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WHITE PAPER

TOPIC:

We "No Bid," and I'll tell you why.

Does the procurement process always result in the best bids?

PART ONE IN A SERIES

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Connecting Supplier Perspectives with the Public Procurement Community.

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The mission of the Business Council is to…

> **Serve the NIGP membership and procurement profession through the sharing of resources and expertise in support of NIGP's educational, research and advocacy mission.**

In essence, the Business Council connects the supplier's perspective with the public procurement community and is dedicated to improving the buyer/supplier relationship.

This white paper represents one of the ways in which the Business Council supports the educational mission of NIGP.

NIGP Business Council

Connecting Supplier Perspectives with the Public Procurement Community.

Procurement Professionals,

It has been my honor and privilege to Chair the NIGP Business Council (NBC) over the past couple of years. Like the ever-evolving marketplace, our Council discussions have also evolved during this time. Our main purpose is to serve the NIGP membership, while providing the Supplier perspective to public procurement.

This white paper, *"We 'No Bid,' and I'll tell you why."* is one of the outcomes we are proud to share with the NIGP membership. Its purpose is to help further bridge the communication gap between the Supplier community and the Public Purchasing community and we believe great progress has been made.

"We 'No Bid,' and I'll tell you why." provides examples as to why Suppliers may not choose to bid on a public solicitation. While the example herein has been simplified from a more broad and much more complicated topic, the NBC felt it was packaged such that most everyone could learn something from it, - if even a point or two that may help a practitioner when drafting future solicitations. As Public Procurement Professionals, your job is to create competition with the development of your solicitations. The Suppliers responsibility is to earn the business. We are confident this white paper helps bring to light some of the reasons why a Supplier may choose not to respond to public solicitations, hence eliminating the exact competition you are trying to create.

The NBC also wants to take this opportunity to thank the NIGP Board for embracing our idea around this topic and wants to especially thank Don Buffum, CPPO, NIGP Board Liaison to the Business Council, as well as Chad Quinn, NIGP Enterprise Program Specialist. Many hours of conversation, debate, writing and editing went into the final product that you are about to read and this white paper would not have been possible without their many contributions and commitment to the project.

Finally, the NBC extends our thanks to the NIGP membership for allowing us to serve. We look forward to continued open and honest communication, which helps all of us improve in our respective areas.

Best Regards,

Paula Sliefert

Paula Sliefert
The Toro Company
NIGP Business Council Chair

The Disclaimer:

"We 'No Bid,' and I'll tell you why." is an amalgamation of real-world examples related to why a company may choose not to bid on a particular Request for Proposal (RFP) and/or Invitation for Bid (IFB). It is intended to present a complex topic in simple terms. For this particular subject, we are illustrating the potential reasons why a company may choose not to bid through the use of an admittedly simplistic, low-dollar, local in scope example. However, the basic principles of this example apply to bids which are national in scope and much higher in dollar value.

The Problem:

The competitive bidding process is essential to ensure the products and services purchased by public procurement professionals on behalf of their agencies offer the best value and quality. To achieve this, agencies use a Request for Proposal (RFP) and/or Invitation for Bid (IFB) to solicit as many responses as possible from potential suppliers. But, not all RFP/IFBs are created equal.

In theory, the bidding process is designed to result in responses from many potential suppliers. However, what if an RFP/IFB does not result in several qualified responses? If leading suppliers in the marketplace choose not to respond, what does that mean?

- Did they not know about the RFP/IFB?
- Were they too busy to respond to the RFP/IFB?
- Do they already have all the business they want?
- Is there something in the RFP/IFB which prevents interest?

Of course, the answer to each of these questions is a resounding "unlikely." At their most basic level, suppliers are in business to make money. In response to the questions above, there is the possibility that perhaps small local suppliers may not have the resources to know about potential bidding opportunities, but most regional, national and international companies monitor these opportunities closely.

So why might a company decide not to bid on a potential new contract?

A company's quality response to the bidding process says as much about the agency issuing the RFP/IFB as it does about the supplier.

Through this white paper, the NIGP Business Council aims to enlighten:

We "No Bid," and I'll tell you why.

- "There was no opportunity to meet with the agency before or during the RFP process."
- "The timeframe was too just too short for us to be able to adequately respond."
- "The set price requirements within the RFP/IFB were unrealistic."
- "The specifications were written to clearly give a particular supplier an advantage. Favoritism."
- The Terms and Conditions were not current or up-to-date.
- "The agency is not open to change; there is no opportunity to educate them about new technologies and/or other possible solutions."
- "The legal terms do not fit present market conditions."

The above represent just a small sampling of the potential reasons why a company may choose not to respond to an RFP/IFB. To illustrate this further, and to ensure anonymity, we've created a generic example around a fictitious agency and a generic product, widgets. However, this scenario is based on a collection of real-world experiences.

The Example:

Seaside, a large city located on the East Coast, has an existing five-year contract for widgets with Northern Widgets which is set to expire in six months. Because the annual contract is worth $450,000, exceeding the $100,000 threshold, the city's policies require that the contract go out for bid. Seaside's Purchasing Department sets the Invitation for Bid (IFB) process in motion.

Seaside's Purchasing Manager assigns the widget IFB to a senior buyer who worked on the previous IFB five years ago. The buyer reviews the previous IFB and, deciding that it must have been thoroughly researched the first time, figures they only need to look for obvious changes such as dates. As part of the update process, the buyer's next step is to send the IFB to the department which oversees the distribution and use of widgets for the city.

The city's Distribution Manager has been with the city for more than twenty years and has a reputation among his co-workers for being somewhat set in his ways. Over the course of the past five years, he has developed a great relationship with his contacts at Northern Widgets; he likes working with them and would like to continue to do so. That being said, he has never done anything inappropriate in regard to any supplier; he has never taken any free gifts – even rejecting the candies that some of the representatives like to bring around at the holidays. His relationship with Northern, in particular, has always been professional and ethical.

His reasons for wanting to continue doing business with Northern include:

- They are a *known* entity to him and his staff: he and his staff are on a first name basis with the delivery drivers, he has easy access to his account manager at Northern including cell and home numbers;
- He doesn't like the idea of having to *break-in* a new company;
- His existing inventory processes work well with Northern's products and he doesn't want to have to make any changes;
- The product has been working well for the past five years and he feels, *"if it isn't broke, don't fix it."*

While reviewing the IFB, the Purchasing Department sent over, Bill decides to add some requirements which, on face-value, appear to increase efficiency for the city.

Some of the Distribution Manager's additions include:

- The distribution center for the widget supplier must be within 20 miles of the city's warehouse.
- The widgets must be octagonal in shape.
- The widgets must be cranberry red in color.
- The widgets must be made of a 100% wood.
- The supplier must be able to make deliveries on Thursday mornings before 7:00 a.m.
- The per unit price of the widget must be no more than $2,000.

The Distribution Manager sends his changes back to the Purchasing Department where the staff and manager accept all of his changes/additional requirements, deciding to defer to the widget "expert."

The updated IFB goes live on the city's website April 1 with a deadline for submissions of 5:00 p.m. on April 12.

Several widget suppliers have been waiting years for the opportunity to bid on Seaside's contract and are excited to finally have the opportunity. But, will they bid? Will they have an opportunity? Is there enough time for them to adequately respond? Can they meet all of the requirements laid out in the IFB?

The Contender:

Acme Widgets is a national distributor known in the industry as a leader in widget technology; they feel they have a great product that has the potential to save the city money. In the past couple of years, they have developed a new synthetic widget material which lasts four times as long as their wood counterparts. They do have some concerns related to the requirements listed within the IFB: their closest distribution center is 28 miles away; their widgets only come in yellow and are round in shape; their driver's work shifts do not begin until 7:00 a.m.; and their per unit cost is greater than the set price requirement.

Acme feels they have a superior product and would like the opportunity to discuss the IFB requirements with someone at the city in hopes of explaining why, even though they may not be able to meet some of the specifics of the contracts, their product has the potential to save the city money. Unfortunately, the Seaside's process does not allow for any meetings with city personnel while the IFB process is ongoing.

Representatives for Acme have repeatedly tried to meet with representatives of the Purchasing Department and the city's distribution center over the past several years to demonstrate new product technologies and get to know how the city uses widgets, what might improve the end-user's experience, and to get a better understanding of the city's goals for widget usage going forward; all of their efforts to meet with city personnel, whether in the Purchasing Department or at the distribution center, have been rejected. The most common replies to their request for a meeting have been: "We already have a contract." and "Once the IFB process begins, you can send in a bid."

The Breakdown:

As mentioned previously, this scenario is an amalgamation of real-world experiences. What can be learned from the example of Seaside's widget contract?

In the fictional case of Acme Widgets, they are not able to meet the requirements of the RFP, but their reasons for not being able to do so could, in actuality, have the potential to save the city money, help meet other goals/initiatives the city may have, and are not necessarily negatives.

Let's take a look at each:

- The distribution center for the widget supplier must be within 20 miles of the city's warehouse. **Acme's distribution center is 28 miles away; however it is a new state-of-the-art facility and the only distribution center in the state to be a Platinum Certified LEED building. The LEED certification compliments the city's environmental initiatives.**
- The widgets must be octagonal in shape. **Through extensive research and testing, Acme has developed a unique round widget shape which has proven to last four times longer than other shapes.**
- The widgets must be red in color. **Acme's research and development resulted in the development of a unique and patented yellow color which is much more environmentally friendly (during the manufacturing process) and contributes to the life of the widget.**
- The widgets must be made of a 100% wood. **Acme's unique proprietary synthetic material is more sustainable than wood and contributes to the long life of the widgets.**
- The supplier must be able to make deliveries on Thursday mornings before 7:00 a.m. **Acme's state-of-the-art automated distribution center requires less manual labor to run and therefore does not require an overnight shift; their drivers do not get on the road until 8:00 a.m., however they can work with the City of Seaside to arrange a route that will make them the first stop on their Thursday route – guaranteeing delivery by 8:45 a.m. In addition, Acme is the only distributor to use all hybrid delivery vehicles, further complimenting the city's environmental initiatives.**
- The per unit price of the widget must be no more than $2,000. **Acme's widgets costs around $2,400 each, however they last up to four times as long as conventional**

widgets which would ultimately result in a tremendous savings to the city. In addition, Acme does not charge a delivery fee and, because of their hybrid delivery fleet, guarantees to never charge fuel surcharges.

Unfortunately, due to the inability to meet with any staff at Seaside, Acme does not have the opportunity to educate the city about the benefits of their product. Furthermore, Seaside's IFB process will *likely* disqualify Acme's bid because it will clearly not meet the requirements the Distribution Manager inserted.

In an effort to keep the status quo, the Distribution Manager, although perhaps not overtly, skewed the IFB to show favoritism to the current supplier. In addition, the city's policy to not engage with suppliers has limited the amount of education which can take place and the potential to, through the use of a new product, save the city – and ultimately the taxpayers – money.

The Discussion:

Although purchasing agents and procurement policies tend to keep suppliers at arm's length to ensure a level of distance aimed at removing any potential conflict of interests, the side-effect is missed opportunities for each to learn about one another. Procurement professionals can help suppliers understand the unique needs and processes, of government customers and suppliers can educate government agencies about the latest technologies and solutions.

In the example above, had Seaside been open to change, they could have learned a great deal in regards to how far widget technology had come in the past five years. However, the City's requirements actually limited the supplier pool.

In addition, had Seaside been more open with their requirements, and their process, the city could have realized the following:

- As written, the specifications will result in a higher total widget cost to the city (Chart 1);
    - Northern's "per price unit" was $400 lower, although the overall cost to the city was higher because it had to purchase 4x more widgets
        - Example:

- Assume the city purchased 225 widgets per year with the current supplier
- Acme's widget would have allowed the city to purchase only 57 widgets, because the widget lasts 4x longer
- Acme's "per price unit" was $400 higher, although the city would have saved $313,200 over the term of the contract by purchasing a more technologically advanced widget that last 4x longer.

Chart 1: Unrealized Potential Savings to City

Company	Agency's Operating Requirement – Number of Units	Number of Units to Meet Operating Need	Per Price Unit	Total Widget Cost	Notes
Current Supplier: Northern	55	225	$2,000	$450,000	City has to buy 4x more due to shorter lifecycle.
Acme	55	57	$2,400	$136,800	
			Cost Savings	**$313,200**	

As you can see from the chart above, Seaside's restrictive IFB will result in the following:

- Increased number of orders
    - The city has to purchase 168 more widgets
    - Results in increased cost from procure to pay include:
        - More purchase orders to create
        - More deliveries to manage (receiving)
        - More invoices to process
- Deliveries
    - Current supplier's deliveries use more fuel and result in higher smog-forming emissions as well as higher greenhouse gas emissions than Acme's hybrid delivery fleet

The *Other* Drawbacks:

Some of the other potential pitfalls of the RFP/IFB process which were not included in the widget example and may cause a supplier to decide not to bid include:

- **No question and answer period.** Often the bid process does not include a question and answer period where the supplier can ask questions of the agency; what are their needs and goals, as well as what are their current processes.
- **Short timeframe to respond.** Like procurement staffs, companies will need to spend a lot of time, resources, and money to respond to an RFP/IFB. Often, suppliers need to get input from many different departments and will need a full review by their legal staff; this takes time. Agencies who provide only a very short window of opportunity to receive bids are not allowing enough time for a supplier to adequately respond.
- **The RFP/IFB is not clear.** In an effort to save time, RFPs/IFBs often use portions which are cut and pasted from previous versions. This may cause information and language to be included which does not apply to the product being solicited for.
- **The complexity of the RFP/IFB makes a response unreasonable.** A company needs to decide if the costs associated with producing a quality response is worth the effort and eventual pay-off.
- **Unreasonable warranty requirements.** Some RFPs/IFBs include requirements for suppliers to extend manufacturer warranties and/or for resellers to fix defective equipment (which is outside the scope of their business).
- **Specifications are too broad.** Very general specifications provide an opportunity for an inferior product to win a bid.
- **Specifications are too specific.** Very specific specifications are often perceived as written to favor a particular supplier (i.e. color).
- **The RFP/IFB specifications require a company to be registered with a particular group;** these registrations can take time.

In addition to the drawbacks listed above, there are also identifiable "unintended consequences" related to an RFP/IFB process which is not complete and/or inclusive.

Issue Overview

Historically, agencies desire to select the lowest cost, qualified supplier who, on face value, meets the specifications (technical, managerial, functional, legal, etc.) of the RFP/IFB. However, in reality what may look good on paper does not always pan out in the end. As in the example of the widget, an agency may restrict itself from taking advantage of new technology or lower long-term costs, etc., by not allowing for considerations outside the scope of the RFP/IFB.

The best practice would be for the entity to approach this procurement through the lens of "best value." In that context, it would select the most qualified supplier that provides the lowest total cost of ownership/use which will improve the entity's process while reducing additional related cost.

Functional Issue

The more specific a RFP/IFB's specifications become, the more restrictive it becomes. Although restrictive requests with very specific requirements seem to simplify the selection process and easier to uphold during protest, the unintended consequence is that the agency may miss out on a supplier who has a better, more cost effective solution. A restrictive RFP/IFB requires someone, at the agency, to become the subject matter expert on the particular product and/or service being solicited. This is impractical. The supplier will almost always know more about the market than the agency.

Suppliers respond to multiple agency types in their markets (states, counties, cities, districts, school districts, etc.). Because of this they have a great deal of diverse knowledge related to the issues agencies experience and their long term goals. Agencies have the potential to learn a great deal from the *subject matter experts*. Reputable, sincere, and legitimate suppliers realize they will not win all of the business all of the time; however, they also realize that participating in a well thought-out and fair solicitation process allows them an opportunity to learn more about the markets they serve and to potentially help the agency in the long-term.

In general:

- Suppliers will focus on the agencies from which they receive good viable business.

- Suppliers will not waste money, time and resources to respond to RFPs/IFBs that they feel confident will not result in potential business and/or those that are clearly written to favor a particular supplier.

What to Remember:

- If a RFP/IFB does not attract responses from *all* potential vendors, the department has failed.
- When large and national suppliers do not participate in a RFP/IFB, the agency does not gain the market intelligence of the scale and sophistication that will allow them to take advantage of industry trends and best practices.
- When medium size suppliers do not participate this becomes a sign of suppliers electing to move away from the public market and put their energies toward the private sector. These entities can be the most cost effective portion of the market.
- For the small market and the Disadvantaged Business Enterprises (DBE), their non-participation reduces the impact on the entities ability to assist the development of this flexible and creative portion of the market.
- Over the years and/or through multiple cycles of the RFP/IFB, when a department sees less suppliers participate this is not a sign of a great solicitation it is a sign of less competition.
- The worst award is the one given to a supplier that has the lowest price (lowest profit or least quality) and is willing to take the chance that they can meet the terms and condition.

Improving the Process:

- Establish opportunities to meet with suppliers, either individually or collectively:
  - Sourcing consultants familiar with specific market areas can be a helpful resource. However, keep in mind they may have their own agendas influencing the guidance they may provide.
- Establish a standard process for Vendor Market Solicitation:
  - Group presentation to all interested parties (keep in mind, vendors do not like discussing the uniqueness of their product in front of their competitors)
- Request for Information

- Down select;
- Vendor presentations;
- Request for quotation;
- Final Presentation;
- Award

Transparency

To improve the transparency, the entity needs to develop a repeatable process that becomes a standard with the following aspects:

- Inclusive
- Highly documented
- Public access

Political Agendas

- Local Preference
    - Provide suppliers training on Local Preference and Disadvantage Business Enterprises 6-12 months in advance of the RFP/IFB release date.
    - Rules are different by agency; for instance definitions can be different:
        - One agency will classify work as Direct Participation while another will define the work as Indirect Participation
    - Support partnerships, joint ventures

Terms & Conditions

Explicitly state top contract issues. Standard boilerplate language has the potential to drive away very successful suppliers. Suppliers need to know if there is a willingness to reasonably adjust the terms and conditions.

Below are examples of terms that will impede some suppliers:

- Broad indemnification for intellectual property rights:
    - No limitation to US claims
    - No duty of prompt notification of claim
    - No duty for them to assist our lawyers at our cost

- Broad indemnification for injury and property damage:
    - No requirement of contractor negligence
    - Not limited to third party claims
    - No duty of prompt notification of claim
    - No duty for them to assist our lawyers at our cost
- Broad liability for damages, including liquidated damages
- Most Favored Nation clause
- Other entities may piggyback without meeting creditworthiness standards
- First priority for service over other customers in emergency
- Cancel for Convenience vs. Fiscal Funding Out Clause
- Prevailing Wage

The Conclusion

An agency's primary purpose is to serve their constituents in the most effective and efficient way possible. One of the key components of the success of any agency is a fair, equitable and transparent procurement process which results in the best possible solutions, products, and services. As part of the procurement process, the RFP/IFB process offers an opportunity for the agency to learn from potential suppliers the latest industry trends, technology innovations, and best practices developed through the experiences of other agencies. If the RFP/IFB does not allow for an open dialogue, or the ability for a potential supplier to respond in a way that could result in the agency seeing the *other* possibilities in the marketplace, it becomes a hindrance to advancement and a disservice to the constituents the agency serves.

If suppliers are not responding to your RFP/IFB, we hope that this white paper has shown the potential reasons why *we* "No Bid" and may provide referencable insights that can help your agency strengthen its RFP/IFB practices and realize true best value solutions.

Mississippi State UNIVERSITY

Fellow Procurement Professionals

When the Business Council first started discussing the concept of this paper, "We no bid, and I'll tell you why", I was immediately interested in the outcome. I thought to myself that this would be a great way to determine what the obstacles are for the vendor, and it would force me to do a self-analysis of the way my entity does business. I was also interested as I thought, if there are detrimental practices that have been handed down thru the ages, perhaps this paper would give me the "power" to make changes.

As I read thru the document, while at first, rather simplistic, the messages come through loud and clear. It doesn't take a complex discussion to hit me over the head with a hammer. I must now review my own practices. Are we doing these things? Why? What can I change? If we are taking actions, intentionally or unintentionally, that keep vendors out of the game, we may be hurting ourselves and our entity. Are we satisfied with getting two bids from the same two companies that always bid? Or worse, only getting one bid from the incumbent?

While a self-analysis is a valuable part of this paper, I think it is equally important to use this as an opportunity to discuss "the rest of the story". Yes, we need to look at new products and new ways of doing business, but how do we weed out the innovations and opportunities from the "snake oil"? Yes, we still have vendors promising the world but not able to deliver. Again, yes, it is our job to do the due diligence to research the available products and services but reduced budgets and reduced staffs severely limit our opportunities to pursue such endeavors.

This paper makes it very clear that there are things we Public Procurement Professionals can do to improve the atmosphere for vendor participation, and it is our duty to review our process and our documents to be sure we are not including unnecessary or vague requirements. We need to use this opportunity to determine why we maintain restrictive practices and, if needed, use this paper as a reference document to substantiate change. At the same time we need to understand that this paper is just the beginning of the dialogue. We need the supplier community to understand our requirements and our limitations and our challenges. We need them to help us with ideas on ways to develop specifications that invite competition rather than rule out all of their competitors. We need to share information among ourselves so we are not overwhelmed with the research of every single product and communication and cooperation between the procurement professionals and the supplier community can only make things better for all of us and allow us to provide greater value to our entity.

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I appreciate the members of the Business Council coming together to work on this project and I truly thank Chad Quinn, NIGP Enterprise Program Specialist, for his excellent work in bringing it all together.

Sincerely,

Don Buffum, CPPPO

NIGP Board Liaison to the Business Council

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NIGP's Business Council is comprised of two representatives from each company participating in the Association's Enterprise Sponsor Program.

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