

DIVISION VII CONSULTANT SELECTION PROCEDURE

CHAPTER 35 CONSULTANT SELECTION PROCEDURE

- §35101. Policy.
- §35102. Scope - Request for Proposals.
- §35103. Solicitation.
- §35104. Evaluation and Selection.
- §35105. Negotiation.

NOTE: Rule-making authority cited for formulation of consultant selection procedures by the Guam Environmental Protection Agency, 10 GCA §45105. These Rules were filed with the Legislative Secretary on September 11, 1981.

The regulations for consultant selection are reprinted here in form as exact as possible to those filed with the Legislative Secretary. The substance of the regulations has not been changed. However, for the purpose of uniformity and ease of use, a new system of numbering has been adopted by the Editor.

§35101. Policy. It is the policy of the Guam Environmental Protection Agency to select consulting firms by an objective process which will provide high quality, cost effective services. To the extent practicable, proposals will be required from as many prospective firms as possible. There may on rare occasions be reasons to deviate from normal selection policy because of emergencies, conflict with funding agency selection requirements, or other compelling reasons. The reasons for any such variation must be documented in the project files.

The procedures is divided into four steps:

- (a) Scope - Request for Proposals.
- (b) Solicitation.
- (c) Evaluation and Selection.
- (d) Negotiation.

§35102. Scope - Request for Proposals. The two (2) terms are sometimes used interchangeably. There is a slight difference. The scope is a written description of the work to be done. The Request for Proposal (RFP) is a request by the Agency for proposals from consultants. The RFP includes the scope of work and additional information about how an interested consultant should respond.

Guam EPA shall prepare a Scope of Work for each procurement of consultant services. The purpose of the

scope is to describe to prospective consultants the services being requested. The RFP will include the scope of work and detail the procedure to be followed in selecting a consultant. At a minimum all of the following shall be included in the RFP:

(a) **General or Introduction.** This provides a summary of the general work objective, and other necessary background information.

(b) **Scope** (objectives and task). This may be one or more sections which describe the specific objectives of the project. The desired product (maps, plans, reports) and the time allowed to complete the work shall be stated. Other more general objectives may also be included. Examples would be requirements for the consultant to monitor, schedule, analyze, administer, coordinate, review and approve some action or program.

An attempt shall be made to outline any specific task required of the consultant. The distinction between task and objectives shall clearly be made. Tasks are the steps to accomplish the over-all objective. Sound judgment shall be exercised in outlining the tasks.

In some cases a very detailed list of tasks can be provided. In other cases it will be necessary (even preferable) to be less specific. For example the desired result (objective) may be known, but the Agency may not be sure how best to achieve it. The consultant shall be told how much latitude he has in proposing an approach to the project.

(c) **Consultant's Proposal.** The specific information required by the Agency to consider a consultant for the work should be stated. The Agency normally requires specific qualification information in considering a consultant for the project, but, it may consider a general statement of qualifications when appropriate. In some cases it may be possible to request a general statement of qualifications from firms interested in doing the work. Under this procedure three (3) to five (5) firms would be selected based on general qualifications and asked to subsequently prepare more detailed proposals and be interviewed.

For most GEPA work a more specific proposal will be requested initially from interested firms. This proposal shall contain sufficient information to select a firm or at a minimum, develop a "short list" of prospective firms.

The consultant shall be asked to provide in his proposal:

- (1) The name and address of the consultant.
- (2) Resumes of individuals who would be assigned to the project.
- (3) A list of recent projects that the consultant has been associated with.
- (4) A statement by the consultant outlining his approach to the project including techniques and methodology.
- (5) Any other information which the consultant feels may aid GEPA in evaluating qualifications to perform the work as requested.

(d) **Submittal.** The RFP shall include information on where and when responses should be submitted. The number of copies required shall be stated.

The following items (e) and (f) [Numbers 5 and 6] are not necessary but shall be considered and included when appropriate.

(e) **Evaluation.** All negotiated procurement shall be conducted in a manner that provides, to the maximum extent practicable, open and free competition. The prospective contractor has the right to know how his proposal will be evaluated. The selection process shall be described. Actual evaluation criteria along with the relative importance of the criteria shall be developed. It may be included in the RFP. The criteria shall include such things as the firm's:

- (1) specialized experience and technical competence;
- (2) past record of performance;
- (3) capacity to complete work on schedule;
- (4) apparent understanding of the project;
- (5) approach to the project;
- (6) proposal quality (clear/complete).

Other considerations, such as minority business participation or identification of work to be done locally, shall be included if they are to be considered in the selection process.

(f) **Cost.** There is probably no item about which there is as much discussion. There shall be no inference from the following discussion that price competition or competitive bidding between professional consultants is required.

The Agency has three (3) choices in providing cost information regarding the fee to the consultants:

- (1) provide nothing;
- (2) provide a range;
- (3) provide a ceiling.

In most cases it will be advisable to provide a range of cost or a ceiling so that the prospective consultant can better respond. The actual contract cost shall be negotiated after selection of a firm and shall be adjusted up or down based on the services to be provided.

The second point is whether a cost proposal from the Consultant shall be included with his submittal. Traditionally this has been an anathema. The prevailing trend is to consider price as one of the factors in the evaluation process. Consultants' estimated cost can be of assistance in evaluating the proposals. They are a good indication of the relative resources to be applied to various task by the consultant. Both parties need to understand that final contract format and cost shall be established after refinement of the scope of work during negotiation.

§35103. Solicitation. The RFP shall be widely distributed. Some consideration needs to be given to the type of work being requested. For example, a small contract that is within the capability of local firms would only need local advertisement. A major contract requiring specialized skills shall be given wider distribution. The following is a list of steps that can be taken to assure distribution:

- (a) Direct mailing to consultants who have expressed an interest.
- (b) Notification in local newspaper.
- (c) Direct mailing to local consultants.
- (d) Direct mailing to firms listed in Trade Journals.
- (e) Notification in Trade Journals or off- island

newspapers.

Any notification shall contain basic information about the services required, how to obtain an RFP, when the work will need to be completed, and deadline for submittal. If a direct mailing is used it would normally be advisable to include a copy of the RFP.

§35104. Evaluation and Selection. The purpose of the evaluation is to select the best firm. Evaluation shall be done by a panel. The panel shall be composed of at least three (3) and not more than five (5) voting members. A majority of the panel members should (if possible) have the same background, training and education as the services being requested (for example, engineers, planners, biologist, etc.). The panel should be composed of the most qualified people available. For highly technical services, the use of panel members with strong technical background is required.

The panel shall have some latitude in the evaluation process. The normal process shall be: (1) short list; (2) interview; and (3) ranking. Under some circumstances it may be advisable to skip the short listing or select without conducting interviews. Such circumstances would be rare and any decision to alter the "normal" process shall be well documented in the Project File:

(a) **Short List.** If more than three (3) proposals are received, consideration shall be given to reviewing the proposals to select those that are most responsive. The short list shall be prepared after an objective review of the proposals by the panel. Normally no interviews will be conducted prior to short listing. Firms shall be notified if they did or did not make the short list. All proposals shall be retained.

(b) **Interview.** To the extent possible the interview panel shall consist of the same people who conducted the initial review or short listing. Selected firms shall be given a reasonable time to prepare for the interview. They should be encouraged to have principal project officer attend.

An interview period of one (1) to two (2) hours shall be selected prior to the interview. A conscious effort to complete the interviews within the allotted

time shall be made. General format is up to the discretion of the panel but should be the same for all firms. A general presentation by the consultant followed by questions and answers is most common.

(c) **Evaluation and Selection.** The selection process is, of necessity, a subjective judgment. For reasons of accountability it shall be made as objective as possible. A formal criteria is required for the evaluation. There is no required format. The panel shall develop a format that meets requirements of the funding agencies and is workable. A general discussion of the criteria which may be included is found in §35102(e) (evaluation).

The evaluation criteria that are to be used shall be documented. This can most easily be done by developing a form with a point or rating system and including it in the file.

The actual selection of the firms shall be done by ballot, either secret or signed, as agreed by the Panel. In the balloting, firms shall be ranked by each panel member.

The purpose of the balloting is to document the panel's selection. In the event of widely divergent ranking or very close rankings between the leading firms further discussion of the merits of the various firms and proposals would be advisable. More than one (1) ballot may be taken. The purpose of the panel is to select the best qualified firm. Procedures should be consistent with this objective.

The panel will submit a list of three (3) qualified firms in ranked order to the Administrator. The only exception would be when the panel concludes that there are less than (3) qualified firms. The Administrator after having reviewed the procedures as well as other pertinent documents must assure himself that the selection procedures have been followed and sufficiently documented. The Administrator will then select one (1) of the qualified firms. The selection may not necessarily reflect the ranking of the panel, as the ranking is provided to the Administrator for informational purposes only. The Administrator must present and justify his selection to the GEPA Board of Directors, and the Board must formally concur with the selection. Upon Board concurrence, the selected firm shall be notified. Firms

not selected shall also be notified and their proposals shall be retained.

§35105. Negotiation. After selection it is necessary to develop specific contract language. This is often referred to as the negotiation. The amount of actual negotiation involved will vary. In general, projects which are complicated or require a substantial reduction in scope will involve the most negotiation.

The most critical step is arriving at an agreement about the scope of work. The services to be provided by the contractor shall be clearly established and agreed upon. The scope utilized in the RFP provides a good starting point and in many cases will need only minor revision.

Price negotiation for most work can not be finalized until the scope is agreed upon. There are many guidelines that can be used to establish reasonableness of the cost. They are: recent similar work; professional guidelines, such as ASCE #45 "Consulting Engineering - A guide for the engagement of engineering services;" an independent cost estimate prepared by Agency staff, other agencies, or consultants; guidelines from funding agencies.

In the event that the Agency is unable to agree on the scope of work, fees, or some other contract item, the negotiation shall be formally ended. A written notice shall be provided to the consultant. The Agency would then begin negotiations with a second qualified firm selected by the Administrator and concurred to by the Board. After appropriate reviews, the contract document will be forwarded to the Attorney General and Governor of Guam for signature. A formal notice to proceed shall not be issued until all parties have signed the contract.

It is important that the contract negotiations be documented. In some cases it may be advisable to write a memo outlining the major steps in the process. In other cases simply filing the various draft documents developed during negotiations in the Project File shall be adequate.