



# Competitive Sealed Proposals

## Required Procedures and Guidance for Communications After Opening but Prior to Award

Effective: **September 2021**

**Division of Procurement Services**

*This document applies only to the competitive sealed proposals source selection method authorized by S.C. Code Ann. § 11-35-1530. This document does NOT apply to competitive negotiations conducted pursuant to 11-35-1535.*

*This document supersedes Procurement Policy Statement 2008-2, Guidance & Best Practices for Permissible Communications in a Competitive Sealed Proposal (Nov. 26, 2007).*

## **Applicability, Authority, and Conventions**

### **Applicability**

The Materials Management Officer, the Information Technology Management Officer, and the State Engineer have all approved the procedures and guidance appearing herein. Accordingly, agencies shall follow these procedures when acquiring supplies, services, information technology, or construction using the competitive sealed proposals source selection method.

This document applies only to the competitive sealed proposals source selection method authorized by S.C. Code Ann. § 11-35-1530. This document does not apply to any other source selection methods.

### **Authority**

Regulation 19-445.2095G provides:

The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies using the competitive sealed proposal method of acquisition....

The mandatory procedures herein, not including the guidance, are issued pursuant to this Regulation.

### **Conventions**

(a) Guidance on the use of these procedures is provided by the commentary, which appears in a sans serif font, indented and set off with a vertical left border to distinguish it from the text of the mandatory procedures.

(b) The text of R. 19-445.2095J and R. 19-445.2098A through C is nearly identical. R. 19-445.2098 was originally intended to replace paragraph J. Because of a delay in obtaining legislative approval, both provisions appear in the Code of Regulations. There are no substantive differences between the two. Throughout this document references will be to R. 19-445.2095J only.

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# Communications After Opening, Prior to Award

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## 1 Communications other than Discussions or Negotiations

Discussions authorized by § 11-35-1530(6) are treated in Section 2. Negotiations authorized by § 11-35-1530(8) are treated in Section 3.

The Code and Regulations authorize the following communications after opening, prior to award. Unless the law reflects otherwise, such communications may take place at any time between opening and posting of the award notice, consistent with the underlying enabling authority.

Don't forget about pre-opening communications, which are beyond the scope of this Policy Statement. Those include:

- Exchanges with industry during acquisition planning, R. 19-445.2017D
- Pre-proposal conferences, R. 19-445.2042

### 1.1 Opening

Very limited communications, if any, can take place during opening. § 11-35-1530(3); R. 19-445.2010D; R. 19-445.2095C(1).

### 1.2 Acceptance Period Extensions

The procurement officer may request in writing that an offeror extend its offer acceptance period. R. 19-445.2097C.

### 1.3 Minor Informalities

The procurement officer may exchange information in writing with an offeror to allow the offeror to cure, or the State to waive, any deficiency resulting from a minor informality or irregularity. § 11-35-1520(13), R. 19-445.2095E.

### 1.4 Corrections & Withdrawals

The procurement officer may exchange information in writing with an offeror regarding an offeror's request to correct or withdraw its offer. R. 19-445.2085A(1) and -445.2085B; R. 19-445.2095H(4).

See comment to Section 2.2.4 below. For a more thorough discussion, see Manual for Planning and Execution of State Permanent Improvements, Chapter 6, Part 6.8 (2021).

## 1.5 Questions & Answers

Most solicitations provide an opportunity for offerors to submit written questions and for the state to respond in a written amendment to the solicitation.

In a solicitation amendment that responds to vendor questions, the amendment should not (i) reveal the identity of any offerors (R.19-445.2010D), or (ii) provide information not necessary for bidders to submit offerors. The solicitation amendment forms part of the contract documents. Draft amendments accordingly.

## 1.6 Confirmation of Price Proposal

If the procurement officer knows or has reason to conclude that a mistake may have been made, she may request an offeror confirm its proposed price. No information other than the procurement officer's conclusion must be communicated. R. 19-445.2085A(2).

## 1.7 Clarifications

The State can seek clarification only by conducting discussions. See Section 2, Discussions with Offerors.

## 1.8 Responsibility

1.8.1 The procurement officer may exchange information in writing with an offeror regarding its responsibility. Information may be requested at any time prior to award. § 11-35-1810; R. 19-445.2125B

While responsibility can be determined earlier in the process, responsibility is often determined only for the apparent successful offeror, after evaluation and shortly before award. If special standards of responsibility have been established, the procurement officer may find it more efficient to identify which offerors meet the special standards early in the process. Exchanges to acquire this information are allowed after opening and prior to award.

1.8.2 Information gathered from an offeror after opening to determine responsibility - either generally or regarding special standards of responsibility - cannot be added to the documents to be evaluated and ranked, *i.e.*, the proposal.

Most RFPs include one or more evaluation criteria that contemplate an offeror's capabilities. Adding information to the proposal that you have acquired from the offeror would provide that offeror an unfair opportunity to enhance its proposal.

This concern does not apply to information gathered from sources other than the offeror, e.g., internal or external references.

## 1.9 Oral Presentations / Demonstrations

Oral presentations and demonstrations may not be conducted except as part of the evaluation process.

1.9.1 Oral presentations are used only for understanding an offeror's proposal in order to facilitate evaluation. Demonstrations involve an evaluation of an offeror's product. Presentations and demonstrations must be consistent with and limited to the equipment, supplies, services, information technology, pricing, terms, and conditions provided in the offeror's proposal.

1.9.2 Under the control of the procurement officer, people directly involved in evaluating proposals may attend, participate, and ask questions of offerors during an oral presentation or demonstration. Such communications may not (i) communicate demands or weaknesses or deficiencies to an offeror, (ii) include or take place during negotiations, or (iii) result in proposal revisions.

1.9.3 People participating or attending an oral presentation or demonstration must agree to the same limitations applicable to those with access to proposals. R. 19-445.2010D and E.

## 1.10 Cost / Pricing Data

If allowed by law, the procurement officer may exchange information with an offeror regarding its cost or pricing data. § 11-35-1830; R. 19-445.2120. Generally, the procurement officer will request cost or pricing data only in conjunction with negotiations or prior to making an award without negotiations to the highest ranked offeror.

## 2 Discussions with Offerors

**Special Restrictions: Do not conduct discussions under this Section 2 unless you have been authorized by the applicable CPO under R. 19-445.2095I(4).**

(1) The communications addressed in R. 19-445.2095I are authorized by Code § 11-35-1530(6):

Discussion with Offerors. As provided in the request for proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award *for the purpose of clarification*

| to assure full understanding of, and responsiveness to, the solicitation requirements.

| (emphasis added).

| (2) The text of this document's Section 2 is taken verbatim from R. 19-445.2095I, except for the commentary.

## **2.1 Classifying Proposals, R. 19-445.2095I(1)**

For the purpose of conducting discussions under § 11-35-1530(6) and item 2.2 below, proposals shall be initially classified in writing as:

2.1.1 acceptable (*i.e.*, reasonably susceptible of being selected for award);

2.1.2 potentially acceptable (*i.e.*, reasonably susceptible of being made acceptable through discussions); or

2.1.3 unacceptable.

| Please see related training materials for illustrations.

## **2.2 Conduct of Discussions, R. 19-445.2095I(2)**

If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable.

The content and extent of each exchange is a matter of the procurement officer's judgment, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

| Section 11-35-1530(6) also provides, "In conducting discussions, there must be no disclosure of confidential information derived from proposals submitted by competing offerors." Since discussions are focused on each individual offeror's proposal, sharing or disclosing information from a competitor's offer should not become an issue. However, you must take care to safeguard any confidential information from inadvertent disclosure.

2.2.1 Control all exchanges;

| Please see attached Form Letter for Discussions with Offerors.

2.2.2 Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;

| (1) R. 19-445.2095J identifies the basic reasons for rejecting an individual proposal. This language was adopted in 2007 specifically to allow more flexibility



to clarify proposals than the strict requirement of facial responsiveness that had previously applied to both hard bids and RFPs.

(2) Note that a determination of non-responsiveness (a material failure to meet the mandatory requirements of the RFP) may be deferred until an offeror has been afforded an opportunity—through discussions—to cure defects in its proposal. R. 19-445.2095J(1)(b).

(3) Particularly in complex acquisitions and where the number of offerors is small, procurement officers should consider the benefit of discussions so that otherwise promising proposals are not rejected because of minor or technical issues of responsiveness.

### 2.2.3 Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;

(1) Discussions conducted under § 11-35-1530 expressly contemplate proposal revisions. While discussions are not designed to generate unrestrained enhancements to or further development of proposals, they are conducted for the purpose of clarification and should provide all offerors an opportunity to clarify significant ambiguities in their proposals.

(2) Language can be ambiguous either because it can be fairly understood in more than one way or because it expresses its purpose in an indefinite manner. *Penton v. J.F. Cleckley & Co.*, 486 S.E.2d 742 (S.C. 1997).

(3) Because discussions involve an opportunity for proposal revisions, discussions may include new information or revisions to existing information. However, revisions resulting from discussions must be limited. Allow new information or revisions to existing information only to the extent required to address the ambiguity. The procurement officer can exercise some control by carefully phrasing any questions sent to an offeror.

### 2.2.4 Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.

(1) Discussions are conducted for the purpose of clarification, not to enhance or improve a proposal. Mistakes only include unintended errors, defects, or omissions that the procurement officer has reason to suspect based solely on examining the proposal document. Examples include apparent clerical errors, suspected errors in pricing, inadvertent omissions (*e.g.*, perhaps a missing numbered page). The opportunity to identify mistakes must not be used to identify areas an agency may want an offeror to improve or further develop.

(2) Discussions to correct mistakes should not be used to alter elements of a proposal that were intended by the offeror but later found to be disadvantageous because, in that situation, there was no mistake.

(3) Communications regarding mistakes should identify the suspected mistake and the reason for the suspicion, but should not suggest correct answers,

solutions, or improvements. For example, you may suspect a defective price based on how the offeror's price compares with other prices. When communicating to the offeror the reason for the suspicion, do not indicate how the offeror's price compares with any other offeror's pricing.

(4) Mistakes evident on the face of an offer can be corrected under R. 19-445.2085; however, the scope of corrections allowed under that regulation is much narrower than what is correctable under R. 19-445.2095. *E.g.*, *Protest of Millers of Columbia, Inc.*, Panel Case No. 1989-3 ("Although it was evident on the face of the bid that a mistake had been made, that mistake could not be corrected from the information available.") and *Protest by Ohmeda Company*, Panel Case No. 1987-5. *See also* R. 19-445.2085A(2) (Confirmation of Bid) and discussion at item 1.6 above.

**2.2.5 Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items 2.2.2 through 2.2.4 above.**

(1) Do not conduct discussions with any offeror whose proposal is classified as unacceptable.

(2) Under Section 11-35-1530(6), discussions are conducted only "for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements." Discussions are not conducted to coach offerors regarding how to enhance, expand, or improve their proposals. Likewise, discussions do not involve either negotiations or revisions to the solicitation.

(3) Except as required in R. 19-445.2095I(2)(b) through (e), discussions need not be in writing. Discussions may include communications to assure an offeror's full understanding of the solicitation requirements, but all offerors must be accorded fair and equal treatment.

(4) When communicating to an offeror the information required by items 2.2.2 through 2.2.4 above, do not share one offeror's communications with another offeror.

(5) After opening, you must not allow proposal revisions except in conjunction with, and in accordance with, discussions conducted pursuant to this paragraph. R. 19-445.2095I(2)(e) strictly limits the type of proposal revisions allowed. Revisions beyond those allowed may result in rejection of a proposal. If an offeror submits revisions beyond those allowed, the procurement officer has two choices. First, as noted in the form letter, the procurement officer may reject the revisions and consider only the initial proposal (which may be non-responsive). The regulation requires only "a reasonable opportunity to submit any ... revisions." Second, the procurement officer may conduct further discussions, *i.e.*, advise the offeror in writing of the deficiency and provide an opportunity to cure with proposal revisions.

### 2.3 Limitations, R. 19-445.2095I(3)

Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions. § 11-35-1530(6). Ordinarily, discussions are conducted prior to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

(1) With rare exceptions, discussions are conducted prior to final ranking. There are two reasons for this. First, since § 11-35-1530(7) allows only responsive offers to be ranked, discussions may facilitate responsiveness of an otherwise promising proposal and permit its evaluation and ranking. Second, since evaluators must consider the entire proposal, any proposal revisions resulting from discussions must be submitted for evaluation. *See Appeal by ACT, Inc., et al.*, Panel Case No. 2014-16(II); *cited by Appeal by Blue Cross Blue Shield of South Carolina*, Panel Case No. 2019-2, n. 23.

(2) Discussions can occur after best and final offers have been solicited and received.

(3) Multiple rounds of discussions may be conducted, subject to all other applicable rules, especially the rule requiring fair and equal treatment of all offerors.

(4) In unusual circumstances you may conduct discussions to address an issue of responsiveness that is discovered during negotiations, after the initial evaluation and ranking are complete. *Appeal by Blue Cross Blue Shield of South Carolina*, Panel Case No. 2019-2. The Panel observed that this was an extraordinary procedure and suggested that the complexity, importance, and extended timeline of that procurement were important factors in its decision to allow the practice. Also critical to the Panel was the procurement officer's quick action upon discovering the issue and his reconvening the evaluation panel to re-score the revised proposal.

(5) Discussions conducted to clarify the State's requirements may not involve changing those requirements. As with pre-opening conferences, the State's requirements may only be changed by amending the solicitation. *Cf.* R. 19-445.2042 ("Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment.")

### 2.4 Authorization by CPO, R. 19-445.2095I(4)

Communications authorized by Section 11-35-1530(6) and items 2.1 through 2.3 above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

Selected procurement officers will be authorized individually, in writing, by the appropriate CPO.

### 3 Negotiations

Negotiation is an exchange between the State and an offeror undertaken with the intent of allowing the offeror to revise its proposal. Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. Negotiated proposal revisions may affect the scope of the proposed contract, so long as the changes are within the general scope of the request for proposals.

#### 3.1 Optional

Negotiations are optional.

- (1) After proposals have been ranked pursuant to 11-35-1530(7), the procurement officer may award to the highest ranking offeror, negotiate with the highest ranking offeror, or conduct a BAFO. If negotiations with a particular vendor are unsuccessful, the procurement officer may negotiate with the next highest ranked offeror, re-open negotiations with any offeror with whom he previously negotiated, or conduct a BAFO. None of these decisions is subject to protest. All of them fall within the sole discretion of the procurement officer.
- (2) Once negotiations with a particular offeror are begun, the procurement officer must negotiate in good faith and those negotiations must be meaningful. See item 3.5 below. The procurement officer can only terminate those negotiations if she decides that a satisfactory contract can not be reached. That determination is protestable and is not a matter of the procurement officer's sole discretion; rather, it must have a rational basis. As explained in item 3.8, the decision to terminate negotiation must be documented as part of the written determination of award. As with other aspects of that determination, the justification for terminating a negotiation is final "unless clearly erroneous, arbitrary, capricious, or contrary to law." § 11-35-2410(A).
- (3) If the procurement officer intends to modify the solicitation's mandatory requirements by issuing a BAFO, the procurement officer may terminate negotiations on the basis that negotiations cannot result in a satisfactory contract.

#### 3.2 Control

Negotiations must be controlled by the procurement officer, R. 19-445.2095K(2).

Manage vendor expectations by conveying the following rules to the vendor in writing: (i) the potential for submitting cost and pricing data, (ii) the potential for a BAFO process, (iii) the absence of any obligation to provide formal notice that

negotiations have been terminated with an individual offeror, and (iv) the restrictions imposed by the solicitation on communications by the offeror.

### **3.3 Objective**

3.3.1 The primary objective of negotiations is to maximize the State's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. §§ 11-35-310(30) and -1530(9).

3.3.2 Before conducting negotiations the using agency must prepare a written negotiation plan, R. 19-445.2095K(1).

- (1) The scope of a negotiation plan should reflect the complexity of the acquisition. For simple procurements, a plan may provide only that the agency seeks a price discount from the proposal. For complex, expensive, or mission-critical purchases, the agency should identify specific improvements or enhancements it desires to a proposal.
- (2) A negotiation plan should be considered source selection information as defined in R. 19-442.2010D.

### **3.4 Tailored**

Negotiations are tailored to each offeror's proposal.

### **3.5 Meaningful**

Negotiations must be meaningful. The procurement officer is encouraged to discuss those aspects of an offeror's proposal that could, in the opinion of the procurement officer, be altered or explained to enhance materially the proposal's potential for award. However, the procurement officer is not required to discuss every area where the proposal could be improved. The scope and extent of negotiations are a matter of procurement officer judgment. Negotiations must be conducted in good faith.

- (1) Negotiations present an opportunity for offerors to expand, strengthen, enlarge, enhance, or further develop their proposals, so long as the changes are (i) within the general scope of the request for proposals and (ii) do not involve a significant revision to the solicitation's mandatory requirements. The Procurement Officer can facilitate such improvements by identifying concerns with an offeror's proposal, including significant deficiencies, weaknesses, excesses, ambiguities, uncertainties, omissions, errors or mistakes. Concerns may involve any aspect of an offeror's proposal, including price, past performance, references, technical approach, and any matter evaluated. As an example, the procurement officer could identify excesses or "gold plating" that could be eliminated along with a price concession.

- (2) Issues raised during discussions and evaluation may provide valuable information for negotiations.
- (3) As noted in the limits on exchanges—Section 5 below—a procurement officer should avoid engaging in unfair negotiation practices, such as providing one firm’s innovative technical solution to another offeror or aggressively identifying concerns in negotiations with one offeror while failing to undertake any such effort in negotiations with another offeror.

### **3.6 Limited scope**

Negotiations should not involve a significant change to the solicitation. If the procurement officer makes changes to the solicitation’s mandatory requirements or general scope, the procurement officer must request best and final offers pursuant to part 4 below.

The more requirements your solicitation includes, the less flexibility you have to negotiate. As a general proposition, do not make it mandatory unless you are positive you must have it.

### **3.7 Good Faith**

Once negotiations with a vendor begin, the procurement officer must attempt, in good faith, to successfully negotiate a “satisfactory contract” - without regard to any other proposals received. (Negotiations are not an opportunity to re-evaluate one offeror against another. That step took place during the evaluation and ranking.) If the procurement officer concludes that a satisfactory contract cannot be negotiated, the procurement officer may then proceed as allowed by Section 11-35-1530(8). In evaluating whether or not a contract is satisfactory, the stated evaluation factors must form the ultimate basis of your decision.

### **3.8 Documentation**

Under § 11-35-1530(9), the contract file must contain the basis on which the award is made, and the award of the contract must be made on the basis of the evaluation factors stated in the solicitation. If award is made to the highest ranked offeror without negotiations, the basis for award should appear in the written determination explaining the evaluation and ranking. If award is made after negotiations, the basis for award must also explain (i) the results of any negotiations, and (ii) the reasons any negotiations were unsuccessful, *i.e.*, why a satisfactory contract could not be negotiated with an offeror.

### 3.9 Price

3.9.1 Procurement officers are expected to ensure that the final contract price is fair and reasonable. R. 19-445.2122A. Negotiation should be used to achieve that goal.

3.9.2 If an offeror's final negotiated price is considered unacceptable, make a determination of price unreasonableness under R. 19-445.2095J(1)(c), as such an analysis will justify a decision that a satisfactory contract cannot be negotiated.

Remember that a price does not need to be outrageous to be unreasonable. Regulation 19-445.2095J(1)(c) allows for rejection of a proposal if the proposed price is clearly unreasonable. Regulation 19-445.2122 describes at least three methods to determine if a price is reasonable: competition; cost analysis; and price analysis.

3.9.3 Negotiations are not a mechanism to price shop. If a price reduction cannot be negotiated, the BAFO process may be appropriate.

## 4 Best and final offers (BAFO)

### 4.1 Timing

Best and final offers may be requested only after evaluation and final ranking pursuant to Section 11-35-1530(7). Best and final offers may be sought before, after, or without negotiations. If negotiations are started, those negotiations must be concluded before the procurement officer may seek best and final offers.

### 4.2 Conduct

In conducting a BAFO, the procurement officer should (i) make changes to the solicitation's required scope of work, as long as the changes are within the general scope of the request for proposals, and (ii) provide all *responsive* offerors an opportunity to submit their best and final offers.

BAFOs are most commonly used to achieve price reductions that could not be achieved through negotiations, typically because the price reduction requires a reduction in the scope of work required by the solicitation that cannot be achieved properly in negotiations.

### 4.3 Amendment

A request for best and final offers must be issued as an amendment to the request for proposals. The request shall include:

- 4.3.1 Any changes to the request for proposals allowed by Section 11-35-1530(8)(c);
- 4.3.2 Notice that negotiations are concluded, if applicable;
- 4.3.3 Notice that this is the opportunity to submit a best and final offer;
- 4.3.4 A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and
- 4.3.5 Notice that if any best and final offer is submitted, it must be received by the date and time specified and is subject to the rules governing submission of proposals.

- (1) Amendments for purposes of a BAFO are not posted to the internet. Rather, they are sent only to actual offerors.
- (2) Best and final offers should be submitted as proposal revisions. Include appropriate instructions in your request for BAFOs.

#### **4.4 Evaluation**

Following receipt of best and final offers, all responsive offerors must be reevaluated and ranked pursuant to Section 11-35-1530(7). § 11-35-1530(8)(c). Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State. § 11-35-1530(9).

#### **4.5 Resolicitation**

If, in the judgment of the procurement officer, based on market research or otherwise, a solicitation amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, such that additional sources likely would have submitted offers had the substance of the amendment been known to them, the procurement officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition. *Cf.* R. 19-445.2099D(5).

### **5 Limits on exchanges**

- (1) Limitations outlined in Section 5 apply to all types of communications addressed in this guidance.
- (2) Prior to posting an award, or intent to award, regulation 19-445.2010D prohibits anyone from disclosing either the number of offerors or their identity unless required to do so by law.



(3) Regulation 19-445.2010C allows the responsible procurement officer to authorize certain disclosures in writing.

## 5.1 Prohibited conduct

Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that—

5.1.1 Discloses confidential information derived from proposals submitted by, or from negotiations conducted with, competing offerors, § 11-35-1530(6) & (8);

5.1.2 Favors one offeror over another;

5.1.3 Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

5.1.4 Reveals an offeror's price without that offeror's permission. However, the procurement officer may inform an offeror that its price is considered by the State to be too high, or too low;

5.1.5 Reveals the names of individuals providing reference information about an offeror's past performance; or

5.1.6 Knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (a) proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (b) source selection plans, (c) technical evaluation plans, (d) technical evaluations of proposals, (e) cost or price evaluations of proposals, (f) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (g) rankings of responses, proposals, or competitors, (h) reports, evaluations of source selection committees or evaluation panels, (i) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates, R. 19-445.2010C.

-end-

# Form Letter - Discussions with Offerors

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[Date]

TRANSMITTED VIA FACSIMILE: (999) 999-9999  
CERTIFIED U.S. MAIL # (*insert certified mail number*) [if applicable<sup>1</sup>]

[*send to offeror at address appearing on cover page*]

Re:URGENT NOTICE - **Response Due by [date]**  
Request for Proposal Revisions  
RFP # x

Dear [*person signing proposal cover page*]:

As the procurement officer for the above referenced RFP, I am writing to conduct discussions regarding your business' proposal. As contemplated in the Request for Proposals, the State has elected to conduct discussions pursuant to South Carolina Code Section 11-35-1530(6) and Regulation 19-445.2095I. Under these laws, discussions are conducted with all offerors submitting proposals initially classified, for discussion purposes, as either acceptable or potentially acceptable. Your proposal has been classified as [acceptable / potentially acceptable].

The authority to conduct discussions is strictly limited. First, discussions involve only a limited exchange of information. They are not and cannot constitute negotiations.

Second, all discussions must be controlled by the procurement officer. Accordingly, please do not communicate with any other state employees regarding these discussions without my express prior approval and my direct participation.

Third, these discussions involve an opportunity for you to submit cost or price, technical, or other revisions to your proposal. However, the law allows such revisions "*only to the extent such revisions are necessary to resolve any matter raised in writing by the procurement officer during discussions.*" Accordingly, you must ensure that any revisions submitted are strictly limited to only those revisions necessary to resolve the concerns raised in this letter. Please see the attached list of concerns. Unauthorized revisions or additional unsolicited responses may result in rejection of your revisions and consideration of only your initial proposal.

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<sup>1</sup>For very large or very high profile procurements, the added security of sending your letter certified mail may be worth the cost. Ordinarily, the expense is not needed. If you elect to use email, make sure you have proof of receipt. Unlike mail deposited with the U.S. Post Office, the law does not include a presumption that email is properly delivered.

Fourth, revisions must be timely received. **Any revisions must be received by me no later than [date]. Late proposal revisions will not be considered.**

Please contact me if you have any questions.

Sincerely,

[name]

Procurement Officer

*[Instructions to Procurement Officer: If a proposal is acceptable, you may have no need to send any letter. A letter is not needed unless you intend to authorize a proposal revision.]*

Matters for Discussion  
[date / same as letter]  
RFP # [number]

Concerns regarding Proposal of [name of offeror]

A. We have identified the following deficiencies in your proposal that will result in rejection as non-responsive unless corrected. You may address these deficiencies by submitting revisions to any aspect of your proposal, but only to the extent such revisions are *necessary* to resolve the deficiency identified.

1. x
2. x

B. We have identified the following uncertainties in your proposal that could render your proposal non-responsive. You may address these uncertainties by submitting revisions to any aspect of your proposal, but only to the extent such revisions are *necessary* to resolve the uncertainty identified.

1. x
2. x

C. We suspect that your proposal includes the following mistakes. If a mistake was made, you may correct the mistake by submitting revisions to any aspect of your proposal, but only to the extent such revisions are *necessary* to resolve the mistake identified. If no mistake was made, please confirm that no mistake was made.

1. x
2. x

[Instructions to Procurement Officer:

1. For any area with no concerns, state "None".
2. For each item, identify the exact language in the proposal to which the concern is addressed.
3. For items identified as uncertainties, explain the reason for the uncertainty.
4. For items identified as mistakes, identify the language in the proposal that led someone to suspect a mistake and why.]

## Solicitation Clause

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### **DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015)**

Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095I] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [06-6058-1]