

GUIDELINES FOR PREPARING THE REQUEST FOR PROPOSALS (RFP)

In a property disposition, an RFP details the property to be disposed of and describes any reuse requirements. The RFP provides a formal process for soliciting information from prospective developers/owners to allow manageable and meaningful comparisons of all offers. The following outlines the major components of an RFP, including provisions required by M.G.L. Chapter 30B. It is important to have an attorney review the final RFP for compliance with all applicable regulations, including Chapter 30B.

Please note that only Chapter 30B requirements are covered in these guidelines; Massachusetts Department of Housing and Community Development (DHCD) or federal requirements are not covered.

GUIDELINES AND SAMPLE: REQUEST FOR PROPOSALS

I. INVITATION TO BID

The invitation introduces the RFP and provides a brief overview of key information. Ideally, this information will be conveyed in a way that sparks interest from prospective developer/owners. Specifically, the invitation to bid should provide the following:

Outline of offering:

1. Name the entity issuing the RFP.
2. Identify and briefly describe the property concerned.
3. Describe the disposition method (i.e., ground lease or sale), and identify key terms of the disposition.
4. Highlight the goals for the disposition.

Summarize submission requirements:

1. Number of copies needed; date, time, and place for submission
2. How the proposal should be marked.
3. Typically there is a 8-10 week response period from the time of issuance of the RFP. The response time should be gauged depending upon the level of information you are seeking and the complexity of the project.
4. Responses must be complete and signed and that late submissions will not be accepted. Reserve the right to reject any or all proposals or to cancel the RFP, if it is in the best interests of the issuing entity

Disclaimer against any information provided in the RFP. Note that the disposition is subject to the Uniform Procurement Act, M.G.L. Chapter 30B.

Contact person for inquiries and questions:

1. Name, phone and fax numbers, and e-mail address, if available.

2. Request that all inquiries be made in writing no later than a given date.
3. Indicate that if questions arise at any time prior to the due date for the proposals all answers will be in writing and the questions and answers will be shared with everyone who has requested a copy of the RFP.

II. SITE TOUR AND BRIEFING

It is strongly recommended that you conduct an on-site briefing session or property walkthrough. If one is planned, designate a time, place, and contact person for more information about this session. The site tour should be scheduled relatively soon after the issuance of the RFP to allow prospective developers time to view the site before finalizing their submission. Often, bidders are required to register 24 hours in advance if they plan to attend a briefing to prevent holding a briefing with no participants.

III. PROPERTY DESCRIPTION

Provide detailed information on the subject property should be provided to prospective bidders. This can be collected from the tax collector, the assessor, the municipal planning department, the city or town clerk, the conservation commission, the municipal building/engineering department, the regional planning agency, and local realtors.

Copies of any studies undertaken for this site (e.g., water and sewer access, soil conditions, contamination, conceptual site plan), should be included with the RFP or posted so that developers can access them electronically. These studies provide valuable information for prospective developer/owners. The property description should provide the following:

Location and site information:

1. Provide street address, map and parcel reference if available,
2. Deed description or survey if available (or if a survey has not been done, describe location with enough specificity to identify the property)
3. Copy of an assessor's map.
4. Attach any available studies or blueprints as appendices, or identify where they can be found.

Buildings and improvements (if applicable):

1. Description of any buildings and structures, including size, age, construction type, condition, occupancy, use history, etc.

Site plans: Drawings, plot plans (if available).

Zoning:

1. Zoning maps and references to applicable sections of the zoning regulations.
2. State if there is an expected zoning path (e.g. special permit; Ch.40B comprehensive permit).

Deed restrictions, easements, or covenants: Identify any existing restrictions and/or any restrictions that will be imposed on the property by the municipal entity, such as affordability covenants or utility easements..

Regulatory constraints: Identify all regulatory constraints, such as historic district restrictions, and watershed protection areas.

Utilities and infrastructure: Identify what utilities are available at the site or within a reasonable distance, including water, sewer, gas, and electric.

Bidder's responsibility for due diligence: State that bidders are responsible for their own review and analysis related to all aspects of the project.

IV. DEVELOPMENT GUIDELINES

This section of the RFP states the project's goals and guidelines under the following recommended headings:

Programmatic Objectives: include target population, type of housing (e.g. rental or homeownership) and level(s) of affordability.

Design Guidelines: be as specific as possible as to the preferred type of construction, unit configuration, site design, and the desired amenities. Recognize that guidelines that are too prescriptive can impede the interest as well as the creativity of prospective developers.

Role After Disposition: State what, if any, role the municipal entity expects to play after transfer of the property. Be cautious about the role played post disposition as it could trigger issues with the state's public construction and bidding statutes.

Price and Financial Guidelines: If price is a factor in the decision this should be stated here.

Lease Terms: outline the mandatory lease provisions (attach a sample lease if available). This includes but is not limited to the following:

- a. Lease term
- b. Affordability
- c. Payment terms
- d. Lease termination
- e. Tax compliance
- f. Lease amendments
- g. Assignment of the lease

Implementation Guidelines: Detail what the process is once the winning bidder has been selected. This should include the timeframe for execution of a developer agreement (if applicable) and other documentation leading up to the sale/signing of the lease.

Other Resources (if applicable). If you can provide additional assistance to the successful bidder beyond the land, list it in this section. Examples of such resources include assistance with project permitting and providing Section 8 project-based rental assistance.

V. CRITERIA FOR EVALUATING PROSPECTIVE DEVELOPER/OWNERS

The purpose of the RFP process is to establish a fair and objective method for selecting a developer/owner for the property. It is strongly recommended that this evaluation occur in two or three stages. Establish a set of minimum criteria that all proposals must meet. Any proposal that fails to meet these criteria should be rejected. Second, if applicable, you need to evaluate whether the proposal meets the minimum price criteria set forth in the RFP. Third, proposals must meet a set of comparative criteria that provide a relative measure of the strengths of each proposal.

It is important that submission requirements match all of the items outlined in these evaluation criteria. Both the submission requirements and the selection criteria should be as detailed as possible to ensure that first, you get a complete picture of the bidder, the development team, and the proposed development and second, the bidders understand what is required of them and how this information will be evaluated.

Evaluating a bidder’s proposal can be seen as a three-step process:

Step One: Develop Minimum Threshold Criteria

List criteria that establish the basic eligibility of the proposal for further review. Ideally, these should be “yes-or-no” standards that you will apply to every proposal. Any bidder with a “no” should be eliminated from further consideration.¹

Some examples of minimum threshold criteria are:

1. Conformance with Submission Requirements: Did the bidder include all of the required items outlined in the submission requirements? If not, reject the application.
2. Development Experience: This is one of the most important criteria to consider. Development is often a complex and risky undertaking. The criteria should specify the minimum level of experience necessary to carry out the requirements of the RFP. This might be expressed in years or types of experience (e.g., five years of affordable housing development, or successful completion of two affordable elderly-housing developments of at least 20 units each).

¹ IG procurement manual p 42.

In defining relevant experience, it is important to consider the characteristics of the proposed project. For example, a developer/owner might need experience developing special-needs or service-enriched housing or using a specific type of funding (e.g., HUD 202 funding or Low Income Housing Tax Credits). Similarly, a project that will require a comprehensive permit would benefit from a developer/owner with that zoning experience. A homeownership project benefits from a developer with experience in a similar type of project.

3. Current taxes: Request certification of current payment of all state and local taxes (or an acceptable explanation of why tax payments are not current).
4. Bidder Availability: Are there any time constraints on the project? If so, request a start-date commitment and a proposed staffing plan, including a description of existing time commitments for each member of the development team.
5. Affordability: Specify the minimum affordability criteria required by both percentage of units and level of affordability (generally stated in relation to median income). It is helpful to test these goals with a feasibility study that evaluates the income necessary to support project costs. Unrealistic goals will discourage good developer/owners from submitting proposals.
6. Bidder financial resources: The more complex and expensive a project, the more important the developer/owner's financial capacity becomes. A bidder must demonstrate strong financial capacity including sufficient net worth and access to financing. The ability to secure predevelopment funding or be able to carry the project through the predevelopment stage until construction financing is available is very important. In addition, evaluate whether the developer/owner has sufficient resources to meet any required equity contribution.

Step Two: Price Criteria

If price is a consideration, make a judgment as to which bidder has made the best offer for the property.

Examples of Price Criteria

- **Terms of Purchase or Lease**: It is important to specify price or lease-payment terms for comparison purposes.
- **Price Requirements**: In most cases, maximizing the public purpose will be more important than securing the highest price for the property. (In some cases payment might not even be expected from the bidder).

Step Three: Comparative Evaluation Criteria

Consider giving additional weight to proposals that exceed the minimum criteria. Use comparative criteria to look at the relative merits of the proposals, rather than just selecting the responsive and responsible proposal that offers the best price. The Inspector General recommends that measurement of comparative criteria not be a point-based system, which can be “deceptive, creating the illusion that qualitative judgments can be compared with mathematical accuracy.”² The examples below employ the measurement of “highly advantageous,” “advantageous,” and “not acceptable” that is required for service and supply RFPs under Chapter 30B. However, any system that can be clearly defined and applied to all proposals is acceptable.

Examples of Comparative Criteria

The following are some examples of criteria that can be used to judge the competitiveness of a bidder’s proposal if public purpose is the objective. Give weight to these criteria according to the relative level of importance to your housing authority.

Affordability: Determine whether it is more important to serve people with lower incomes (deeper affordability targets) or to serve more people at the proscribed “affordable” level (more affordable units).

Developer Capacity and Quality of Team and Property Manager: A development team’s track record with comparable projects is one of the best measures of its ability to complete the project as proposed. Funders and lenders consider this key when awarding competitive funding and making loans. The amount and type of experience a developer/owner and his/her team needs varies with the complexity of the project. Experience can be measured by number of years, number of projects completed, and role in the development process.

Feasibility: The ability of the development team to understand the complexities of affordable housing development and the challenges posed by your particular site is key to the success of the project. At the heart of the competitive criteria is an evaluation of whether the project, as proposed, is feasible.

Site and Unit Design: At the RFP stage, designs are generally at the very preliminary schematic stage, reflecting approach rather than detail. Still, there are questions you can consider when reviewing proposals: Are the site and unit designs appropriate for the parcel and the target population?

VI. SUBMISSION REQUIREMENTS

² IG procurement manual 43

The RFP should include standard forms to ensure consistency in the bidders' submissions. Consider the use of standard forms that are included in the One-Stop application that is used by state funding agencies

The submissions are typically divided into ____ sections as follows:

- A. Developer and development team
- B. Development concept
- C. Project financing and financial analysis
- D. Conceptual design
- E. Implementation plan
- F. Management plan
- G. Lottery
- H. Certifications

Financial information from private individuals must be treated as private, confidential information with access limited to essential individuals in accordance with the Fair Information Practices Act ("FIPA"), M.G.L. c. 66A. It is recommended that a sub-group of the evaluation team review and analyze all financial information included in proposals. This sub-group should include a least one person with strong financial background and the ability to analyze financial statements. The entire sub-group should be trained in standards of confidentiality, security, and requirements of FIPA.

VII. SELECTION PROCESS

Describe the process that will follow the disposition of the property. Include how and when the proposals will be reviewed.

- State that all packages submitted by the deadline will be opened in public and logged in. Identify the party responsible for reviewing the submissions, and state that all information contained in the proposals is public.
- State how and when the winning bidder will be notified. Give a description of the process for conveying the property.

VIII. EXECUTION OF AGREEMENTS

Outline any terms or conditions that will be incorporated into the purchase and sale or disposition agreement. Consult with an attorney regarding any local laws relating to real property transactions.

- List all terms and conditions that will be required in the agreement (e.g., reuse restrictions; certification of tax compliance)
- Explain that all contract amendments must be in writing and approved and signed by an authorized official

- If the property is being offered for lease, spell out mandatory lease terms. If you have a draft lease include it as an Appendix to the RFP.

ATTACHMENTS

Attachments to the RFP can and should include:

1. Assessor's map
2. Engineering Site Plan & Soil Evaluation Letter
3. Selection rating criteria
4. Certificate of Non-Collusion
5. Tax Compliance Certificate
6. Disclosure of Beneficial Interest

Please Note | Effort has been made by the author and sponsoring organizations to provide current and accurate information. However, readers should not rely on the information and are urged to review source material and consult with appropriate funding sources, practitioners and legal counsel before embarking on a particular course of action.