

# Public Procurement Practice

## REQUEST FOR PROPOSALS (RFP)

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*Note: RFPs, evaluation criteria, and the evaluation process are all integral to the RFP process. This practice consolidates, updates, and replaces the previously published practices of Request for Proposals, Developing Evaluation Criteria, and The Evaluation Process. We are indebted to the authors of these practices and to the team who worked on Developing and Managing Requests for Proposals (DMRFP), Third Edition.*

The guidance in this practice is offered to clarify concepts and identify elements favorable to achieving a successful outcome using the RFP process. Application of guidance in public procurement practices will depend on the laws, procurement codes, ordinances, trade agreements, and policies of each entity.

**Note: This practice is presented in two parts. SECTION 1 covers THEORY and SECTION 2 covers PROCESS. Numbering will reflect this division.**

### STANDARD

A Request for Proposals (RFP) is a solicitation document issued through a competitive procurement method. An RFP is used when the requirements are not clearly known, are qualitative rather than quantitative, or when the entity is looking for a solution to a problem. An RFP tends to be utilized for technical and complex procurements as proposers are encouraged to offer creative and innovative solutions customized to the entity's needs. The evaluation of proposals requires pre-established criteria and processes, which are used to select a proposer(s) for contract award.

*A key benefit of the RFP process, when warranted, is the ability to engage with proposers at various stages of the RFP evaluation, i.e., clarification, negotiation, dialogue.*

#### Definition

**Request for Proposals (RFP):** The document used to solicit proposals from suppliers for commodities, i.e., goods and services. Selection is based on the evaluation of criteria and most often includes price.

### SECTION 1: THEORY

Procurement professionals should keep the end in mind when first drafting the documents for use in the RFP process. RFPs could include debriefs, protests, and audits. The successful outcome of a procurement is dependent upon policies, procedures, planning, process design and execution, decisions, actions, and inactions. All aspects of an RFP are subject to public scrutiny.

#### Professional judgment

*The procurement professional applies judgment, experience, professional knowledge, training, best practices, lessons learned, and ethics throughout the preparation and execution of an RFP.*



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### **Element 1.1: Establish policies and procedures for using an RFP.**

Procurement policies and procedures are the foundation for a consistent, ethical, and transparent process for selecting a proposer for contract award. Entities should dedicate a section of their procurement policies and procedures to describe the use of a competitive process from development of the RFP through contract award.

Policies and procedures should address:

- The roles and responsibilities of the procurement professional and the evaluation committee.
- The authority, including the authority to delegate, of a legislative body or individual to award the contract.
- Procurement's responsibility for determining which competitive method is used.
- Protests, errors, or anomalies that may be encountered during the competitive process.
- Debriefs.
- The nature of the procurement and if it warrants an opportunity for information exchange and possible proposal revision.

### **Element 1.2: RFP types and evaluation methodology**

There are many different types of RFPs, some variations are simpler, others include multiple stages. Procurement professionals should select the right type of RFP to achieve the best possible outcome for the specific project.

Considerations in selecting an RFP:

- Entity seeks the best solution from potential proposers.
- Whether engagement with proposers is warranted, i.e., clarification, negotiation, dialogue.
- Entity knows general requirements, outcomes, and desired results, but not the solution.

RFP types include:

- RFPs without Negotiation.
- RFPs with Consecutive Negotiations.
- RFPs with Concurrent Negotiations aka Best and Final Offer.
- RFPs with Dialogue.

Procurement professionals should select the right type of RFP to achieve the best possible outcome for the specific project. Before issuing a Request for Proposals (RFP), procurement professionals and stakeholders must create an evaluation methodology by which the resulting proposals will be evaluated to identify the top-ranked proposal. To the extent possible, templates should include built in flexibility to allow the procurement professional to customize the RFP evaluation methodology.

Methodology items stated in the RFP:

- Criteria and weights
- Formula for calculation of scores for price
- Overall process, short-list
- Optional steps with process and conditions for use

Methodology items not stated in the RFP:

- Method of reaching consensus
- Roles and responsibilities

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The evaluation criteria and their weights must be stated in the RFP with sufficient detail to enable the proposer to know what information to include in their proposal. Any changes to the criteria and weights published in the RFP must be communicated to all interested parties using the same method through which the RFP was issued, and before the deadline to receive proposals.

The RFP must also state how the proposals will be evaluated, including evaluation steps and the conditions that must be met to advance proposals through the evaluation process. Evaluation steps include evaluation of the mandatory and scored criteria, as well as short-listing, demonstrations, interviews, and a request for best and final offers (BAFO), which may or may not be permitted by the RFP.

### **Conveying the importance of criteria to achieve successful outcomes**

Care must be taken when defining the evaluation criteria and associated weights, specifically when assigning a weight to price relative to non-price criteria. Assigning weights incorrectly may lead to an undesirable outcome.

Price, for example, may be an important element in proposals submitted in response to an RFP. However, the award recommendation is based on all factors, including price, but never made on price alone. Based on the entity's goal or expected outcome for the solicitation, the entity must determine how price will be evaluated and select the appropriate weighting and formula. There are a number of methods to incorporate price into the evaluation methodology stated in the referenced textbook *Developing and Managing Requests for Proposals* (DMRFP).

*To optimize the strategic value of Procurement, departments should involve Procurement early for the best outcome.*

### **Element 1.3: RFP Structure**

The entity should develop a standard RFP format or template grouping like information into customizable sections. A well-structured document used consistently is beneficial in the following ways:

- Helps build capacity and achieve efficiency through a familiar and more readily comprehensible format for both staff and proposers
- Makes it easier for the proposer to respond
- Reduces drafting, assembly, and review time
- Structures content

Entities will determine specific section headings and content. The RFP document should detail in a clear, organized, and consistent manner the conditions, procedures, evaluation criteria and process, as well as requirements.

#### **Instructions to proposers should include:**

- Submission method, location, and deadline, i.e., date and time, manner.
  - Electronic submission requirements, e.g., file format and functionality such as a searchable PDF versus a scanned document to PDF, file size limits, image quality
- Proposal format and content requirements.
- Process and designated point of contact for questions, clarifications, and addenda.
- Process for protests.
- Details on pre-proposal conferences, if any.
- Page limits.
- Mandatory requirements, if any.



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- Entity-provided response form(s).
- Schedule of solicitation activities, timelines, and milestones.
- Confidentiality, public record laws, entity policies, release of proposal information and results.
- Background: History and context for the desired outcome.
- Negotiation terms for the RFP, e.g., terms and conditions, scope of work, pricing, timeline.

#### **Scope of Work and Specifications should include:**

- Overview of the project, including background information.
- Entity's problem, challenge or issue, and desired outcome(s).
- Design and technical requirements.
- Performance requirements.

*The "Specifications" Global Best Practice, available on the NIGP website, includes tips for writing specifications.*

#### **The evaluation methodology and selection process should include:**

- Evaluation criteria.
  - Weighting of each criterion
  - Formulas or calculations to be used for scoring
  - Responsiveness and responsibility requirements
- Information for interviews, presentations, or demonstrations.
- Negotiation terms and the process to include exceptions/alternatives.
- The method of contract award, e.g., single or multiple award, highest rated proposal(s).

#### **General Terms and Conditions should include:**

- Definitions.
- Governing law.
  - Rights, e.g., cancellation, addenda
- Protest policy.
- Clauses applicable to the solicitation process.
- Entity preference programs.
- Not to exceed budget, competitive range.

#### **Conditions for Participation**

A procuring entity must include the conditions for participation in the solicitation, if any. Suppliers may be eliminated from consideration for award on grounds such as:

- Bankruptcy or insolvency.
- False declarations.
- Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts.
- Final judgments in respect of serious crimes or other serious offences.
- Professional misconduct or acts or omissions adversely reflecting on the commercial integrity of the supplier.
- Failure to pay taxes.

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### Special Terms and Conditions

Terms and conditions may vary according to the specific procurement. This section should include:

- Definitions.
- Delivery location.
- Shipping terms.
- Warranty requirements.
- Performance requirements.
- Public Records and release of RFP information and results.
- Performance bond.
- Entity preference programs applicable to the RFP.
- Minimum qualification requirements.
- Contract term and renewals.

### Forms

An RFP should include required forms for the proposer to complete and submit with their proposal. Provision of forms helps the proposer prepare an organized and concise proposal. This typically results in shorter, concise, well organized proposals being written with more consistency in structure and content and, therefore, easier to review by the evaluation committee.

Forms for proposers' use may include:

- Submittal checklist.
- Administrative information such as a cover sheet.
- Certifications and assurances, insurance, bonding.
- Proposer knowledge and experience.
- Experience of proposed key personnel (resumes).
- Work plan and approach.
- References.
- Cost schedule, pricing sheet.
- Exceptions to the contract terms and conditions.
- Questions or clarifications.
- Open-ended questions to gauge proposers' level of expertise.
- Risk identification and mitigation plan.
- Value-added options or alternatives.

The RFP should include or reference the entity's proposed contract for review and subsequent acceptance upon award. Depending on the negotiation terms, proposers should be instructed to declare in their proposals any terms to which they take exception.

*The ability for proposers to take exception will vary by jurisdiction or entity. Best practice recommends proposers declare any exceptions within their response to the RFP. Exceptions in some jurisdictions may result in a determination of non-responsiveness.*

### Negotiation

Procurement should develop a negotiation strategy, then craft the provisions of the RFP to reflect that strategy. The strategy should include the identification of team members who may be required to participate should negotiations occur. The procurement professional is an integral part of the negotiating team and should take the lead role in crafting the negotiation strategy. The team should be limited to those members with essential skills or knowledge necessary to reach a sound agreement.



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The procurement professional will prepare a negotiation strategy using the following considerations:

- Project risk exposure
- Entity risk tolerance
- Which components of the RFP are negotiable e.g., scope, terms and conditions
  - Explicit exclusions i.e., insurance, limitations of liability
- The negotiation process, e.g., short listing, concurrent, Best and Final Offer (BAFO)
- Pricing, both amount and structure
- Price escalation clause
- Timelines
- The mechanism for the proposer to identify proposed changes
- Steps to take when negotiations fail
- Type of commodity
- Entity policies
- Market conditions
- Level of negotiation expertise and skills of the entity's procurement and legal departments' staff
  - It may be beneficial to consider supplementing the entity's expertise by engaging a negotiation consultant or investing in negotiation training
- The entity's Best Alternative to a Negotiated Agreement (BATNA)

If allowed, each RFP should state what may or may not be negotiated, including:

- Contract terms, such as insurance, limitations of liability, indemnification, delivery, and payment terms.
- Proposed solution, value-added options, or alternate proposals.
- Warranty.
- Scope of Work.
- Terms and conditions.
- Pricing, compensation, payment structure, discounts, trade-ins.
- Incentives, penalties, liquidated damages.
- Optional or additional components as identified in the RFP.
- Other items as favorable to the entity.

*A well-crafted and executed negotiation strategy contributes to achieving the best outcome for the project.*

#### Element 1.4: Determination of Proposal Responsiveness/Compliance<sup>1</sup>

Responsiveness is the proposal's compliance with objective mandatory submission requirements such as the correct number of copies and authorized signatures, proof of insurability, bonding, and certification as required in the RFP. A checklist including the responsiveness requirements is an effective tool to help prevent compliance issues.

*Procurement professionals must consider potential unintended consequences of using mandatory requirements. The use of "must" as opposed to "should" indicates a mandatory requirement, thus imposing unnecessary or restrictive barriers that may discourage a supplier from responding or inadvertently disqualify an otherwise qualified proposer. Whether mandatory requirements are used depends on professional judgment, legitimate operational requirements, and may also warrant a discussion with the project manager.*

<sup>1</sup> Responsiveness is also known as compliance to mandatory requirements

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Determination of responsiveness of a proposal is typically a straightforward process, done as pass/fail, and should be conducted by the procurement professional. A record of the determination and rationale should be kept in the procurement file. Proposals that do not comply with objective requirements are deemed non-responsive. Proposals determined to be responsive will continue through the evaluation process.

Some entities choose to include language in their RFP to allow for resolving immaterial errors or omissions related to mandatory criteria, i.e., rectification, minor informality inconsequential to determination of award. Examples of resolving may include waiving, revising, or clarifying and are applied with professional judgment to each situation.

An example of an immaterial deficiency or minor informality would be a proposal lacking a signature, as it would not give a proposer an unfair advantage. If the RFP includes rectification language, the proposer would be permitted to provide the signature. This opportunity should be applied equally to all proposers.

*Examples of material errors or omissions include anything affecting Price, Quality, Delivery, or Quantity (PQDQ). Rectification of such errors would be consequential to the determination of award.*

### Criteria to Determine Proposer Responsibility

The level of responsibility is determined through the evaluation of the technical requirements and subsequent verification of the general requirements.

1. Mandatory technical requirements:
  - a. The first phase of determining responsibility is to review the mandatory technical requirements, for example:
    - Compliance to technical requirements.
    - Review of equivalents for acceptance.
2. Evaluation criteria
  - a. The second phase of determining responsibility, conducted by the evaluation committee, involves scoring the evaluation criteria, for example:
    - Experience, e.g., level of.
    - Professional ability of staff assigned to the project.
    - Technical approach and methods.
    - Reference checks, past performance evaluations, reliability.
    - Quality of goods or services.
    - Sustainability, e.g., social, economic, environmental.
    - Schedule.

Evaluation criteria used to determine proposer responsibility must be stated in the RFP and should relate directly to the scope of work. Market conditions are also a consideration in the selection of the most appropriate evaluation criteria. Selection of evaluation criteria and determination of their respective weights/scoring should be based on their relative importance to the entity as they can significantly affect the quality of the proposal content and subsequent outcome of the evaluation.

3. Price
  - a. The third phase of determining responsibility is generally conducted by the procurement professional, and involves calculation of scores for price using the predetermined method or formula, which must be listed in the RFP.



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4. General requirements:
  - a. The procurement professional performs a due diligence review, as appropriate, to validate the general requirements before award recommendation, for example:
    - Adequate financial resources.
    - Ability to comply with the delivery or performance schedule.
    - Satisfactory performance record.
    - Satisfactory record of integrity and business ethics.
    - Necessary organization and experience.
    - Necessary equipment and facilities.
    - Otherwise qualified and eligible, i.e., other provisions of law specifying when suppliers are disqualified from or ineligible for award.

The depth and extent of review will depend on the entity's policies, procedures, and the professional judgment of the procurement professional.

#### **Element 1.5: The Evaluation Committee**

Participation as an evaluation committee member demands a commitment of dedication and effort. Members should conduct themselves in a professional manner and not use their position to unduly influence other members of the committee, regardless of their position within the organization. Advance planning is necessary for the efficient and proper execution of the evaluation process. The optimal composition and number of evaluation committee members should be determined by the nature of each procurement, balancing engagement, expertise, and available resources.

The evaluation committee should be vetted in advance by the procurement professional to ensure all members are free of bias or conflict of interest.

Once evaluation committee members are selected, Procurement should provide them with a document, i.e., manual, describing the evaluation process and guiding principles. Ideally, this information would be reviewed during a live training session prior to evaluation of proposals, emphasizing:

- Evaluation committee member roles and responsibilities.
- Communication protocols internally and externally, as well as confidentiality.
- Signature of relevant declarations, e.g., impartiality, confidentiality, conflict of interest.
- Identification of actual, potential, or perceived conflicts of interest.
- The timeline and expectations, including attendance and participation at scheduled meetings.
- The evaluation process and steps to be followed.
- The criteria to be evaluated, how scoring will be applied, and consensus reached.

#### **Preparation and Planning**

The procurement professional should serve as the chairperson of the evaluation committee and facilitate the process. When the role of chairperson is delegated, for example, to the program or project manager, the procurement professional should provide oversight to facilitate and manage the evaluation process. The decisions and actions of the Committee should be properly documented in the procurement file.

It is the Chair's responsibility to:

- Ensure everyone is heard and that all viewpoints are discussed.
- Ensure no member is influencing the decisions or discussion of other members.
- Reinforce the confidential nature of the evaluation process, content, and outcome.



Procurement should conduct training for the evaluators prior to the submission deadline to ensure the evaluation methodology as detailed in the RFP is well understood by all. When possible, this training should be conducted at a time near the proposal due date so the information is 'fresh' in the minds of evaluators when they receive the proposals.

## SECTION 2: PROCESS

### Element 2.1: Executing the RFP Process

Once the RFP is issued, the procurement professional's responsibilities include the following:

- Record the activities related to the solicitation process.
  - A repository of the RFP documents may be paper or electronic
  - The process for record-keeping should be documented and consistent for all RFPs
- Designate a single point of contact for proposers and management of pre-proposal communications.
  - All potential proposer questions and other communications regarding the RFP are to be directed to the procurement professional managing the solicitation process to decrease the likelihood of:
    - Inappropriate sharing of information
    - The appearance of impropriety
    - The potential for a protest
  - The designated procurement professional would consult with the project manager or subject matter expert to gain information to respond to a proposer's technical questions
- Communicate any changes to the RFP via addenda to all interested parties using the same method through which the RFP was issued, and before the deadline to receive proposals.
- Manage, guide, and facilitate the evaluation process. The procurement professional should not be a voting member of the evaluation committee.

*Practitioners should exercise their professional judgment and consider whether the nature of the addenda warrants an extension of the deadline. This may require a conversation with the project manager.*

The receipt, handling, and evaluation of proposals must be carried out in accordance with all applicable laws, the process outlined in the RFP, as well as the principle of ethics, which includes accountability, impartiality, professionalism, service, and transparency. The entity must keep all proposals secure and must maintain the confidentiality of those proposals subject only to applicable freedom of information or public records laws.

Proposals are evaluated against the criteria as stated in the RFP. The entity conducts a comprehensive, fair, and impartial evaluation of each proposal to identify the top-ranked proposal. Scoring results from the entity's assessment of the quality of the proposal, as determined by the proposer's technical approach, qualifications, and experience. A well-documented evaluation process helps the entity support their award decisions.



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When evaluating proposals, members of the evaluation committee must:

- Evaluate the proposals according to the published criteria and evaluation methodology, e.g., established weights for criteria and using the same assumptions.
- Use a consistent approach when scoring each criterion and each proposal.
- Record scores with the strengths, weaknesses, or rationale and include the scores with the evaluation report.

#### Element 2.2: Receipt and Review of Proposals

##### Receipt and Responsiveness

After the proposal deadline, the procurement professional opens the proposal and determines responsiveness by ensuring the proposals comply with the mandatory requirements stated in the RFP.

##### *Non-Responsiveness*

If a proposal is determined to be non-responsiveness and eliminated from consideration, the justification must be documented in the procurement file and communicated without delay to the proposer. Acceptance of a non-responsive submission undermines the integrity of the procurement by violating the principles of impartiality, transparency, and fairness.

##### *Minor Informalities and Irregularities*

When applicable, the procurement professional may request the proposer resolve, or rectify, any immaterial errors or omissions related to mandatory criteria within a specified time, as stated in the RFP.

##### *Responsibility*

Responsive proposals are then subject to the evaluation process, which determines the level of proposer responsibility through evaluation and scoring of the technical proposal. Evaluation of the technical proposal may consist of multiple steps or options such as:

1. Score initial technical evaluation.
  - a. Seek clarifications, as needed
  - b. Establish shortlist based on scoring
2. Conduct dialogue or discussions, interviews, presentations, demonstrations, according to stated criteria.
  - a. Seek clarifications, as needed
  - b. Revise scoring
  - c. Request Best and Final Offer (BAFO)
  - d. Update shortlist to reflect the final ranking

Whether the entity uses the options stated under each step will depend on the nature, complexity, and other factors of the procurement.

##### Requests for Clarification

An entity may request a proposer to clarify a specific aspect of a proposal. This process may not be used to correct, supplement, or modify a proposal. When a request for clarification is necessary:

- Negotiations are not implied.
- The procurement professional must issue the request in writing.
- The requests and responses must be documented in the procurement file and shared with the evaluation committee.

##### Consensus

After all evaluation committee members have independently completed the initial scoring of the technical proposals, the committee applies the established methodology to reach consensus.

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### Optional steps

The committee may exercise the right to use optional steps as stated in the RFP, for example, establishing a short list of proposers who will move forward in the evaluation process. Proposers may be invited to present or participate in interviews as established in the RFP. In many cases, there is a clear break or gap between proposers who scored well and those who did not, which helps in selecting the short list. Selection of a short list of proposers for presentations must not be arbitrary.

After the optional steps have been executed, members of the evaluation committee may finalize their technical scores and document the rationale for any changes.

### Price Proposals

Once the evaluation of the technical proposals has been completed, the procurement professional shares the price proposals with the evaluation committee.

The procurement professional is responsible for:

- Calculating the scoring for price for each proposal.
- Reviewing pricing for apparent errors or omissions.
  - Investigating prices appearing to be abnormally low or high
- Confirming discounts/trade-ins have been applied.

*For more complex pricing structures, an additional review or analysis of pricing components may be advisable prior to recommendation for award. This would be decided on a case-by-case basis.*

Final ranking of proposers is based on the combined final technical and price proposal scores. The top-ranked proposer is recommended for award.

- If negotiations are necessary prior to recommendation for award, the procurement professional would send a Notice of Intent to Negotiate to the top-ranked proposer and facilitate the negotiation process.

### Element 2.3: Evaluation Report and Recommendation for Award

The evaluation committee will:

- Issue the notice of final ranking to Procurement who will issue the recommendation to award.
- Develop the evaluation report to support the recommendation for award.

The evaluation report typically includes:

- General description of the RFP.
- A statement of the evaluation methodology used by the committee.
- Names of all proposers.
- Results of the evaluation process performed by the evaluation committee.
- Justification for the award recommendation.
- Signature by committee chair.

### Award Approval

The top procurement official in an entity, i.e., Chief Procurement Officer, should be responsible and have authority to solicit and award all competitively solicited contracts without limits for purchases that have been approved in the adopted budget.



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#### Notice of Intent to Award

Once the award recommendation has been approved, the procurement professional should notify the successful proposer, in writing. All other proposers should also be notified of the decision.

- Entities may be subject to a mandatory waiting period, e.g., 10 calendar days, between the intent to award and final award to allow for protests regarding the committee's final decision.
- During this time, preliminary discussions with the selected proposer may be conducted by the entity.

#### Contract Assembly

The contract should include:

- Final terms and conditions.
- Schedules.
- RFP, in whole or part.
- Addenda.
- Proposer's response, in whole or part.

*The contract should include all applicable documents such as attachments, exhibits, schedules, and not by reference.*

#### Debrief

Once the award has been announced, proposers may request a debrief within a specified amount of time as stated in the RFP. The entity will provide a debrief upon request. The debrief should be facilitated by the procurement professional. During the debrief, the entity discusses only the strengths and weaknesses of that proposer's proposal.

Best practice is to actively offer debriefs. Depending on the entity, a debrief sometimes is also the first step in a protest or challenge process.

The procurement professional should establish clear expectations for any debrief. The intent of the debrief is to provide the supplier with constructive feedback on their own proposal. Debriefs can also offer an opportunity for suppliers to convey valuable feedback to the entity regarding the RFP and solicitation process.

The thoroughness of the comments recorded by the evaluation committee and the preparation of the procurement professional conducting the debrief directly impact the value of a debrief. Proposals may be subject to the Freedom of Information Act (FOIA) and may also contain confidential or proprietary information. During the debrief, only details from the proposer's response are discussed.

#### Protests

An RFP consists of objective and subjective elements, i.e., the solicitation, evaluation criteria and methodology, evaluation and award process, and the terms and conditions.

Because of the subjective elements, if the RFP is not designed and executed in an impartial, open, fair, ethical, and transparent manner or is too restrictive, it is subject to more risk and protests than some other solicitation methods. For more information, refer to NIGP's global best practice on Protests.

#### Audits

Audits determine if the RFP process was carried out in accordance with the entity's policies and procedures. For more information, please refer to the NIGP's global best practice on Audits.

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