



DR. BUU NYGREN *PRESIDENT*

RICHELLE MONTOYA *VICE PRESIDENT*

The Navajo Nation | Yideeskáądi Nitsáhákees

October 10, 2023

MEMORANDUM

BRD-24-0006

TO: All Navajo Nation Departments/Programs/Chapters

FROM:

A handwritten signature in black ink, appearing to read "Notah C. Silversmith", is written over a horizontal line.

Notah C. Silversmith, Department Manager
Business Regulatory Department
Division of Economic Development

SUBJECT: NBOA Compliant Proposal Opening Procedures

This memo provides guidance and instruction to the Navajo Nation government regarding the openings of proposals pursuant to the Navajo Nation Procurement Act (Procurement Act), 12 N.N.C. § 301 *et seq.*, while remaining compliant with the Navajo Nation Business Opportunity Act (NBOA), 5 N.N.C. § 201 *et seq.*¹ Pursuant to the Procurement Act and its Procurement Rules and Regulations, a department or program may procure for services through a Request for Proposals (RFP) or a Request for Statement of Qualifications (RFQ).² In response, vendors³ submit either a proposals, or a statement of qualification, depending on the type of solicitation to which they are replying, e.g., a vendor will provide a proposal in response to a request for proposals.

The NBOA provides Navajo preference to Navajo-owned businesses in contracting using a priority ranking system. Under NBOA, registered businesses that are 100% Navajo-owned and controlled receive Priority 1 status. Registered businesses that are 51-99% Navajo-owned or 51-100% other Indian-owned and controlled receive Priority 2 status.⁴ A vendor's priority status is the first consideration when a department or program opens responses to a procurement solicitation. The requirements of the Procurement Act, Procurement Regulations, and NBOA must be applied by Navajo Nation departments and programs when procuring for services. The procedures in the Procurement Act for opening responses to RFP or RFQ shall be read harmoniously with the requirements of NBOA to advance a Navajo business friendly process. In order to ensure appropriate application of NBOA when opening proposals or statement of qualifications, the Business Regulatory Department (BRD) strongly encourages departments and programs to request a presentation from BRD on the process.

¹ 5 N.N.C. § 332(D).

² Navajo Nation Procurement Regulations Section 4(A).

³ Also referred to as Offerors.

⁴ 5 N.N.C. § 204(A).



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Opening Responses to a Request for Proposal or a Request for Statement of Qualifications

The following is a step-by-step guide for how departments and programs will apply NBOA priority when opening and evaluating proposals and statements of qualifications under the Procurement Act.

1. Prior to issuing, include clear evaluation factors in the RFP or RSQ.

To determine qualification, the procuring party must establish the qualifications for the procurement in the solicitation through its use of evaluation factors. A procuring party is required to determine the qualifications of the vendor based on the evaluation factors it included in the RFP or RFQ.⁵ The evaluation factors should include elements that the procuring party believes important in selecting a qualified vendor. If certain skills, licenses, or prior work experience are wanted by the procuring party, it should include each one individually as an evaluation factor.

When issuing an RFP, price may be included as an evaluation factor, where receiving the lowest price contributes to a better evaluation. For RSQs, the procuring entity may not include price as an evaluation factor. There is no limit to the number of evaluation factors a procuring entity may include, but it should keep in mind that the goal of the evaluation factors is to select a responsible vendor—a vendor that is fully capable of performing all contract and evaluation requirements noted in the solicitation. If a determinative factor for vendor selection is not included in the issued RFP or RSQ, it cannot be used during the evaluation process.

2. Prior to issuing, identify a Maximum Feasible Price.

Prior to issuing any solicitation, the procuring party must determine a maximum feasible price, which is the high cost, based on industry standards and other factors, that the procuring party is willing to pay for the service.⁶ The maximum feasible price should take into account average costs in the industry, a general market price, any budgetary constraints, prototype cost, and may not be revealed until after the award of the contract.⁷ The procuring part must be able to show records of the research or other inquiries made when identifying the maximum feasible price.

⁵ 5 N.N.C. § 205(B)(2) and Procurement Regulations Section 4(3).

⁶ 5 N.N.C. § 205(A).

⁷ 5 N.N.C. § 205(A).



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3. Separate vendor responses by priority status.

Prior to the proposal or statement of qualification opening, separate all vendor responses received according to priority status, which should be clearly marked on the outside of the packet. If there is no priority marking on the packet, then it is a non-priority response.

4. Open all Priority 1 responses first.

Evaluate the Priority 1 proposals or statement of qualifications. Utilizing the evaluation factors contained in the RFP or RSQ, determine if the vendor's proposal or statement of qualifications is responsive and responsible to the solicitation. The procuring party may utilize a rating system to make this determination by assigning numeric values to each of the evaluation factors. Please note, the priority status of the vendor is not an evaluation factor and therefore, cannot have a numeric rating.

If there are multiple responsible and responsive vendors, and cost was not an evaluation factor, then the procuring party shall determine if any of the qualified parties' cost proposals are under the maximum feasible cost.

It is important to note that cost schedules for any RSQ are submitted separate from the overall statement of qualification so that it may be evaluated without consideration of the price.

If there are no qualified Priority 1 vendors, or if the cost proposal of all qualified Priority 1 vendors exceeds the maximum feasible price, the procuring party shall then open the proposals or statement of qualifications for the Priority 2 vendors.

5. Open Priority 2 responses only if there are no qualified Priority 1 vendors that meet the maximum feasible cost.

The procuring party will follow the same opening and evaluation process explained in section 4 above to open Priority 2 proposals or statements of qualification.

If there are no qualified Priority 2 vendors or if all qualified Priority 2 vendor cost proposals are over the maximum feasible price, then the procuring party shall open the proposals and statements of qualification for the non-priority vendors.



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6. Open all non-Priority responses only if the procuring party receives no qualified Priority 1 and 2 vendors that meet the maximum feasible cost.

The procuring party should follow the same opening and evaluation process explained in section 4 above to open non-priority proposals or statements of qualifications.

Award only to qualified businesses

Though the procuring party must open and fully evaluate proposals and statements of qualifications according to priority status, it is not required to automatically accept and award contracts only to Priority status vendors.

The NBOA does not require contracting with *non-qualified* Navajo businesses. The NBOA does, however, prohibit a procuring party from awarding a contract(s) to non-Navajo owned and controlled entities at a price equal to or greater than the price offered by an equally *qualified* Priority 1 or 2 business.⁸

The BRD strongly recommends you request a presentation from or consult with the BRD to review the information provided in this memo. Departments and programs may schedule or send requests for presentations via email to businessregulatory@navajo-nsn.gov or call (928) 871-6714. If you have any questions, contact our office. Thank you.

CC: BRD Chrono.File.FY'23

⁸ 5 N.N.C. § 205(C).