

**SECTION 7: ACQUISITION PROCEDURES**

**SUBJECT: BEST AND FINAL OFFER (BAFO) Procedure 7.5.5**

**Policy:**

For large and complex procurements, utilize Best and Final Offers (BAFOs) to improve bids after initial evaluation. In order to require BAFOs as part of evaluating responses, the original RFP must include language addressing BAFOs (see example below). The BAFO process may only be used with responsive bids to improve their value to the University, it may not be used to change a non-responsive bid into a responsive one.<sup>1</sup>

**Procedure:**

Most procurements do not require the use of BAFO language or necessitate the use of BAFOs. However, procurements with complex scopes of work or where the full cost of performance may not be known at the initial bidding stage can be improved by allowing bidders to submit BAFOs once an initial evaluation has occurred and the bidders have obtained more information about the project through improved definition of the project scope, walkthroughs, etc. Allowing bidders to submit BAFOs at this stage can improve the price and quality of the responses received.

**RFP Issuance**

When issuing the RFP, include BAFO language in the RFP document. This language should give the University the flexibility to enter into negotiations with one or more finalist bidders after evaluation but prior to contract award. However, the language typically should not require that the University use BAFOs. This allows the University to determine that bidders are responsive, provides for negotiating leverage and does not obligate the University to use the BAFO process if it is unnecessary. The following BAFO language can be used in most RFPs:

After the University's initial evaluation, Bidders (Finalists) may be required to submit revised proposals, addressing any elements that the University requests. UW may also require the Finalists to respond to additional questions. Finalists will be provided with a Request for Clarification including details regarding required revised proposal elements. Revised proposals will be evaluated as an adjustment to scores given to initial proposals unless otherwise specified. If a Finalist fails to submit a revised proposal, its initial proposal will be evaluated against other Finalists' revised proposals.

For some procurements, more specific language may be preferred.

**Request for Clarification**

In the event that Best and Final Offers are necessary, Bidders should be notified via a Request for Clarification. The Request for Clarification must indicate:

1. The elements of the proposals for which revisions are requested;
2. The criteria by which revised proposals will be evaluated;

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<sup>1</sup> See RCW 39.26.160.

- a. The same criteria as in the RFP; or
  - b. New criteria, which must be specified
3. Any additional questions that Finalists must respond to; and
  4. The method of submission and deadline for revised proposals.

Requests for best and final offers must be in writing (but may be electronic). If the request is made orally, it must be confirmed in writing. The document requesting best and final offers has four essential elements:

1. Specific notice that discussions are concluded.
2. Notice that this is the opportunity for the offeror to submit a best and final offer.
3. A definite, common cutoff date and time that allows a reasonable opportunity for the preparation and submission of the best and final offer.
4. Notice that the final offer must be received at the place/in the medium (including electronically) designated by the time and date set in the request and is subject to any provisions dealing with late submissions, modifications and withdrawals of proposals set forth in the solicitation.

#### **Evaluation**

BAFOs are evaluated according to the criteria set forth in the Request for Clarification. At this point, the most responsive and responsible bidder (based upon the initial evaluation and any adjustments to initial scores based on the BAFOs received) is the Apparent Successful Bidder.

#### **Note:**

A bidder may lower its price for a Best and Final Offer (BAFO) without any basis for the change, other than trying to beat out the competition. The basis for change may be solely the bidder's desire to increase its chances of winning the contract award by lowering its price.

If the solicitation is for a cost-reimbursement type contract, UW Buyers should ask for a bidder's rationale in lowering the original cost estimates to do the work. One concern when a bidder lowers its price in a BAFO situation without justification is an attempt to "buy in" at an unrealistic total estimated cost. Because the estimate is not a contractual obligation to complete work at that price, it is important to ensure that the cost estimate is not unrealistic, leading to cost-overruns and increased total contract cost.