

Chapter seven

Competitive Proposals. Competitive proposals is another word for RFPs. Now, looky here, quotes, bids, proposals RFPs are a completely different process. Now, many people use the term RFP as an acronym to doing any kind of a competition. It reminds me of when I hired a temp to work in our office. She was very much like me, I'm very literal, very literal. That's part of OCD, yeah. My wife is almost to her doctorate in special education. She's got two masters. And she diagnosed me on the spectrum and that hurt my feelings terribly. Because I'm just off the spectrum. Now it shouldn't hurt my feelings 'cause the OCD is why I know this stuff and why I have the forms and everything, so that's good. However, this young lady was like that. And I handed her some documents, actually me and my admin, and said, "go xerox these," and she left. And she was gone for much longer than she needed to be, because the machine was just right over there. So I went looking for her and she was walking through the offices. And I said, "uh what's up, is everything okay?" She says, "no, I'm looking for the Xerox." And I said "it was right there in the hall," and she goes, "oh, that's a Toshiba." (participants laughing) Was that her fault? No, that was my fault, should've said "copy them," 'kay?

Now RFPs. A lot of you are gonna send me even after I tell you this, you're gonna send (audio crackles) email and say, "would you send me an RFP for construction?" And I am going to, 'cause I'm OCD, I'm gonna email you back and say, "construction is inappropriate for an RFP." She goes, "no, you showed us an RFP." And I'll email back again I and show, "I showed you an IFB, "is that what you want?" And you'll say, "whatever." (chuckling) It's not whatever. An RFP is a completely different process. Now we've gone over quotes and bids. And how do we reward quotes and bids? To what decision factor? Price, thank you. But RFPs are so very different. It's not through price. In fact, many times price is very much a small part of the award, 'kay? It just depends on what the service is. You see, I do RFPs for lawn cutting, not bids. I do RFPs. But I make the (audio crackles) pack for lawn cutting for cost, 50 or 60 points, making it much more like a bid. And I do that so I can get rid of trunk people. What is a trunk person? He works out of his trunk, you know, when you do a pre-bid, a pre-conference for lawn cutters, two kinds of people show up, trailer people. Now, who's here's told me they had 100 units? Which one of you are? That's a lot of units to cut. Yeah, even 40 units. Where's 40? Yeah, 40 units. Do you hire lawn cutters instead of you doing it in house? Say yes, I do. There you go. So typically, somebody with 40 units might decide to hire lawn cutters so that their people can concentrate on work orders and fixing stuff. By the way, my authority had 5000 units. I hired lawn cutters. I had a whole crew of people. 16 people, we had tractors and trailers and trucks, and I did a value analysis. And I found out that we could save a lot of money having somebody else do it, and we had an ongoing problem on my authority, work orders were never caught up. It was always a mess.

So I said, "let's retrain all the lawn cutter guys "and ladies to do work orders, and let's contract it out." So when I did that RFP, that bid, I had two types of people show up. Trailer people who had trailers with stuff, and then trunk people, were you there, And do you know what happened was? After couple of turns, my bids were going around 350,000 a year for lawns. Yeah. And I divided this city up in three zones, and, you know, and it just all worked out. Until I had a trunk person bid \$50,000. He bid 50,000 for a contract with the ICE and what I had to pay was 350. Now, was that gonna be a good deal for me? A low price isn't always the best value. And remember HUD has said up here, we've said in the PowerPoint in times is value. So what I did was, I had to sit with him, go through everything, get a work plan together with him. And he suddenly realized that his work plan wasn't working, that he could not afford to do these lawns for \$50,000. And I still remember the look on his face when he looks at me and he goes, "you're trying not to award this to me." I said, "well, that's not what I'm trying to do, "I'm trying to

show you that you have severely underbid. And he goes, "I want that money. "That's my money, I deserve that money." He was adamant, he wanted the money. I did not award to him initially. I told him "no," I threw him out. And he came to the board meeting and threw a fit. And accused me of all kinds of ne'er do well things of why I didn't like him, including because his wife was sick and he needed the money. It's not funny. That was one of his excuses. They'll throw anything out to get that award. And the board said, "can't you help him out?" And I go, "by doing what?" They said, "could you give him the award?" I go, "I could." They go, "you will?" And I said, "no, "you've got a complete backup and analysis "and there's no use to award to him, "it's a waste of time." Anyway, long story short, they made me award to him 'cause his wife was sick. And because there was a question as to whether

I had discriminated against him based on race, religion, gender, I had, didn't have any hair he did. He pulled everything out. He was very angry and upset. Right. I remember the hair thing, the rest of it I don't remember a bit. So anyway, how long do you think he lasted? A month. Any other guesses? Well, he had to have Gerson Park 80 acres done the first day, and at noon, he had blown his lawnmower up. And he was working alone and realized it was never gonna get done. And I was there waiting all morning for him to come in. This was important. And he said, "we have a problem." And I said, "I got no problems, "you have a problem." He said, "I'll tell you what." He goes, now this is important because I'm afraid some of you have done this with an award. He said "I bid 50,000 and it's way too low, "the next bidder was 350, "if you just give me 349,000, "I will still be the low bidder." You're laughing but people do this all the time. No, it makes no sense, whatsoever. I said, "no, we can't change the bid." He goes, okay, "here's my final offer. "If you loan me the 50,000 upfront, "I can buy the equipment and hire the people I need." Listen, folks, he was desperate. He had no concept about this money. He'd never done big jobs. And I said "no." And so I terminated him, except for, I broke the bidding rules, you do wanna let them know it was 20 years ago. I separated off some very small sites and gave them to him, so he got something out of it. He was a nice guy, he was just not competent to do the big contract. And I had the other guy on the site the next day. He was ready. Yeah. So I don't do bids for lawn cutting nor do my clients. We do RFPs, 'cause if I'da done an RFP, I could have made the price factor 50%, and I could have evaluated him, and he's never done a large project, so I could give him zero in all those areas. Where he qualified with experience and demonstrated past performance, he would have gotten a zero in all those areas, because he's never done sites like ours. Could have pushed him away then. Are you with me? That's why I sometimes use RFPs for lawn cutting, pest control, elevators, the not anything construction related, and not anything trade services. Plumbers, electricians all must be an IFB.

That's the rules 'cause they have construction elements to them. We're gonna talk context, we're gonna talk about the RFP and the RFQ. And we're gonna talk about procurement of specific services, introduction. Remember, competitive proposals, as opposed to bids allow for consideration of technical factors other than price. Stuff like experience, capability, past performance. Are you with me? Your work plan. Have you ever done anything like this before? And I usually put in these things, especially for a housing authority or for a multi family type development. Like if lawn cutters have cut apartment complexes and done it satisfactory, that means they can probably do my site and your site, right? It allows for discussions with offers, that is called a best and finals process when you have discussions. It allows for a negotiation of pricing and terms, though the negotiation does not occur the way you think it does. You don't sit down with him and do a give and take and give them targets. "Will you do it for \$1? "Will you do it for \$2?" No, we don't do that. That gives people targets. It's not appropriate. It allows for revisions of the proposals prior to the final selection in a best and finals process. Have you ever heard of that best and finals? We do an evaluation, we keep everybody in the

running who scored high, and everybody who scored low and we know can't do the job, we throw them out of the process. Then we do oral interviews with the people that were at the top of it. And we allow them to after that, not only, this is all after the proposal deadline, not only do we allow them to resubmit their proposal with new information, we also allow them to change their price.

Though I will not tell them whether they were high or low. That would be inappropriate. But there's a whole process. And, they can withdraw their offer at any time up till the point of award without penalty. With bids, we have bid bonds, so they can't do that. When are competitive proposals used? They're used when what you require is such a state that you have to utilize factors other than price. Remember this one I just told you about this trunk guy? Yeah, if I'd had the RFP, I could have evaluated him on, has he ever done stuff like this before? Remember too, these evaluations have to be done honestly. Be very wary of people who skew their evaluation to get who they want. That's not appropriate. That has a technical term, it's called fraud. Be very wary of that. I'm gonna talk about evaluation panels in a moment. But we always have a minimum of three, sometimes five, sometimes seven, always an odd number, 'kay? And, it can also be used when you wanna consider various approaches to the work. Let me give you an example. Now, my housing authority I told you was pretty large. And when we do an RFP for audit services, we tell them, "turn in your work plan. "We wanna know how you're gonna do "what it is you're going to do the audit work." Though we're getting a firm-fixed fee for the entire year, we don't tell 'em how to do the work. But we'd like to evaluate them based on, who's gonna do the work in a manner more advantageous to us. Now, I had a one group who bid \$40,000. But they were going to take eight weeks to do the work. They were gonna send one senior person, and then they were gonna send a whole bunch of junior accountants. And it was gonna take 'em eight weeks on site. I had another person, and by the way, I'm just pulling those figures out of the air. I don't remember the exact numbers. I had another firm that was gonna charge me \$60,000. But they were gonna get everything done in two weeks. And they were gonna bring in 10 people (audio crackles) people, and they were going to every day, these senior people were going to complete a different portion of the work, and they were gonna leave till at the end of the second week, there would only be one person still there, the partner, but the audit all the on-site work would be done. And they were gonna do a lot of the off-site work also while on site, 'cause they were dedicated to getting it done.

So do I have any finance people in here? Okay. I'm gonna talk to finance people here. Would you rather, now you know when auditors come in, we don't just work eight to five, right? We stay extra hours, they come in seven, they wanna go home at eight. Yeah, at night. Would you rather spend two weeks with experienced people or eight weeks with people who don't know what they're doing? You'll pay the extra money, won't ya'? That's exactly what Fred my controller said. He goes, "this choice is simple. "We're gonna pay more (audio crackles), get better work, "and keep the rest of our work going on." We rated them much higher. By the way, the firm that was gonna do it for the cheaper price was shocked. And if I said their name, a lot of you would recognize their name. They said, "won't you wanna get the cheaper price?" And my finance manager said, "well, "there's lower prices and then there's lower prices. "And yours was gonna cost us more, "being involved for eight weeks." That would have cost us more money. And the audit committee who picked that, looked at that. So it allows for different fact various approaches to the work, 'kay? Method of solicitation. We're gonna advertise typically RFPs just like we do anything else. You won't get one single respondent off that advertisement. But it looks good. It looks like you're being open. I can preach till the cows come home, about how newspaper ads don't help us get people, and all I'm gonna do is get the newspapers looking into my past history and my private life to shut me up, you know what I mean? I'm not gonna fight the newspapers. But it does look open and fair when you put an ad

in the paper, even though hardly anybody ever sees it. Are we all understanding on that? Good. Yeah, it's best to run the advertisement, one this week one next week, it looks better, 'kay? But your best thing is to contact people directly. Y'all go to these New Mexico NAHRO things? How many's ever seen me at those? There's auditor's there, fee accounts and others. When you get their cards, what you need to do is to either put them on a bidders list, or do what I do, utilize a software and tell them, "well, here's the software address," you know, on the internet, "just go there and register "and then every time I submit a bid for this kind of thing, "an RFP, you will get the notice." That's the best way to do it. But anybody who's let you know that they want to be on your list, you need to make it available for them to be on the list. A bid and a proposal, an RFP and an IFB are virtually the same. If I was to bring up my RFP and my bid, you'd go, "well, the only difference is the words," and I'd go, "correct." What's it gonna have ya? Maybe a cover sheet, table of contents, introduction, statement of work. Do you know that my audit cost, well, it was five years at \$63,100,000? Do you know that my specifications, work specifications, were a page and a half long? Yeah, I do what's called a performance fact we'll talk about in chapter 15. I don't tell people how they're gonna do it. I simply tell 'em what my programs look like, and the dates they have to meet, and that they have to do it according to GAAP, that standard that HUD sets. There's no need for me to write any more specifications. They're gonna turn their work plan back into me. And I'm going to judge, I mean, the committee, the authority and to you, and you're gonna judge them based on how much you like their work plan. Ain't that cool? I think it's wonderful.

Thank you HUD for giving us a handbook where we can do RFPs. It's just a wonderful way to do it. We're gonna have evaluation factors. Now remember, the factors must be published in the documents and must be weighted according to the points, and the attachments, of course. Ah, there is a mistake on the screen and these mistakes come right out of the handbook, amending and canceling a solicitation. Now I'm gonna read the two titles and I want somebody to raise their hand and tell me if they recognize the mistake. Remember, amendments are addendum is an addendum or addenda. Amendments before the proposal due date, amendments after the proposal due date. "Ah, she said it right here after he said it right there." There is no amendment after the due date, not for a quote, not for a bid, not for a proposal, okay? what they really mean is though, is you can send notices out after the proposal due date, because that is still the way that we are going to communicate with everybody. Now, let's recap this. Remember, amendments, if anything changes or something comes up, that's really important to tell the bidders or proposers, we do an addendum, right? Because everybody receives it all at the same time. And we tell the same thing to everybody and it's in writing, everybody with it? Sometimes we have to talk to them after the due date. So we send that out in the same manner, but it's not called an addendum, it's called a notice, are you with me on that thought? Let me give you an example. Typically when I have housing authorities that have an RFP that people is really, people are excited about, well, Paducah just did an annual audit and they got 10 proposals. Uh, that was a bit much. We didn't want 10 but it's okay because there's 10 people.

The nice thing is there's 10 people who want to come to Paducah, Kentucky and audit their program. So what does that mean about the price? Pricing was probably very aggressive. They wanna come there and I think it's because in this area of Southern Kentucky, Northern Tennessee, there are tons of these mid and small size agencies. So my guess was these other, these firms all have somebody else in the area. That's gonna be good for Paducah because they get economies of scale. There's more people to audit there already that they've received contract awards, so that gave them a better price. However, this is what usually starts and tell me if this has happened to you. We start getting, we received the proposals on Wednesday, and by Friday, we're receiving phone calls, "are we there yet? "Are we there yet?

"Have you made a decision yet? "Are you there yet?" Are you with me? Does that happen to some of you? Yeah, and it takes at least 30 days and maybe 60 days to evaluate proposals, so I immediately put out a notice on my software that says, "the purpose of this correspondence "is to first thank you for turning in a proposal, "we are very grateful for your interest in doing business "with our housing authority. "It is also to inform you that we anticipate "but do not guarantee, that we will have our evaluation done "within 60 days," and I give 'em a specific date, "please do not call us until that time, "if we have any questions of you, "do not call us pertaining to this issue, "if we have any questions of you, "we will contact you directly, "thank you again for responding." Now, we don't get those calls, "are we there yet? "Are we there yet?" Yeah, and that's a proper notice. It didn't change anything, it just informed people. Now, there is a thing that we can do called a competitive range, or a best and finals.

First of all, there is no such thing as "amendment after the competitive range," that's the title from the handbook, it's a notice, right? If you ever decide to cancel an RFP, you have to document everything to the file, everything as to why you're canceling it. Now, here's the competitive range, let's say we got five proposals, and we did an evaluation, and on a 100-point scale, you with me? They came out to 96 points 95, 87, 73 and 56. And let's say that we looked at this and we said, "hmm, there's a close grouping there, "let's see if we can get separation "in our evaluation process going forward, "by interviewing the people we think have a chance "to get an award, receiving new proposals and new pricing." Are you with me? That's called a competitive range or a best and final process. Now we have to establish the competitive range. So remember, with everybody we leave in the process, we have to do oral interviews, and that is expensive. We don't make them necessarily come in we can do them on Skype or telephonically, 'kay? But if they live in our area, they can come in. And it's expensive, it takes you another 30 days or longer. And it costs money. Who wants to keep 56 in the process? And before you vote guys, don't feel sorry for people, you're in public housing, I know I know, sometimes when you go to a victim, they cry and the children cry, but who's gonna pay the rent? Are you gonna pay it? And you know that they had money, but they just made bad choices. So what do you do? You go through with the eviction, don't you? It's the same thing with proposal evaluations. Yeah, I know they tried. And they did a real bad job. Now somebody who scored 56 points out of 100, do you want them to audit your firm? No, okay, so who wants to leave the 56 in the process? Raise your hand high, correct, we're gonna eliminate them. And we're gonna send them a letter stating "you're out." "Dear John, you're out. "Note this, John." Now let's make another (audio crackles) look who wants to keep 73 in?

Remember, they've gotta overcome all these points up here. No feeling sorry for anybody for trying. You know 73 is three points above failing right? The international (audio crackles) is 70 points, 69 fails 70 is a D. Who wants to keep 73 in? Good nobody. Now it might get a little dicier who wants to keep 87 in, everybody else in, raise your hand. Okay, hold on, just keep 'em up. One two, three, four, five, six, seven, okay. You don't vote again, 'cause you kept everybody else in. Who wants to keep 95 in? One two, (mumbles) lots. And who only wants to keep 96 in the process? Now hold on a minute, if any of you had voted, I would say you're completely in your rights, you do not have to redo the evaluation. However, I agree with your assessment, that this is the competitive range. These people get an email stating, of notice stating, "we're grateful for your interest however as the result "of our initial evaluation, you have been (audio crackles) "in the competitive range, we expect to be done "with this entire process in the next 60 days. "And at that point, we will offer you your right "for a debriefing and the right to protest." Not now I'm not gonna talk to 'em. They're out they have no chance. Now these people stay in, "congratulations," they get a notice, "congratulations, "you're in the competitive range, we're gonna meet with you "that day at 9 a.m, 10:30 a.m, 12 p.m." We're gonna meet with each of them, we're gonna talk to them, we're gonna ask them questions,

they're gonna ask us questions, we can discuss anything in their proposal except the price. And then, and by the way, I have forms for this, so just ask for 'em if you ever decide to do it, and I'll give them to ya'. And then we're gonna re-vote. They're gonna turn in their new proposal, their new price if they wish, and we re-vote, and this is scored 96, and this is scored 96, and this is scored 98, and that's our winner. That's called a competitive range or best and finals process. It takes a lot more time than I have today to teach you all of that, but I want you to know that that's available to you.

However, I would say that I do this in one out of 20 RFPs. Which mean I do about 100 RFPs and bids a year with my clients. I would say that I do it maybe three or four times a year at most. We don't do it a lot. Any questions about competitive range or best and finals? Okay, we do, we receive, let's go back, we receive the proposals we date and timestamp 'em. We hold them sealed. This is way back from the submittal deadline. We hold them sealed until the deadline has passed. We do not open them publicly. Did you hear me? Some housing authorities say "ah, we open 'em publicly, "just to make everything good. "Make it clear make it fair." No, that's not good, not good at all. Once the proposal evaluation is all done, you have to publish all of it in almost every state, would it be appropriate to advise, to share evaluation responsibilities for two small APHAs, to share staff to help evaluate each other's proposals? The answer is absolutely. You give them a courtesy they'll give you one back. Just make sure that however many evaluators you have, that your housing authority is the majority on the evaluation panel. Evaluating proposals, and we're gonna get into that more now, requires certain elements to ensure a fair and transparent process and to get to value. Yeah, the elements are fairness, disclosing any conflicts of interest. They must be published in the RFP. And after the proposal deadline, you cannot change factors. What about "Mike, we wanted to change the factors ""cause once we received the proposals, we have somebody "that we wanna key-eliminate and keep out of the process, "so we need to change the factors so we can--" That's all fraud. You put 'em in the fact right up front, yeah. And by the way, we use RFPs to keep people from getting awards, people that we know are really bad. But you're gonna have to write it all down as to why you gave them low points, and what are the bad acts they did, including poor work for us previously, yeah. It's just that we can't change the process later and suddenly decide that we want to change the points, they must stay the same after the deadline.

Now, if you change it before the deadline, make sure that you give people plenty of time at least a week, to consider those changes before the deadline, so you may have to extend the deadline. Evaluation factors must indicate the criteria used, what are we gonna rate them on? Typical factors are understanding of the work and I like to put the word 'demonstrated' in front of everything, their technical approach, the quality of the work plan. You don't have to use all of these just ones that you think apply, technical capabilities, experience performing similar work, successful past performance I like, and proposed cost, that is not a technical factor, it is a cost factor, remember that when people evaluate the pricing, evaluation committees do not see the proposed costs. When you have evaluation committees evaluation proposals, do not allow them to see the cost or evaluate the cost. Cost is objective and done on a mathematical calculation, not on a warm and fuzzy method. All the factors are done on the warm and fuzzy method. People look at it and say "do I like it?" If they do they give higher points, if they don't? All this stuff about experience and the work plan, it's all done based on an opinion, not a fact, an opinion. Factors and weighing combined, you prepare- the you do conduct the evaluation, you have maximum point values for each fact and then you have an evaluation sheet, no longer, no not only so you can have the factors and the points to assign, but I give each evaluator a full eight and a half by 11 sheet of paper to record their impressions for each evaluator.

That means if I have 10, proposers, I had 10 evaluation sheets that they fill out and do their written narrative. What are their strong points, weak points, that is a requirement by HUD. Some people do the point sheet and then they have a little box about an inch by an inch that says 'comments,' inadequate, does not meet the standard for the HUD Handbook. The committee would be comprised of people who have knowledge, for instance, if it's an annual audit RFP, I think you're gonna have mostly finance people on there. Not a commissioner. The only time that commissioners are appropriate for evaluation panels are for legal services because (audio crackles) the legal role so represents the board, and for developers, other than that, commissioners need to not be on panels. commissioners are not staff. That gives them too much input too much authority. Frankly, my opinion, commissioners need to not be dealing with staff at all other than, "how are the kids?" "Good to hear your illnesses over." You know what I mean? The commissioners are the boss of the executive director, not of the staff. I had a commissioner come in one day and fire me. She was angry. She wanted some done and it was illegal, I couldn't do it. And I just stood there and she said, "get out" and I said "no" and she said, by the way, the mayor kicked her off, two weeks later, he was done with her. So she threatened me and I just stood there and said, "you need to go see the E.D," "you need to go see the E.D." She had too much input into the process. By the way, she had been on an evaluation panel for this service, and I think it led her to believe that she had more input as a commissioner, than she did. No the security guards services were the purview of the executive director and the operations, the COO, Chief Operations Officer, not her purview, yeah. I recommend always an odd number, three or more. Anybody who serves on must disclose their conflict of interest, you must give them a form they sign, where they state, "I do not have a conflict of interest." Evaluation committee tasks. We're first gonna have an individual review.

That means the individuals are gonna do their review. We have a consensus review, it says "if necessary," I don't recommend it, but that's fine, if you wanna do it. Then there's a rank you have to rank 'em. You saw the rankings on that last form that I showed you, correct? Very good, and then it is potential that you do negotiations, but remember the negotiations happen under the best and finals process, not this kind of a negotiation. "You bid \$7,000 a year, will you do it for six?" That is entirely inappropriate. It's not appropriate to give them targets or to try to work somebody down on their price. It's not appropriate. There is an evaluation report, 'kay? The valuation report will explain a narrative on how the process happened and the scores were derived the methodology, showing the methodology for the ranking proposals, the strengths and weaknesses for each proposal, by the way that's in two spots, that's the recap of the responsiveness review, by the contracting officer, and then it's for the evaluation narratives that they fill out. That's where those are, and then all documentation and justification for award which is the final rank, and all the due diligence and did they qualify? Remember, everything needs to be in the file. I'm gonna say this for about the fifth time, but it is so important and it will help you so much. When you start an RFP or a bid or a quote, you get out a three ring binder, get the checklist, get the file started, and as you do stuff, you put it into the file then. If you're so busy that that second you can't open the rings and put it in the proper tab, put it in the, what's that called the folder that, the envelope that's placed, pocket. Yeah, that's the hard word to remember, (participants laughing) in that pocket in the front, but then go back to it and get this stuff in the file. Do not get called for an audit, or somebody drop in for an audit, and you say, "oh, I have some stuff over here, and I think I "hold on, I think there's some stuff in this drawer, "gimme 15 minutes, let me go through it." Don't get caught like that.

That's prime areas to be audited. You know what I mean? It just doesn't look good. But if you have an organized file, I've had auditors drop into some of my clients and leave within 30 minutes, their files are so complete. I have all (audio crackles) my people have a bookcase,

they have all the files right up there, right there. The three ring binders with you know, labeled. And they say, "well, let me see this RFP" and they look and they go, "let me see one you're working on now" and they look at it. And it just happened in Alabama, (audio crackles) she called up and she said, "you know what, they just said (audio crackles) "we'll go somewhere where we're needed." Because she was so organized, yeah. It's nice, can't guarantee that'll happen, but it's happened a lot. Determine the competitive range. We've already gone through this right here. You determine which proposals move on to the next phase. They're in the competitive range. We did the vote right there. We review the report, which have approved incapable are the offers reasonable? Offers meeting both standards are kept in the range right here. We classify proposals into different categories acceptable, potentially, and unacceptable, that's fine. Acceptable and these two are acceptable, this was potential and these were unacceptable so we deemed. You can however, just award without negotiations or doing the competitive range. And I do that my clients do that for the vast majority of their proposals, why? There's usually enough separation that they don't wanna go through that whole process. It would be wasted time they have a top rated firm they like. Remember when you do your cost price analysis, and I have a form for this, of course, profit is always gonna be calculated separately, especially when there is no competition or every time you do a cost analysis. You will eventually determine whether or not a quote, a bid (audio crackles) all three of them, but we're in the RFP section now, whether a proposal is fair and reasonable for profit based on the complexity of the work, the risk that the contractor takes, the contractor's investment, the amount of subcontracting, past performance and industry rate standards. After everybody has been asked right up here to resubmit proposals, we conduct a brand new evaluation based on the same evaluation factors. And then, we determine who gets the contract award, which is the top rated firm.

I can't hold you chapter and verse where it says that, but that's what the whole evaluation means is who's the best offer? I once was called into Virginia and the board called me in and they were discussing and there were the top two evaluators top three. The bottom one was 73 points, and the top rated one was 95 points. And the board wanted to award to the 73 points. So I told them, and I said, "I'm not an attorney, but you have an attorney sitting here, "and what you're doing is a kin to fraud. "I'm telling you don't do this." They did, they awarded to the lowest rated one. They were eventually all removed. But they chose this process because this is how we get the best rated firm. You know what I've told boards, "if you don't like "what staff rates then you rate them yourself, "you take the rating." And they say, "no, we don't wanna do that, "that'll put us at risk." Well, you're at risk anyway. Contracts are awarding according to the terms of solicitation, by the way, I put all my contracts in the RFP of the bid, absolutely. They're right in there, they already know and I don't negotiate terms. Do you guys have people ask you to negotiate terms? Use and implement my processes and you won't do that. Unsuccessful offers, receive that note that I showed you, everybody receives it, the notice of successful offer. And then it gives them the right to a debriefing and to a protest, but by a certain date. Let's talk about A and E, we have now done the RFP. Let's talk about A and E, we have now done the RFP. We are gonna now do the RFQ, which is a form of an RFP an adjusted form. And this is architects and engineers. This is the most common usage of the request for qualifications method, which is also called qualifications based selection. There's two names for it, but they both mean the very same thing. We use the RFQ to solicit proposals for architects. Now, I'm pretty sure that New Mexico is one of those states that by state law, state statute requires you to do the RFQ method for architects, not an RFP. You are not allowed to solicit pricing. Does anybody have any knowledge? Well, it's part of the CFR that HUD allows RFQs.

I would rather do an RFP for architectural work. I'd rather solicit the pricing. But almost every state all but about five states do not allow an RFP. They say "you have to do an RFQ." The main difference between an RFQ and an RFP is with that a request for qualifications, the architects do not submit pricing, you negotiate it after you evaluate them on who's the most qualified. I'm very confident saying that New Mexico requires the RFQ method. Because I've done RFQs here for architects before and we checked it out then. So we're using the request for qualifications, that means we're gonna adjust the RFP, so cost is not discussed or received, everybody with me? That's an RFP, no, an RFQ cost is not received. You do the highest rate responded. There's no need, as you asked to withhold price from the evaluators because there is no price. We typically use the RFQ method only for A and E or developer contracts. There's a few other specialized services that we can use it for. We'll talk about them later tomorrow. The RFQ must have a though, clear scope of the work they're gonna do, because even though they're not gonna give you a price right now, they are gonna tell you why they're qualified to do that work. Typical factors for an RFQ for architects are a bit different than RFPs and includes the ability to perform work in a timely manner. You know, you see, when we have architects, their work is usually tied to rent loss, agreed? We've gotta get work done, so we can start receiving rents on properties that have to be rehabilitated. That's very typical, 'kay? We're gonna also check 'em on their past performance, we're gonna have a factor for that. And we're gonna be pretty strong on that 20 or 30 points. And their knowledge of local building codes. Now some people say, "Mike, you told me I can't select "somebody based on the location of the firm." That is absolutely true, however, if you're gonna evaluate an architect to do work in your area, where there are certain building codes that may be different than other areas, if they've done work in your area before, don't you think they might probably be more efficient and effective working with you? If they already know a lot of those local codes? The answer is yes. So therefore, we're gonna give them extra points for understanding of our local building codes. Again, we're not gonna tell them they have to be in our area.

They only have to have knowledge about our area an experience in our area to get those upper points. And then any other factors important to the PHA. Let's see architects in every state have to have a state license to do architectural work correct? In Nevada, you cannot even respond to an RFQ for architectural work unless you have a license in place in Nevada, either through a Nevada license or a reciprocal agreement from another state and the fine is 25,000 dollars for turning in a proposal. How many points should we give them if they're not debarred by GSA or HUD? Do you think that should be five or 10 points? There was a HUD website that had a sample RFQ on there. It was in a state I won't mention. And I went on to some people, clients of mine said, "go look at it," and I looked at it. And there was 20 points for having a license and 30 points for not being debarred on this sample RFQ. I called the office, you think they would have been grateful but the person who, they gave me the person who put it up there, was not happy. I was as kind as I can be. And I told them, "I just want to show this" and he goes, "yeah, thanks" click. It bothered me so I called the Field Office Director who I'd had some dealings with, and I said, "can I just show you" he goes, "yeah, the guy just came in "and said you were very rude to him on the phone." And I said, "can I show you what I showed him?" And showed it and the minute the field office guy opened the page that had the points, he goes, "oh my, "yeap, that's a problem, thank you, "yes, (chuckles) let's get that off of there." Because you don't give points for threshold factors. We don't give points to people for having a license when they're required to have it, not being debarred, that sort of thing. There are two ways to do the solicitation. One is the direct approach, where you do it for a specific service. Every time you need an architect, you do knew RFQ don't do that, do it the pool approach, which is (audio crackles) for architectural services, and especially you larger agencies, please listen up, and I make all firms who submitted eligible for an award at any time during the next five years. That means that if I evaluate, do an evaluation and I got a best firm today,

I might reevaluate when my needs change, and be able to evaluate for an additional like, say, for instance, if I was to replace elevators in buildings, and my current architect has no experience, there may be other architects or engineers who responded, who do have experience with elevators, then I can reevaluate. So I do the pool approach where everybody is always eligible for an award later. Okay, let me explain this pool award. Let's say that eight architects and engineers respond to my RFQ. And I have some jobs coming up that we know are rehabilitation specific. So I want to potentially make an award to somebody who's done rehabilitation before. So, I just wanna make sure I'm on the right path or what you asked. So when we do that evaluation, we make that evaluation rehabilitation specific and we make an award to the top rated firm, and then we hope to negotiate with them the fee. Are you with me? However, let's say later, I'm gonna build a newly constructed development. I might choose to reevaluate those with people who have done new construction, heavy experience there. Or I might replace elevators in a building. No my scope of work for this art, see you're thinking of this specific RFQ for a specific one project. No, this scope of work, contains everything from rehabilitation to, remember I have no drawings, I just have concepts, so I include everything in this scope that an architect might potentially do. Everything, rehabilitation, new construction, elevators, roofs, everything, but I reserve the right to make separate awards at any time in the next five years, to different firms that show a experience in those different areas. And that requires a new evaluation. It works, it does, yeah it works. By the way, this is the only kind of service I do that for, except for legal, I also do the same thing for legal. I'm not stuck with one legal. Now, let me tell you why I do not want you to make awards from architecture work, based on indefinite quantity contracts. What I'm talking about right here is not an indefinite quantity, though, it eventually could look like that later, because I want you to hire architect based on their specific knowledge of the specific area that you're gonna have a job done for. So see, in a way, the thought that you would do a new RFQ every time, is kind of the way I'm doing it, It's just we're not doing a new RFQ, we get as many people to respond as possible.

And I've had upwards, some of my clients have 10 or 15 firms, and then we simply re-evaluate every time for the specific scope of work. So we're doing the same thing except we're not dragging everything down. 'Cause remember, an RFQ takes three months. If they have experience in those areas, but you have to conduct a new evaluation, you just don't have to repost everything. And I write all of this upfront to let everybody know, "look, you wanna turn in a proposal on this, "to the Albuquerque Housing Authority, "because you may not get an initial award, "but you might get one, two or three years down the road, "if we re-evaluate for specific areas "that we had not procured for before." I've done this and I've done 50 or 60 of these and it's, it really speeds up the process. But this awarding this open indefinite quantity, uh-uh I don't do that, and the reason is, I want the architect to have, I want to ensure that the housing authority ascertains that the architect has specific knowledge in those areas that you're now gonna contract to for them, so that they will do a better job, okay. So it's really kind of a hybrid of what you were just talking about, really in a way, yeah. (participant mumbles) There's a lot of engineering firms around the country, who work jointly with an architectural firm to stamp their drawings and such, when the state requires it. But the engineering firm is very skilled at all of these drawings and everything that we need. Well, yeah, I wouldn't have as many civil engineers doing that, as I would, no I would have more civil engineers doing that, than I would specific electrical engineers, 'cause that's a very small portion, I said that backwards. But it works, okay, we'll talk about it again and I'll show you what I have. All I want you to know is for architects and engineers, the proper form is form HUD 51915 to contract with them, not the AIA document, are you with me? Gifford's eight gospel says "he or she who writes "the contract, the contract is in favor of." The AIA document is written by architects, for architects, and therefore, it may not be in your best interest, maybe. I know there's clauses in there that I

do not like. However, HUD has given you a form so here's my thought. HUD says you must use this for everything over 100,000 why not use it for architectural work for 50? I mean, I'm still waiting some day for somebody to tell me, why not use the HUD form? Because when I do work, my clients, whenever there's a HUD form, that is the form that we use, are you with me on that thought?

Use the HUD forms, it'll give you a lot less grief. Legal services. HUD states, for legal services, that there are four different ways you can buy legal services, but I'm gonna tell you some they state this in the handbook, but I'm gonna tell you something, only one of 'em is actually practical and realistic. They said you can do a quote for legal, do you wanna hire your legal counsel based on the lowest cost? Okay, well, they said you can do a bid too, so do you wanna hire on the lowest cost? Okay, HUD says you can do it non competitively, how? What's the justification for not doing a competition, I guess if you have an emergency, but is the emergency where we've never done an RFP and now we know we need a legal firm, so let's sign a contract for a year? I'm just trying to find out what the emergency might be. No, the only realistic method to retain legal counsel is through an RFP, where you consider their experience their qualifications, their past performance, and you get a price. My legal RFP signs surprise factor at 20 points. You can make it anything you want, but I wouldn't go much lower because then price will have almost no bearing on the award. Yeah, remember that we are typically going to it is not realistic, typically, to retain legal services through a firm fixed fee bid. Except we do it on the time and materials contract pre-priced, so therefore, we get hourly fees from the legal counsel. Oh, I'll need to go back to something on architectural. When you negotiate your price for an architect, you must not negotiate it as a percentage of construction cost. That is a violation of chapter (audio crackles). The percentage of cost contract is a violation for architects, are you with me? Remember, if you sign it on a percentage of construction cost 10%, for instance, and they bring you a change order, would they be motivated to approve the change order or to have you disapprove it? They might be motivated to approve it because they get 10% of it. Percentage contracts for architects are not legal, are you with me? You got it, 'kay. Remember Albuquerque, do you have an in house attorney, an employee that's your attorney? You do. (participant mumbles) Right, so you have a outside counsel for other things but the in house secretary okay. That in house attorney, 'cause does anybody else have in house attorney? I don't think you're large enough to, oh, you do, who are you?

Oh Santa Fe, that's right, you guys are larger too. That attorney is not subject to an RFP. They are an employee, and are therefore hired under employee issues, not on RFP. Okay, that's first. Secondly, that attorney cannot maintain an outside office practice while they're employed at your agency. Yeah, I just did an audit at the housing authority and the attorney did and my suspicion was they were spending all their housing authority time doing outside work. Have a look at that, am I right? Yeah, no attorneys like that, okay. They can do outside work, but it has to be very unsubstantial and probably they would do it as favors to people 'kay? Remember, every contract, HUD expenditures over \$100,000 for legal services litigation, must have Albuquerque's approval, Albuquerque HUD office. - Field office. - You're the regional office, yeah? (participant mumbles) Fort Worth, okay. Okay, sorry, I thought you were, you're field office, okay. must have had regional approval. litigation only, not everyday legal matters, just issues that have are in court, expenditures over 100,000 must have prior regional office approval and matters over, litigation over 300,000 must have both regional and Washington DC HUD approval. Question here. (participant mumbles) For the only things you can do an RFQ for is architects and developers. Therefore, the accountants, legal counsel all must be an RFP. And I have a sample just ask me for it, I'll send it to you. Okay, now, this is just litigation not every day legal advice that they give 'kay. There is a contract addendum for legal counsel that HUD says "we'd like you to give it to your attorney "and have him sign it." Good luck with

that. I've never met an attorney who will. It violates attorney client privilege. So good luck. It's not mandatory. They would just like you to give it to them and have them signed it if they will. Good luck. 'Kay. Employment contracts are not, now executive, but sometimes deputies executives have the contract and legal counsel has a contract. Again, the executive director's contract is not considered a procurement.

Therefore, there is not any, it is not necessary to do an RFP to retain your executive director. They come aboard based on a search employment type issues, 'kay. Those employment contracts, though, are governed by HUD rules. And for instance, there's a limit on executive director contracts on the years, is it three years? I think it's two or three years. There's a limit. Yeah, there's a limit on those how long an executive or a deputy or a legal counsel, that's an employee can have the contract. Anytime you hire independent contractors it is a procurement. For instance, it's a procurement it's subject to competition. For instance, if you hire a contractor, your executive director leaves for whatever and you hire a contractor to fill in, then you have to do an RFP, typically. Although I will tell you I know people who have consulted with HUD and have gotten a waiver at certain times, why? Well, because the housing authority (chuckles) is desperate for somebody to come in and fix issues. Things have to be straightened up so you might get a waiver 'kay? HUD requires, oh, yeah, its longer than two years. Contract forms, yeah. And HUD recommends two years with three one year options. But remember, the options are gonna be on the discretion of the housing authority, not the executive director if the options are put into place, but I do the same thing with contracts for professional providers of services, yeah. HUD states, for legal services, that there are four different ways you can buy legal services, but I'm gonna tell you some, they state this in the handbook, but I'm gonna tell you something, only one of them is actually practical and realistic. They said you can do a quote for legal. Do you wanna hire your legal counsel based on the lowest cost?

Okay, well, they said you can do a bid too. So do you wanna hire on the lowest cost? - No. - Okay, HUD says you can do it non competitively, how? What's the justification for not doing a competition? I guess if you have an emergency, but is the emergency where we've never done an RFP and now we know we need a legal firm? So let's sign a contract for a year? (chuckling) I'm just trying to find out what the emergency might be. No, the only realistic method to retain legal counsel is through an RFP, where you consider their experience, their qualifications, their past performance, and you get a price. My legal RFP signs surprise factor at 20 points. You can make it anything you want, but I wouldn't go much lower because then price will have almost no bearing on the award, yeah. Remember that we are typically going to, it is not realistic, typically, to retain legal services through a firm-fixed fee bid. Except we do it on the time and materials contract pre-priced. So therefore, we get hourly fees from the legal counsel. Oh, I'll need to go back to something on architectural. When you negotiate your price for an architect, you must not negotiate it as a percentage of construction costs. That is a violation of chapter (audio crackles). The percentage of cost contract is a violation for architects. Are you with me? Remember, if you sign it on a percentage of construction costs 10%, for instance, and they bring you a change order, would they be motivated to approve the change order or to have you disapprove it? They might be motivated to approve it because they get 10% of it.

Percentage contracts for architects are not legal. Are you with me? You got it? 'Kay, remember, Albuquerque, do you have an in house attorney? An employee that's your attorney? - Yes. - You do. (participant mumbles) so you have outside counsel for other things but the in house side attorney okay. That in house attorney 'cause does anybody else have an in house attorney? I don't think you're large enough to. Oh, you do? Who are you? - Santa Fe County. - Oh Santa Fe, that's right, you guys are larger too. That attorney, is not subject to an

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