✓ In a subsequent stage, the Bidder refused to comply with the negotiation rules and procedures, resulting in a complete loss of control over the negotiation process

Lessons Learned from Recent Public Entity Procurements

- **Case Study #3 – Bidder's Standard Contract Form**
 - ✓ RFP mandated use of the public entity form of contract
 - ✓ When a Bidder objected, the public entity became fearful that they would not be able to negotiate with the vendor, so allowed the vendor to submit its own contract form
 - ✓ Bidder further refused to permit the public entity to control the drafting of the documents, resulting in:
 - 11-month delay in negotiations
 - Significant added costs – internal team and outside counsel
 - Virtually no critical and important commitments were obtained for the project
 - Complete loss of the value of the process

Lessons Learned from Recent Public Entity Procurements

- **Case Study #4 – Refusing to Sign Certification Form**

- ✓ Public entity RFP mandated signing of certification forms “AS IS” without modification
- ✓ One Bidder refused to sign the negotiation certification form, indicating that it was willing to discuss and negotiate *any and all* of the public entity’s terms and conditions if selected as a finalist
- ✓ Public entity summarily eliminated Bidder from the procurement -- The right result

Discussion and Q & A



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