

2009 Minnesota Statutes

16C.02 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of this chapter, the following terms have the meanings given them, unless the context clearly indicates otherwise.

Subd. 1a. **Accessibility and accessible.** "Accessibility" and "accessible" are defined by the accessibility standards developed and required under section 16E.03, subdivision 9.

Subd. 2. **Agency.** "Agency" means any state officer, employee, board, commission, authority, department, entity, or organization of the executive branch of state government.

Unless specifically provided elsewhere in this chapter, agency does not include the Minnesota State Colleges and Universities.

Subd. 3. **Award.** "Award" means a commissioner's written acceptance of a bid or proposal to provide goods, services, or utilities.

Subd. 3a. **Best and final offer.** "Best and final offer" means an optional step in the solicitation process in which responders are requested to improve their response by methods including, but not limited to, the reduction of cost, clarification or modification of the response, or the provision of additional information.

Subd. 4. **Best value.** "Best value" describes a result intended in the acquisition of all goods and services. Price must be one of the evaluation criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to, environmental considerations, quality, and vendor performance. In achieving "best value" strategic sourcing tools, including but not limited to best and final offers, negotiations, contract consolidation, product standardization, and mandatory-use enterprise contracts shall be used at the commissioner's discretion.

Subd. 4a. **Best value; construction.** For purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price and performance criteria, which may include, but are not limited to:

- (1) the quality of the vendor's or contractor's performance on previous projects;
- (2) the timeliness of the vendor's or contractor's performance on previous projects;
- (3) the level of customer satisfaction with the vendor's or contractor's performance on previous projects;
- (4) the vendor's or contractor's record of performing previous projects on budget and ability to minimize cost overruns;
- (5) the vendor's or contractor's ability to minimize change orders;
- (6) the vendor's or contractor's ability to prepare appropriate project plans;
- (7) the vendor's or contractor's technical capacities;
- (8) the individual qualifications of the contractor's key personnel; or

SECTION 2 – PROPOSAL REQUIREMENTS AND EVALUATION CRITERIA

2.1 GENERAL INFORMATION

The Respondent selected for an award will be the one whose proposal is responsive, responsible, and is the most advantageous to the City, as determined by the City in its sole discretion. The City anticipates that all Respondents will have a fair and reasonable opportunity to provide service.

The City intends to award a contract, subject to the terms of this solicitation, to the best valued Respondent. The City may add, delete, or modify any requirement or statement in this solicitation if the City deems that it is in the best interest of the City.

The City reserves the right to contact any Respondent to clarify any information in their proposal and/or request additional information not described in this RFP. Respondents that do not, or cannot provide the requested information, shall be considered nonresponsive.

2.2 RESPONSIVENESS (PASS/FAIL)

The City will, at the stated Proposal Due Date and Time, review each proposal submitted in response to this RFP for responsiveness, completeness, signatures, and all required data before accepting the Proposal for further review. Please be advised that failure to comply with any of the requirements in this section may be grounds for disqualification.

Only responsive proposals will be evaluated and considered for award. Respondents must prepare proposals that follow the format and sequence specified in this RFP. This includes adherence to the format of any attachments. The following conditions/criteria MUST be met in order to be considered responsive:

1. Attend all mandatory meetings / site walks
2. Complete and provide all information in Attachment A
3. Complete and provide all information in Attachment B
4. Complete and provide all information in Attachment C

2.3 EVALUATION CRITERIA & WEIGHTS

Only responsive proposals will be evaluated and considered for award. The City will evaluate Proposals against the evaluation criteria for the degree to which each Proposal meets the criteria as follows:

WEIGHT	CRITERIA	REFERENCE
25 Points	Risk Assessment and Value Added Plan Rating	Refer to Section 2.6
15 Points	Past Performance Information	Refer to Section 2.7
5 Points	Disadvantaged Business Enterprise	Refer to Section 2.8
25 Points	Interview Rating	Refer to Section 2.9
30 Points	Cost Proposal	Refer to Section 2.11

2.4 EVALUATION COMMITTEE

An Evaluation Committee will evaluate specific portions of the proposals (as described in this RFP).

Legal Framework for Bidder Qualifications

1. Statutory Requirements

- a. State law specifies when competitive bidding is required. Minn. Stat. §471.345. This applies to all cities.
- b. For statutory cities, the contract must be awarded to the lowest, responsible bidder. Minn. Stat. §412.311. Charter cities are not bound by this.
- c. An amendment to the MN Data Practices Act in 2001 governs the information submitted by bidders. Minn. Stat. §13.591.

2. Court Decisions

- a. Even under the “lowest, responsible bidder” standard, the contract does not always need to go to the lowest bidder.
- b. In determining who is “lowest,” quality, suitability, and adaptability to particular purpose may be considered in addition to price. *Otter Tail Power Co. v. Village of Elbow Lake*, 234 Minn. 419, 425, 49 N.W.2d 197, 201 (1951). “Value is not always determined by price alone.”
- c. In determining who is “responsible,” public officials may consider integrity, ability and skill, and the likelihood of the bidder to do satisfactory work and fulfill the contract. *Kelling v. Edwards*, 116 Minn. 484, 490, 134 N.W.221, 223 (1912).
- d. Public officials have broad discretion in defining the terms of its evaluation criteria. *Queen City Construction, Inc. v. City of Rochester*, 604 N.W.2d 368, 374 (Minn.App.1999). The criteria just cannot grant an advantage to one or place others at a disadvantage. *Foley Brothers, Inc. v. Marshall*, 266 Minn. 259, 264, 123 N.W.2d 387, 391 (1963).
- e. Pre-qualification of bidders is acceptable if all have notice of the evaluation system to be used, and the criteria does not give an unfair advantage. *Frontier Traylor Shea LLC v. Metropolitan Airports Commission*, 132 F.Supp2d 1193 (D. Minn. 2000).
- f. Two un-reported cases have upheld systems of scoring bidders. *Siemens Transportation Systems, Inc. v. Metropolitan Council*, File No. C8-00-2213, Minnesota Court of Appeals, June 19, 2001, and *Westra Construction, Inc., v. City of Minnetonka*, File No. AP 02-6327, Minnesota Court of Appeals, December 30, 2003.

Evaluation Criteria for Minnetonka Public Works Building

Contract Award:

This project is very complicated, involving a specialty building and a site that must continue to provide essential public works services during construction. The site is not large enough to accommodate a new building while continuing to use the existing one. The project must be completed in phases, to allow some functions to be moved from the old building to the new building. Those functions must be moved before demolition of the old building can occur to construct the remainder of the new building. Timing of the project is critical not only for the phasing but also for completing the project before snow plowing operations are activated in the fall. The project is further complicated by the fact that the new building will house two governmental agencies and that both will be adversely affected by a failure to complete the facility on time. In addition, the City has limited financial resources to commit to the project. Accordingly, the project must be accomplished with a minimum of interruption, on time, and without cost overruns. The City believes that only a contractor with good experience in constructing this kind of specialty building is necessary for this complicated project. Therefore, the City will be considering the quality and experience of each bidder in addition to the bid price.

A bidder will not be considered as a contractor for this project unless the bidder receives a rating of at least 10 points, as determined by the architect and the City, using the following system for assigning points:

Experience constructing a [add: public] facility similar in size and functions within the last five years, to the satisfaction of the owner	5 points
<ul style="list-style-type: none"> • For each additional facility qualifying under the above category 	1 point each
Experience of the assigned job superintendent in supervising construction of a [add: public] facility similar in size and functions within the last five years, to the satisfaction of the owner	5 points
<ul style="list-style-type: none"> • For each additional facility supervised that qualifies under the above category 	1 point each
History of initiating change orders (not at the owner's request) that total more than 5% of the original bid within the last five years	Deduct 2 points for each confirmed project
History of complaints regarding completion deadlines or the quality of the work of projects within the last five years	Deduct 2 points for each confirmed project

[add: The City may give partial credit for points depending on the nature of the projects.] The City will award a contract to the bidder whose bid price, quality and experience best conform to the overall interests of the City.

A condition of the contract is that the contractor must keep the job superintendent specified on the bid as the job superintendent for the project. The only exceptions will be if the person is not physically or mentally able to perform those duties or is no longer employed by the contractor.

- (f) Proposer information, certifications, and documents as listed in Section 4.5 are included in the Proposal and are complete, accurate, and responsive, and they meet the requirements of the DBE federal regulations at 49 C.F.R. Part 26.

5.4 Evaluation of Technical Proposal

Mn/DOT will evaluate each of the factors set forth in Sections 4.3.3.5 through 4.3.3.11 to determine whether the Technical Proposal satisfies the content requirement of the RFP and to determine the Proposal's technical score. Each Technical Proposal will receive a maximum score of 100 points. A Technical Proposal will receive 50 points for being determined responsive by Mn/DOT. Mn/DOT will score the remaining 50 points in accordance with Section 4.3.3.5 through 4.3.3.11.

5.5 Oral Presentations

Mn/DOT does not intend to interview Proposers. However, Mn/DOT reserves the right to request clarification via phone interviews with Key Personnel at any time during the Technical Proposal Evaluation process. Key Personnel shall make themselves available via phone between the dates of the Technical Proposal Due Date and Public Opening Date listed in Section 2. Mn/DOT will contact the Proposer's Project Manager to arrange dates and times for any phone interviews.

Mn/DOT does not intend to hold discussions with Proposers for purposes of bargaining. Therefore, the Proposal should contain Proposer's best terms from both price and technical perspectives.

5.6 Best Value Selection

Mn/DOT will determine the adjusted score for each responsive Proposal by a responsible Proposer by dividing the Proposal Price by the Technical Proposal score. Immediately after such determination, the Price Proposal will be reviewed for responsiveness. Unless all Proposals are rejected or Mn/DOT otherwise elects not to award the Contract, the Contract will be awarded to the responsive and responsible Proposer with the lowest adjusted score. If a Proposal is based on furnishing foreign iron or steel, see Book 1, Exhibit F-6.