

HOW PUBLIC OWNERS CAN BENEFIT FROM MORE OBJECTIVE SCORING OF CONSTRUCTION PROPOSALS

A White Paper

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Common Abbreviations and Defined Terms

This section explains the common abbreviations and defined terms that are used in this paper. Defined terms are written using capital letters.

Alternative Procurement	The process of securing construction services other than by competitive bid. For the purposes of this paper: CMAR and CSP.
Benchmark	The selection Criteria. In this paper, the legislated Criteria annotated in the Local Government Code Ch 2269.
CMAR	Construction Manager at Risk
CSP	Competitive Sealed Proposal
Criteria	Objective standards defining each Benchmark
GC	General Contractor
Objective	Not influenced by personal feelings or opinions when considering and representing facts
RFP	Request for Proposals or Qualifications
Subjective	Influenced by personal feelings or opinions when considering and representing facts

1. Executive Summary

Selection of a contractor by public owners is most successful when the process is open, clear, fair, and Objective. Having these qualities not only prevents distrust or criticism from taxpayers and contractors, it leads to a true best value recommendation for every project.

Unfortunately, the current Alternative Procurement process falls short in these respects. This is due to the system's use of ambiguous and highly Subjective methods of both developing RFPs and scoring their responses.

Officially, today's system does require that awarding a construction contract be based on the best value to the owner. However, the current system makes this difficult to actually achieve. The lack of Objectivity often leads public owners to select contractors who do not really offer the best value, a trend that breeds considerable skepticism among RFP respondents and the greater public.

"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." ¹

Using only the legislated Subjective Benchmarks in the Alternative Procurement process has led to the belief that the resultant awards are the result of cronyism, favoritism, or have closed the process to all but the largest contractors and/or those who have worked for an owner in the past. This belief eventually leads to RFPs receiving fewer and fewer responses from the contracting community, further lowering the chances of public owners receiving the best possible value for their projects.

Additionally, Subjective scoring of the Benchmarks lends itself to bias. Decision theorists recognize that an owner's cognitive bias does affect the decision process.² This bias results from lack of a solid established and Objective system in place to consistently score and rank the proposals. In order to overcome this natural bias, Subjective Benchmarks require individually-scored Objective Criteria.

This white paper examines the ways in which the Subjectivity of the current Alternative Procurement system puts both owners and contractors at a serious disadvantage. Further, it investigates how introducing Objectivity into the process can serve as an effective solution, particularly in the form of a newly developed software system.

¹ NGIP Business Council, White Paper "We 'No Bid' and I'll tell you why.", p 17

² FMI Journal, "The 'Little White Lie' of Government Procurement", p 11

2. How Subjective Scoring Overtook the Procurement Process

Public construction projects have historically been awarded to the lowest competitive bidder. However, selecting the lowest bid is not always representative of the best value for an owner, whether in terms of cost, quality, and/or other factors. Twenty-six states have legislated changes adding and altering statutes, allowing many governmental entities to procure construction services outside of the competitive bidding tradition.

In Texas, for instance, this authority now includes “the state, counties, municipalities, school districts, institutions of higher education, river authorities, defense base development authorities established under a neighborhood empowerment zone, and navigation districts or port authorities”.³ The result was a significant change from a system that was wholly Objective to one that is now largely Subjective (using the alternative methods of Procurement).

Alternative Procurement legislation requires that projects be awarded to contractors who offer the “best value” - an assessment based on legislated selection Benchmarks, as well as weightings and ranking evaluations determined by the project owners.

In Texas, for instance, the governmental entity may consider:

- (1) the offeror’s price;
- (2) the offeror's experience and reputation;
- (3) the quality of the offeror's goods or services;
- (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (5) the offeror's safety record;
- (6) the offeror's proposed personnel;
- (7) whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (8) any other relevant factors specifically listed in the request for bids, proposals, or qualifications.⁴

³ Texas Construction Law Manual, p 198 & 204

⁴ Texas Local Government Code, Chapter 2269.055, <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2269.htm>

Legislated changes have not provided guidance on how to Objectively rank or score proposals. This has left public owners to make the determinations on their own while they wait for the marketplace to produce a viable solution. Unsurprisingly, this has bred a large amount of Subjectivity in the various scoring systems used.

If owners could require training of its selection committee on subjective scoring, the Subjective system could be more successful. But this demands additional time and expense from both the owners and the committees. A simpler, more efficient solution would be to implement more Objective Criteria instead. This would not only make the scoring process more straightforward, but also preserve public trust.

“The best way to maintain the trust of the public is to have a process that, though it may include some Subjectivity, is still one that is difficult to influence. The absence of a formal process to incorporate non-price Criteria into the final evaluation and selection increases the chances of subjecting your selection committee to scrutiny resulting from charges that the process was not as ‘fair’ as it should have been.”⁵.

If Benchmarks are the legislated definition of best value consideration, then each Benchmark needs one or more Objective Criteria to formalize the process. For instance:

1-8 Chosen Benchmark – Subjective statements

- a. Criteria 1 - Objective
- b. Criteria 2 - Objective
- c. Etc. - Objective

Unfortunately, the contracting community lacked such Objective guidance. This drove them toward responding to RFPs by marketing with sleek brochures, catalogs, and unreasonably low fees, rather than matching qualifications to Criteria as the primary response.

The lack of well-defined Criteria also led back to the old competitive bid mentality among owners: believing that the low percentage or fixed fee is the best value; ignoring the RFP weighting established for pricing vs. the weighting established for technical competency.

3. The Need for Objectivity

“There is currently no standard method for scoring technical proposals in a best value selection. If agencies cannot justify the ‘value’ added to the project in terms of a trade-off with additional costs, those tendering offers will justifiably file protests.”⁶ Contractors who choose not to protest

⁵ BEST PRACTICES FOR USE OF BEST VALUE SELECTIONS p 6

⁶ Engineering the procurement phase to achieve the best value p 140

may simply stop responding to RFPs by owners whose scoring systems they've found to be unfair and biased.

Procurement programs must be grounded in a systematic method of grading or scoring proposals, one that is uniform and consistent. This will inject Objectivity into the owner-considered Benchmarks. Though Subjectivity may not be completely eliminated, its minimization greatly reduces the potential of the errant award. Owners also benefit by having a method that is now backed by solid documentation.

“In practice, best value is neither infinite nor arbitrary, but is a matter of context, relating a restricted set of desired characteristics to desired outcomes.”⁷

Typically, proposals are scored by a team: usually an owner representative, an architect representative, often a public citizen with political influence, and possibly an end user of the contemplated facility. Traditional scoring is done by hand compilation. Scoring systems use a sliding scale of 1 to some higher number for each Benchmark, which may not be adequately defined.

Where there is definition, the scorer may find a Subjective statement similar to:

“The proposal addresses the requirements completely, exhibits outstanding knowledge, creativity, innovation or other factors to justify this rating.” or,

“Fully meets” or something similar.

There is nothing in these statements that is Objective or provides any guidance to the scorers. Without well-defined Objective Criteria by which to score, teams naturally gravitate toward comparisons of one proposal against another, rather than scoring the merits of the proposer results.

This is a cognitive bias resulting in a lack of confidence that an owner has obtained the best value. The result can only be inconsistent, Subjective, indefensible, subject to influence and modification, and quite possibly have no relationship to the project.

With work and thoughtfulness, owners can develop thorough and Objective RFPs that make clear what information is requested of the proposer. “Whatever methodology is followed;

⁷ Best Value in Government Procurement Concepts and practices p 4

Procurement staff must ensure that the organization's choices about what to value and how much importance to assign are formed impartially and do not unjustifiably restrict competition."⁸

Unless public entities "allow adequate time and resources"⁹ for defining the Objective Criteria under any of the eight allowable Benchmarks, the chances of unfairness claims are increased. Though the effort is time consuming and costly, it is wholly necessary.

The investment is justified by the preserved responsiveness of good contractors who can trust that they have a fair chance of award. Additional returns come in the form of legal costs saved by having fewer protests to defend against.

4. Establishing Objective Criteria

The solution comes via establishing the Objective Criteria and their respective score weights. Only then may each proposal be Objectively scored on its own merits, rather than comparatively scored against other proposals.

By switching to an Objective scoring method, owners no longer need to rely on the full committee team for scoring. One person may be appointed as the sole scorer instead, with the result receiving a final review by the committee (if desired).

Such an arrangement decreases the man hour requirements from the committee and costs to the owner. The Objective scoring method also clearly establishes an audit trail. This is necessary not only for the owner's use, but also to satisfy the public trust in the event a proposer desires a debriefing or protests the award.

To achieve best value currently, the owner must commit considerable time and effort in-house or utilize a third party to address each of the eight Benchmarks with an intent of establishing Objective Criteria for each.

For example, each Benchmark may be addressed as noted below for Objective Criteria:

1. Offeror's Price - With CMAR proposals, only general conditions and fee, or fee alone are considered. With CSP, the total price is considered.
 - a. Is there a formula established to define how each fee or price is scored?

⁸ Best Value in Government Procurement Concepts and practices p 6

⁹ BEST PRACTICES FOR USE OF BEST VALUE SELECTIONS p 9

- b. Cost realism analysis - Is the fee/price realistic or is the contractor “buying-in”? The Federal Acquisition Regulation 3.501 defines buying-in as “submitting an offer below anticipated costs, expecting to:

- (1) Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders)

- 2) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.¹⁰

Other signs of buying-in include higher than market rates for CGL insurance or builder’s risk insurance, and when the proposed price “does not appear to provide margin for profit.”¹¹

- c. Are there noted fee or proposal clarifications? Clarifications may not affect the scoring or award recommendation, but the owner must be aware. Additionally, the resolution must occur at the contract award phase to avoid unintended cost consequences and less than a “best value” award.
- 2. Offeror and Personnel experience and reputation
 - a. Experience Criteria should seek the specific project experience of the offeror as well as the specific experience of the offeror’s proposed team, particularly how that compares to the owner’s project Criteria in terms of size and value.
 - b. Reputation can build from Subjective judgements by third parties and may not be relevant as time passes and personnel changes occur. There are other ways of Objectively determining similar yet current information: litigation history, safety record, references, experience with the owner, etc.
 - 3. Quality of goods and services
 - a. Unlike a repetitively manufactured product, construction quality on any given project isn’t known until the project is complete. The end result is dependent on the Offeror personnel and firm, and suppliers and subcontractors as well. Is there a corporate philosophy represented by a written quality control plan?
 - 4. Safety record
 - a. A proposer’s concern for a safe workplace results in a more efficient contractor over time. It is essential to look at the worker’s compensation modifiers, OSHA recordable incident reports, and OSHA lost workday case incidence rates.

¹⁰ FAR 3.501-1, https://www.acquisition.gov/far/current/html/Subpart%203_5.html

¹¹ The World Bank, “Procurement Guidance – Abnormally Low Bids and Proposals” p 1

5. Appropriate Financial Capability
 - a. Financial capability can be Objectively assessed beyond a firm's bank cash balance. Sensible Objective options for financial stability scoring are; bonding, insurance, litigation status, and standard business financial ratios, among others.
6. Other relevant factors
 - a. These may range from home/managing office proximity to the site, ability to schedule a project, interviews, Supplier Diversity, and prior work experience, among others. To the extent an owner uses other relevant information Criteria, they need to ensure Objectivity and relevance.

5. Could Automation be the Ideal Solution?

“Designing and implementing new methods takes thought and intention, and may require more time, especially during a learning phase. With more choices come more questions. Which selection Criteria should be used? How should they be weighted and scored?”¹²

Before issuing an RFP, owners are required to determine the maximum score value or weighting of each selected Benchmark. They must also establish the distribution of the total weight as a percentage between price (as applicable) and the total technical score.

One of the most effective ways to inject Objective Criteria into the Benchmarks is by automation. Automating the process will reduce the time required to publish and score the RFP, as well as answer many of the questions on Criteria and scoring.

An ideal automation system can help the owner establish the weights and publish the Benchmark score factors, saving time and expense during the RFP's development. The system should publish a listing of submittal requirements requesting all proposers to submit the same information in the same format. This listing can then be included in the RFP.

An automated system should also utilize a hierarchical structured scoring framework. Such a framework ought to consist of Pass/Fail scores, numerical scores, and distribution of weightings between technical and pricing Benchmarks and Criteria. This allows for the systematic, logical, and Objective scoring of each proposal.

6. Conclusion

Subjective bias in scoring contractor proposals can be greatly reduced or eliminated using Objective hierarchal Criteria scoring of RFP Benchmarks. Although implementing this is time-consuming and costly, it is necessary to retain faith and have an open process.

¹² Best Value in Government Procurement Concepts and practices p 7

One means to reduce the time and expense of setting up new systems is using a third-party software-driven or automated system. “Using a pre-defined ‘scoring system’, each element of the RFP can then be ranked according to the ‘degree’ to which requirements and priorities are met.”¹³

Using an automated system with hierarchical structured scoring and Criteria reduces the staff man hours and cost required to set up the system. This streamlined system can be operated by one individual, rather than the scoring team, thus minimizing cognitive bias. It also provides for a more Objective result, and will result in the an equally determined “best value” recommendation for a project, based upon the submitted information.

The search for “best value” does not begin or end with the recommendation for award. It includes “preparation, negotiation, execution and award of contract, contract administration and post-contract evaluation.”¹⁴

Having an Objective and automated system enables owners to have auditable files for every RFP. This prepares them to defend their actions and offer debriefings to contractors. “Debriefing provides clarity when the technical evaluation is being explained, because the technical scores are based on Objective assessments against Objective Criteria that were clearly specified and known to bidders in advance.”¹⁵

In the event of protests, owners can more successfully defend their award decisions, minimizing court costs. Legal expenses can be further minimized as a result of avoiding more disputes altogether.

Finally, public trust in the owner and contractor trust in the method are likely to improve as the system will be Objectively-based, transparent, and verifiable. Once contractors begin to learn the process is open and fair, more will eventually begin to respond to the owner’s RFPs. In turn, owners cultivate a larger talent pool to select from, increasing the likelihood of finding the true best value for their projects. The process has not been cheapened, but rather enhanced to the owner's long term benefit.

7. Best Value™ —

There are multiple generalized software-driven procurement systems available on the market. However, only one is currently available for construction: Best Value™ is a program developed solely for use in Alternative Procurement of construction projects by owners seeking to incorporate Objectivity into legislated Subjective Benchmarks.

The creator of Best Value™ is a retired commercial general contractor with thirty-five years of procurement experience, enabling firsthand knowledge of which Objective Criteria are important

¹³ How to Evaluate Responses to a Project Request for Proposal p 3

¹⁴ Best Value in Government Procurement p 9

¹⁵ Increased Transparency in Bases of Selection and Award Decisions p 1482

leading indicators. The product introduces the Objective into the Subjective, yet gives the owner the latitude to establish their own score weight for each Benchmark. It also enables the weight to be split between the pricing and technical portions of the RFP.

Made to be used before an RFP is issued, Best Value™ works off of the owner's provided project information to develop Objective scoring criteria for each Benchmark. After setup, the software will issue customized documents for the owner to incorporate into the RFP, publishing the score values and the required documents to be presented by each proposer. This significantly streamlines the process of introducing Objectivity, and gives owners the means to solicit the most easily-scorable responses from contractors.

Once scoring begins, Best Value™ guides the scorer through the process, helping them come to a clear set of results that rates proposals based on their adherence to the RFP's criteria, rather than how they compare to one another.

With Best Value™, public owners can save time, money, and productivity in their RFP scoring procedure. To learn more about how this system can help you Objectively select contractors who offer the true best value for your projects, call 1-325-656-9890 or email sales@bestvalue.biz.

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