

## CHAPTER 8 Evaluation and Negotiation

### 8.1 Chapter Overview

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This Chapter describes the evaluation and negotiation stage of the solicitation process. This stage includes administering the evaluation and negotiating process, including but not limited to, managing communication with the vendor, conflict of interest concerns, educating evaluators on roles and responsibilities, evaluating bids/proposals, conducting negotiations, and finalizing contract discussions. This Chapter applies to the following solicitation methods:

- Request for Quote
- Direct Solicitation
- Invitation to Negotiate
- Request for Proposal

The State is bound by the terms of the solicitation, and any addendum. The evaluation method, scoring criteria, and award types identified in the solicitation must be utilized in the evaluation and negotiation process.

### 8.2 Vendor Communications

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The Solicitation Manager serves as the point of contact for vendors during the evaluation and negotiation process, and is responsible for leading State communication with vendors regarding clarification requests, negotiations, reference checks and contract discussions.

### 8.3 Evaluation and Negotiation Team Preparation Process

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#### 8.3.1 Code of Conduct Acknowledgment Form

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Prior to the evaluation of any solicitation over \$5,000, the Solicitation Manager is responsible for obtaining a signed Code of Conduct form from all individuals who have or will be participating in the solicitation evaluation, and award process. The signed Code of Conduct Acknowledgement form (or electronic acknowledgement of the form) must be maintained.

#### 8.3.2 Joint Evaluation Committee Process Overview

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If a Joint Evaluation Committee (JEC) is used, the Solicitation Manager is responsible for, prior to the first JEC meeting, communicating, educating, and distributing to the JEC members the Joint Evaluation Committee Project Package, and advising the members of meeting ground rules, scheduling, and the evaluation process. The “Joint Evaluation Committee Process Overview” is information that describes the roles and responsibilities of the evaluators, the Code of Ethics, and the evaluation and negotiation process that will be used for the solicitation.

### **8.3.3 Distribute Vendor Names to Subject Matter Experts**

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The Solicitation Manager is responsible for communicating, to the evaluators, the names of the vendors submitting proposals in response to a solicitation and obtaining verification from the evaluators that a conflict of interest does not exist.

## **8.4 Evaluation and Negotiation Process**

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All formal and informal solicitations must be evaluated in accordance with the terms of the solicitation. There are eight steps in the evaluation and negotiation process:

- Step 1 - Identification of statutory and other considerations
- Step 2 - Identification of responsive vendor
- Step 3 - Identification of responsible vendors
- Step 4 - Conducting the Technical Evaluation
- Step 5 - Conducting the Price Evaluation
- Step 6 - Negotiations
- Step 7 - Reference checks
- Step 8 - Evaluation Synopsis and Award Recommendation

### **8.4.1 Step 1 – Statutory and Other Considerations**

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The Solicitation Manager is responsible for identifying and understanding the application of statutory and other considerations that apply to the solicitation, including, but not limited to, the following sections of the [Michigan Procurement Policy Manual \(MPPM\) Chapter 1](https://www.michigan.gov/-/media/Project/Websites/dtmb/Procurement/documents/MPPM/Chapter_1__Introduction_and_Overview_of_the_Michigan_Procurement_Manual.pdf): ([https://www.michigan.gov/-/media/Project/Websites/dtmb/Procurement/documents/MPPM/Chapter\\_1\\_\\_Introduction\\_and\\_Overview\\_of\\_the\\_Michigan\\_Procurement\\_Manual.pdf](https://www.michigan.gov/-/media/Project/Websites/dtmb/Procurement/documents/MPPM/Chapter_1__Introduction_and_Overview_of_the_Michigan_Procurement_Manual.pdf))

- Michigan Based Business Preference (MPPM Chapter 1, Section 1.3.1)
- Clean Corporate Citizen (MPPM Chapter 1, Section 1.3.2)
- Biobased Products (MPPM Chapter 1, Section 1.3.3)
- Geographically-Disadvantaged Business Enterprise (MPPM Chapter 1, Section 1.3.4)
- Reciprocal Preference (MPPM Chapter 1, Section 1.3.4)
- Service-disabled veteran-owned business preference (MPPM Chapter 1, Section 1.3.6)
- Community Rehabilitation Organization (MPPM Chapter 1, Section 1.3.11)
- Michigan Economic Impact and Other Considerations (MPPM Chapter 1, Section 1.3.22)

### **8.4.2 Step 2 – Determining if a Vendor is Responsive**

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Prior to initiating the evaluation and negotiation process, the Solicitation Manager is responsible for reviewing the vendor proposals to ensure that the proposal is responsive. A “responsive” proposal is one that is submitted in accordance with the solicitation instructions and meets all mandatory minimum requirements identified in the solicitation.

If a vendor, or an employee of a vendor, participates in the solicitation preparation process, the vendor is not permitted to receive an award on a contract resulting from that solicitation.

If necessary, the Solicitation Manager may request assistance from the Subject Matter Experts in determining if a mandatory minimum requirement is met.

Any proposal that is not responsive, as determined by the Solicitation Manager, and in consultation with the Procurement Executive, may not move to Step 3.

#### **8.4.3 Step 3 – Determining if a Vendor is Responsible**

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The Solicitation Manager must next determine if the vendor submitting a proposal is responsible. A responsible vendor is a vendor that demonstrates it has the ability to successfully perform the duties identified by the solicitation. In determining if a vendor is “responsible” the Solicitation Manager should consider the following, or similar factors:

- [Documented and investigated Vendor Performance](https://stateofmichigan.sharepoint.com/sites/SOM-SPC-Procurement/SitePages/Supplier-Relationship-Management.aspx) (<https://stateofmichigan.sharepoint.com/sites/SOM-SPC-Procurement/SitePages/Supplier-Relationship-Management.aspx>)
- Vendor debarment, suspension, or disqualification from bidding or contracting with a governmental entity
- Vendor involvement in litigation against the State
- Vendor default or termination for cause on a government contract, including the state of Michigan within the past five years
- Vendor default or termination for cause on a private contract by any private entity in which similar services or products are being provided within the past five years
- Vendor’s financial stability
- Vendor meets all certification requirements on SIGMA Vendor Self Service (VSS)
- Vendor is able to comply with all legal requirements identified in the solicitation
- Vendors answers to questions on the Vendor Questions Worksheet
- Vendor history on State Contract Monitoring Reports or Contract Compliance Reports

Any vendor that is not responsible, as determined by the Solicitation Manager, and in consultation with the Procurement Executive, may not move to Step 4.

#### **8.4.4 Step 4 – Conducting the Technical Evaluation**

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Note: The evaluation and steps for an Invitation to Negotiate and Competitive Proof of Concept are located in 8.5 and 8.6 below.

The Solicitation Manager is responsible for (1) distributing the list of names, of the proposals for the vendors that are responsive and responsible, to the evaluators, (2) requesting confirmation from the evaluators that a conflict of interest does not exist, and (3) distributing vendor proposals to Subject Matter Experts that do not have a conflict of interest.

The Solicitation Manager is responsible for distributing a scoring matrix meeting the solicitation requirements, if applicable, and if a Joint Evaluation Committee is used, the Joint Evaluation Committee Process Overview to the Subject Matter Experts at this time.

The evaluation team, led by the Solicitation Manager, is responsible for leading and facilitating the evaluation process. The evaluation process must be in accordance with the evaluation method identified in the solicitation. As prescribed, the evaluation will be conducted either by the Solicitation Manager in collaboration with the Subject Matter Experts, or the Joint Evaluation Committee.

Prior Experience - During the evaluation process the Solicitation Manager must lead and facilitate the process of evaluating the vendor's past experience in performing similar work (i.e., similar scope of work or size of the project) to what has been requested by the State.

The evaluation Team is responsible for providing expertise that will assist the State in identifying the proposal(s) that offer the best value to the State. The evaluation team is responsible for the following:

#### **8.4.4.1 Solicitation Manager in Collaboration with Subject Matter Experts**

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Solicitation Manager:

- Collaborates with Subject Matter Experts on a portion of the proposal to determine if proposal meets the solicitation requirements
- Documents Technical Score for the evaluation criteria if applicable, and any best value components of the vendor's proposal on evaluation synopsis
- Documents proposals that meet solicitation requirements, and any best value components of the vendor's proposal on evaluation synopsis

Subject Matter Experts:

- Collaborates with Solicitation Manager on a portion of the proposal to determine if proposal meets the solicitation requirements

#### **8.4.4.2 Joint Evaluation Committee**

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Solicitation Manager:

- Leads and facilitates Joint Evaluation Committee in evaluating proposals based on the scoring criteria identified in the solicitation
- Documents Joint Evaluation Team's Technical Score for the evaluation criteria, and any best value components of the vendor's proposal on the evaluation synopsis

Joint Evaluation Committee:

- Review and independently score proposals based on evaluation matrix prior to the JEC meeting
- Attend and participate in JEC proposal evaluation and negotiation meetings

#### **8.4.4.3 Deficient, Unclear or Conflicting Portion of the Solicitation**

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Deficiency Report: If the Solicitation Manager determines, after the deadline to submit proposals, that a portion of the solicitation was deficient, unclear, or conflicting, the

Solicitation Manager may issue, to the vendors that submitted a responsive bid and are responsible, a “Notice of Deficiency.” The Notice of Deficiency amends the original solicitation. If a Notice of Deficiency is issued, the Solicitation Manager must also provide all bidders with a question and answer period, and sufficient time to modify their proposal.

If, at the sole discretion of the Procurement Executive, the Notice of Deficiency would likely solicit new vendors who may not have initially responded to the solicitation, the Solicitation Manager must open the solicitation to the entire vendor community.

#### **8.4.4.4 Vendor’s Response Contains Conflicting or Ambiguous Information**

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Clarification Request: If the Solicitation Manager determines that a vendor’s response contains conflicting information or is so ambiguous that it is possible for a reasonable person to attribute different meaning to the response, the State may seek clarification from a vendor by issuing a written “Clarification Request.”

A vendor is not permitted to materially change the response, but instead is only permitted to clarify conflicting information or provide clarity around a subject addressed in the bidder’s proposal.

#### **8.4.4.5 Oral Presentations, Product Demonstrations, and Inspection of Vendor Operations**

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The Solicitation Manager is also responsible for scheduling and facilitating oral presentations, product demonstrations (in person, phone conference, web conference, etc.) and inspection of vendor operations (plant, warehouse, or offices). If samples are required, the Solicitation Manager is responsible for ensuring that the samples provided are evaluated consistently and by the appropriate Subject Matter Expert.

Proposals meeting mandatory requirements, or receiving the minimum technical score will move to Step 5.

### **8.4.5 Step 5 – Conducting the Price Evaluation**

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Price - The Solicitation Manager is responsible for leading and facilitating the Evaluation Team in the review and discussion of the pricing proposal in accordance with the solicitation instructions.

The Solicitation Manager is responsible for determining if a vendor is a Service-Disabled Veteran-Owned Business. If a vendor represents Service-Disabled Veteran-Owned Business (SDVOB) status (additional information regarding SDVOB is located in [MPPM Chapter 1](https://www.michigan.gov/-/media/Project/Websites/dtmb/Procurement/documents/MPPM/Chapter_1__Introduction_and_Overview_of_the_Michigan_Procurement_Manual.pdf) ([https://www.michigan.gov/-/media/Project/Websites/dtmb/Procurement/documents/MPPM/Chapter\\_1\\_\\_Introduction\\_and\\_Overview\\_of\\_the\\_Michigan\\_Procurement\\_Manual.pdf](https://www.michigan.gov/-/media/Project/Websites/dtmb/Procurement/documents/MPPM/Chapter_1__Introduction_and_Overview_of_the_Michigan_Procurement_Manual.pdf)), Section 1.3.5, the Solicitation Manager is responsible for reviewing the submitted documents and verifying SDVOB status by performing the following:

- Determine proof of ownership – To qualify for the SDVOB preference the business entity must be 51% or more owned by one or more veterans (not a separate legal entity) with a service-connected disability. To determine ownership the Solicitation Manager is responsible for identifying the vendor’s legal business name and

company status (i.e., ABC, Inc. a Michigan corporation; XYZ, LLC a Texas limited liability company; Jane Doe doing business as (dba) Jane Doe Cleaning). The Solicitation Manager is responsible for verifying the information with the applicable State entity the business is registered in. Typically this information can be confirmed on a state's business entity look-up website or corporation and securities website (example: the [State of Michigan's business entity search website](https://cofs.lara.state.mi.us/corpweb/CorpSearch/CorpSearch.aspx) (<https://cofs.lara.state.mi.us/corpweb/CorpSearch/CorpSearch.aspx>)). Next, the Solicitation Manager must determine proof of ownership. Proof of ownership may be verified by appropriate legal documents setting forth the ownership of the business entity submitting the proposal for example, operating agreements.

- Determine veteran status – “Veteran” means a person who served in the active military, naval, or air service and who was discharged or released from his or her service under conditions other than dishonorable. Proof of service can be verified with a copy of a DD 214.
- Determine service-connected disability status – “Service-Connected Disability” means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in 38 USC 101(16). Proof of conditions of discharge can be verified with a copy of a DD 214 if the disability was documented at discharge or a Veterans Administration Rating Decision letter if the disability was documented after discharge.

In lieu of the documentation identified above, the vendor may also provide a copy of the business entity's National Veterans Business Development Council (NVBDC) certification.

If the SDVOB status is confirmed, the Solicitation Manager is responsible for reviewing the pricing on all proposals advancing beyond Step 3 and determining if the SDVOB is the low bid based on the 10% SDVOB preference. If the SDVOB price is no more than 10% higher than the lowest price, the SDVOB must receive the contract award. For example:

Lowest price from bidders passing Step 4	\$100,000
Lowest SDVOB price from bidders passing Step 4	\$109,000

The SDVOB price is within 10% of the lowest non-SDVOB price. Although the State would normally make a best value consideration in awarding the contract, the State is required to award the contract to the SDVOB at the price quoted in the proposal.

**Request for Quote** - If the solicitation is conducted by a Request for Quote, and terms were not previously provided, this is the time the Solicitation Manager should provide the Responsible and Responsive vendor with a copy of the Terms and Conditions applicable to the resulting contract. If exceptions are requested by the vendor, complete the steps identified in Step 1 and Step 5.

If a SDVOB preference is not applied, the State must then move to Step 6 and begin negotiating.



#### 8.4.6 Step 6 – Negotiations

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The Solicitation Manager is responsible for leading and conducting negotiations (one or more rounds) with vendors. If the solicitation identified a limit to a predefined number of top ranked vendors based on technical score, the Solicitation Manager may only negotiate with the predefined top vendors.

The process of negotiation includes soliciting improvements from a vendor in all areas of the solicitation and vendor response (this includes negotiating price). Negotiations may not be used to modify or delete mandatory minimum requirements of the solicitation. The goal is to obtain a proposal that offers the best value to the State. All revisions to a vendor's response resulting from negotiations must be in writing and included in the resulting contract. Additional Oral Presentation and Product Demonstrations may be requested during Step 6; however, the information collected is used for negotiation purposes, and the scoring of the proposals should not be modified.

**Terms and Conditions** - When evaluating the price proposal, additional consideration must be given to exceptions taken to the proposed Contract Terms and Conditions. The Contract Terms and Conditions of a resulting contract are intended to mitigate risk to the State. A vendor's exceptions to the Terms and Conditions will likely increase risk to the State, and in turn increase cost. A low bid with several exceptions to the Terms and Conditions may result in a higher contract price than a bid with no Terms and Conditions exceptions.

The negotiation of Contract Terms must be completed with the vendor in this Step of the Negotiation process.

The Solicitation Manager is responsible for developing and incorporating all negotiated requirements into the final contract.

#### 8.4.7 Step 7 - Reference Checks

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The Solicitation Manager must lead and facilitate the process of conducting reference checks. A "reference check" refers to the process of contacting a vendor's current or previous client to solicit information regarding the client's business experience with the vendor. A vendor's client references can provide insight into the vendor's level of work experience as well as the quality of past performance. Subject Matter Experts must participate in the reference check process. The method and questions used to conduct reference checks must be consistent with all reference checks, and when possible, should be performed by the same Evaluation Team Members with the Solicitation Manager leading and facilitating the process.

The type of questions to ask client references will vary depending on the State's purpose in requesting references; however, some sample questions include the following:

- Nature and duration of the work
- Quality of supplies delivered, or services rendered
- Timeliness of performance
- Cost or price in terms of control – including changes and claims

- Business integrity – including behavior with subcontractors
- Willingness to cooperate, especially when confronted with unexpected issues
- Effective management of the project and internal practices

A list of questions for the references must be prepared in advance and the same questions should be asked of all references. Responses from references must be documented in writing and shared with each evaluation committee member.

#### **8.4.8 Step 8 – Michigan Economic Impact and Other Considerations**

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The evaluation team must consider the following factors when identifying the proposal(s) that offer the best value to the State:

- Overall Michigan economic impact
- Wages and benefits offered by the vendor to its workers
- Vendor’s history of compliance with labor and employment laws and regulations
- Vendor’s environmental track record and sustainability practices, including history of compliance with environmental laws and regulations over the past five years from the time of the evaluation
- Whether vendor qualifies as a Geographically-Disadvantaged Business Enterprise

#### **8.4.9 Step 9 – Evaluation Synopsis and Award Recommendation**

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The Solicitation Manager is responsible for documenting the evaluation criteria utilized in evaluating proposals, and the justification used to identify the potential vendor(s) eligible for award (best value justification). The “Award Recommendation and Evaluation Synopsis” template should be used to draft the Evaluation Synopsis – see Chapter 9.

### **8.5 Invitation to Negotiate Evaluation and Negotiation Process**

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#### **8.5.1 Evaluation Process**

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If the State receives a response to the posted Invitation to Negotiate, the Solicitation Manager is responsible for, in collaboration with Subject Matter Experts, reviewing the response and determining if the vendor can provide a viable alternative. If the source offered cannot meet the State’s needs, the Solicitation Manager must use the Invitation to Negotiate (ITN) Award Recommendation and Evaluation Synopsis – No Viable Bidder Discovered template to document why the vendor is not a viable alternative and forward it to the Chief Procurement Officer, or designee, for review and approval prior to proceeding into negotiations (Steps 6-8 above) with the named vendor.

If the source offered is a viable alternative, the Solicitation Manager must use the Invitation to Negotiate (ITN) Award Recommendation and Evaluation Synopsis – Viable Bidder Discovered template to document why the vendor is a viable bidder and must notify the Chief Procurement Officer or designee of the determination, and then process the solicitation through a separate competitive bidding process (e.g., Direct Solicitation, or Request for Proposal). If a Direct Solicitation method is used, the Solicitation Manager must



first obtain approval from the Chief Procurement Officer or designee. The Solicitation Manager is responsible for processing the solicitation through Steps 6-8 above.

If the State does not receive a response to the posted Invitation to Negotiate, the Solicitation Manager is responsible for using the Invitation to Negotiate (ITN) Award Recommendation and Evaluation Synopsis – No Viable Bidder Discovered template to document that there were no viable bidders and in collaboration with Subject Matter Experts, to enter negotiations, as identified in Section 8.4, directly with the named vendor. Prior to negotiations, the Solicitation Manager must ensure that the Vendor Questions Worksheet is completed to confirm the named vendor is responsible. The Invitation to Negotiate (ITN) Award Recommendation and Evaluation Synopsis template should be used to draft the Evaluation Synopsis – see Chapter 9.

## **8.6 Competitive Proof of Concept Evaluation and Negotiation Process**

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### **8.6.1 Evaluation Process**

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The evaluation team, led by the Solicitation Manager, is responsible for leading and facilitating the evaluation process utilizing the Competitive Proof of Concept evaluation criteria, and if appropriate, selects one or more proposals for award. A contract is negotiated and executed in accordance with the Administrative Guide and the Michigan Procurement Policy Manual.

After the proof of concept(s) has been conducted and evaluated, the State may at its discretion enter into negotiations with the successful vendor(s) to utilize the full implementation option of the contract. In such cases, the State will establish a separate implementation contract with the awarded vendor(s). The specifications in the implementation contract must be within scope of the initial request to purchase approved by the Chief Procurement Officer or designee.