

Considerations in Developing Requests for Proposals for Real Estate Licensing Examination Services

The Examination Accreditation Committee recognizes the complexity of the process and the efforts and resources required to craft a Request for Proposals (RFP) for development and administration of real estate licensing examinations. To assist ARELLO® member jurisdictions in their efforts, the committee developed this document as an educational resource and reference guide. The document is divided into three sections:

- **Preparation and General Guidelines**
- **RFP Structure and Instructions**
- **Evaluation and Award**

Each of these sections provides both specific guidelines and examples based on the collective experience of nearly all ARELLO® member jurisdictions. The guidelines and examples are provided as best practices based on both highly successful experiences and unfortunate experiences indicating practices to avoid.

Preparation and General Guidelines

A number of steps must be undertaken, sometimes simultaneously, to ensure a smooth RFP development, vendor/service provider selection, and contract award process. The sample timeline and sequence of actions and events below is designed to give the reader an overview of an RFP process. Not all aspects will be appropriate for all jurisdictions. Specific guidelines are detailed following the sample timeline.

Sample Timeline and Sequence of Events

<u>Week(s)</u>	<u>Action/Event</u>
1.....	Select an RFP team
2-5.....	Research and prepare initial draft RFP
6.....	Conduct internal agency review
7.....	Obtain procurement/contract office/legal/administrative services review
8-9.....	Develop second draft RFP
10.....	Approve the RFP
11.....	Publish the RFP
12.....	Hold pre-proposal conference with vendors/service providers
13.....	Deadline to submit vendor/service provider questions
14.....	Provide agency responses to vendor/service provider questions (May result in RFP amendments)
15.....	Deadline to request clarification for agency responses
15.....	Train agency evaluators for consistency in rating
20.....	Vendors/service providers submit proposals and make presentations
21.....	Conduct agency proposal evaluation
22.....	Award the contract
23.....	Draft the contract
24.....	Obtain legal and other contract reviews and approvals
25.....	Execute contract
26-45.....	Transition and Implementation

General Guidelines

- Create an RFP Development Team, considering the tremendous time and staff resources that must be devoted to developing a successful RFP. Ensure that the team members clearly understand the program goals, objectives, and operation, as well as the amount of time the entire process will require. It is very important that those staff members who will be administering the examination/licensing program are fully involved in the proposal development and evaluation process. Allow sufficient time for agency staff to analyze business processes, research solutions, and develop the RFP requirements and evaluation criteria.
- Contact ARELLO® HQ for samples of RFPs developed by other regulatory agencies and jurisdictions.
- Contact other member jurisdictions and ask what problems they encountered and what lessons they learned in the RFP development process. Also ask about outcomes: what worked and what didn't? Prepare a list of questions and allow time for a thoughtful response.
- Involve the Information Technology (IT) and Purchasing/Procurement sections in the early stage of RFP development.
- Plan well and prepare a timeline and sequence of events to ensure that every aspect of RFP planning and implementation has been contemplated. (See the sample timeline provided earlier in this section.)
- Plan to provide adequate time for examination services providers to prepare a thorough and customized response to meet the program needs. A lead time of two to three months will allow adequate response time, provide time for examination services vendors/providers to research solutions to identified needs, and allow them to form business partnerships as needed.
- Schedule sufficient time for implementation and/or transition. It takes considerable time and effort for a new provider to develop a jurisdictional portion of the examination, select and secure test centers, develop candidate information brochures and notices, prepare a website, develop data migration systems, conduct school/industry meetings, and complete all other transitional activities. Four months is an absolute minimum. For complicated implementations, consider additional time.
- RFPs always elicit questions and requests for clarification by vendors/service providers before proposals can be developed. Be sure to allow sufficient time for this before the proposal response deadline. (More information on pre-proposal information exchange sessions is provided later in this document.) Ensure that all communications with any offeror are in written format and retained in records.
- Agency staff preparing for and developing the RFP may find the book, *Request for Proposal: A Guide to Effective RFP Development* by Bud Porter-Roth, 2002, Pearson Education, Inc., to be a helpful resource. Although written primarily for IT solutions, it is instructive on general process and procedure for planning and developing a RFP.

RFP Structure and Instructions

General Instructions

- Provide a description of the purchasing/procurement process/procedure and include a schedule of events and key dates.
- If you are using an old RFP as a template, be sure it is thoroughly reviewed and updated by individuals with firsthand knowledge of the current agency, IT, and procurement processes.
- Require that responses address specifically how the requirements will be accomplished and whether the capability to satisfy the requirement is currently available.
- Describe in what form, manner, and method the proposal and responses to the RFP scope of work requirements must be organized, assembled, and transmitted. Responding to requests for multiple copies of a paper-based format is expensive for vendors/service providers; consider asking your procurement department to allow electronic proposal submissions. Vendors/service providers generally prefer electronic proposal submission.

Example

It is mandatory that vendor/service provider proposals provide a written response to each delineated element listed in the Requirements section on a point-by-point basis, correlating by reference to, and in the indexed order set forth in the RFP. Vendor/service provider responses must first restate the delineated element of the requirement (including RFP index number) followed by the response, which must include a description of the solution (e.g., systems, methods, processes, procedures, standards) the vendor/service provider will employ to fulfill the requirement and whether such described solution/capability to satisfy the requirement is currently available. Proposal responses must be limited to address solely the requirements without including superfluous promotional or marketing information. Proposals may be submitted electronically via the agency's bid response system as identified in Section 1.2.

Executive Summary

- Require an Executive Summary section as a preamble to the proposal. Specify that the summary must describe the vendor's/service provider's capabilities and approach to accomplishing the outcomes identified in the RFP Requirements section and include the program features, capabilities, organizational attributes, and benefits to the agency. Indicate that the summary should avoid technical detail and description of solutions to the requirements of the RFP.

Background

- Include in the RFP information on the current examination administration process, procedures, and support systems as a frame of reference for vendors/service providers to understand what is currently in place. In the background information, also include agency comment as to the adequacy of the current model and practices.
- This section of the RFP should include current examination fees, fee caps, amounts remitted back to the agency (if any), data on the number of examinations administered per test site per year over the past five years—including pass/fail rates, first-time takers, repeats—and information on any known regulatory, demographic, and economic changes and trends that will have an impact on future exam candidate numbers. The current examination services provider can produce examination administration statistics.

Scope of Work/Requirements

This section is subdivided into: General Guidelines, Technical Specifications, Examination Administration, and Management Capability/Qualifications.

General Guidelines

- The RFP should include a single section (Scope of Work/Requirements) that describes and provides specifics about what the vendors/service providers are expected to offer or accomplish. This is often stated as business objectives/outcomes, current issues/obstacles/problems to overcome, and the services and performance objectives desired. Avoid repeating requirements in other sections. Redundancy creates confusion, unnecessarily complex instructions, repetitive proposals, and difficulty for evaluators.
- The requirements must also identify and include the specifications for the technical, administrative, and managerial components that are integral to meeting the business objectives.
- Avoid using subjective terminology (e.g., Provider’s examination scheduling systems shall provide “prompt” service with “minimal” delays and “problems” for exam candidates.). It is difficult for vendor/service providers to determine the level of service requested, and even more difficult for evaluators to determine if the requirement is met. Quantify and qualify objectives (e.g., “prompt” means confirmation or rejection within 12 hours of candidate request; “minimal delays” means less than a 3% deviation from specification; “problems” mean less than a 1% candidate complaint rate related to delays in scheduling).
- The requirements section of the RFP should describe **what** is to be accomplished, not **how** it is to be accomplished. Specifying a “how-to-do-it” solution can limit the vendor’s/service provider’s solution to only those options the agency knows and eliminates different, new, and creative solutions that may otherwise be proposed. If a particular solution is preferred, provide it in the requirements section and be sure to include a provision that alternative solutions may be considered.
- In addition to the problems associated with identifying “how to” solutions, sometimes identifying the “what is to be accomplished” (the very goals and objectives themselves) can limit the proposal of creative alternatives business processes that may be more effective and efficient. Although it would be unwise to omit the agency’s business objectives from an RFP, it may be wise to include a clause allowing the vendor/service provider to propose, and the agency the choice to consider, alternative business goals and processes.
- Be wary of using questions as a means of determining the vendor’s/service provider’s capabilities to meet your business objectives (e.g., What is the vendor’s/service provider’s capability to develop and deliver high-quality exams using technology?). The broad and subjective nature of such terms as “capability,” “deliver,” “high-quality,” and “technology” makes it difficult for vendors/service providers to determine what is required and impossible for evaluators to determine compliance. A general rule of thumb is never to ask a question you don’t know the answer to, and if you do know, state it as a qualified/quantified requirement. If you really don’t know and are searching for a solution, then consider doing more research before crafting the RFP. Or consider issuing a Request for Information (RFI) that will allow vendors/service providers to present new solutions that may be available to meet agency goals, before developing an RFP. Some different or new approaches may be more effective and efficient than more conventional approaches.
- Be sure to identify the requirements that are mandatory, as opposed to those that are desirable. The costs/fees section of the RFP should require that vendor/service provider responses separate costs associated with mandatory requirements from those associated with optional or “wish list” items.

Technical Specifications

- Technical aspects of a requirement should describe the procedural attributes/methods, features, qualifications or capabilities of the solution employed in achieving the business outcome rather than being concerned with what the operational administrative outcomes look like. For instance, the desired business outcome is to determine who is qualified to be licensed as a real estate broker; the solution is the development and administration of a licensing examination; the “technical” requirement is that the vendor/service provider ensure that the examination is sufficient to its purpose (i.e., valid and legally defensible based on evidence of adherence to generally accepted standards for licensing examinations). Technical requirements may also include specifications related to hardware, software applications, programming and systems interface for business solutions and data transference.

Example

The examination services provider shall be responsible for ensuring validity, reliability, and technical soundness of the real estate examinations it develops and administers. The examinations must be developed in conformity with generally accepted standards for licensure testing and shall maintain the ARELLO® examination accreditation throughout the term of the contract and any extensions thereof.

- Unless the agency staff and evaluators have the expertise to determine whether or not the vendor/service provider response meets this criteria, the technical specifications should also include that the examination development program be independently reviewed and accredited by ARELLO®.
- Specifications generally include a provision that vendors/service providers submit or make available for review sample examinations or retired items. Submission of active item content poses a security risk.

Examination Administration

- Requirements for examination administration typically identify processes and procedures necessary to achieve specified results related to delivering the examination to candidates, data and test site security, registration, scheduling, scoring, and reporting of the examination results (scores, pass/fail decisions). An emergency preparedness plan should be required for submission.

Example

The Provider shall develop and maintain both an Internet website and an automated telephone interactive voice response (IVR) scheduling system that permit applicants/candidates to schedule their examinations or to confirm a scheduled examination via the Internet (online) or by calling a toll-free IVR number provided by the testing provider 24 hours per day. These automated systems must be backed up by live customer service representatives between 9:00 a.m. and 5:00 p.m. Central Time.

The vendor/service provider must maintain a subscription to a commercial “hot site” facility, in order to guarantee its capability to continue timely administration and processing of examinations in the event that a natural disaster or other unforeseen event should render the vendor/service provider’s computer system(s) inoperable for a sustained period of time.

Management Capability/Qualifications

- All business is the business of people. Plans, specifications and contract provisions aside, it is the examination vendor's/service provider's organizational commitment and that of their staff that ultimately will determine whether or not there will be an effective working relationship with the agency that results in project success.
- RFPs should include a provision that the vendor/service provider submit a preliminary plan demonstrating that they have the management capability, experience, and personnel resources necessary to develop and implement approaches, programs, and systems to achieve the objectives identified in the RFP.

Example

Vendors/service providers must provide a preliminary plan demonstrating that they have the management capability, operational and administrative experience, and personnel resources necessary to develop and implement approaches, programs, and systems to achieve the requirements/objectives as specified in the RFP. The vendor/service provider plan must address timetables, staffing levels, and the credentials and experience of the key individuals on the management/project implementation team who will be responsible for instituting and maintaining business solutions and provide necessary customer service to examination candidates and regulatory staff. The plan shall indicate how the vendor/service provider technology platform and administrative processing techniques will result in an efficient and effective operation.

In addition to the plan, the vendor/service provider shall describe the management policy and procedure for internal accountability and controls over implementation and maintenance of core program and client service objectives including what, if any, the vendor's/service provider's internal performance evaluation and assessment reporting will be made available to the agency.

A final comprehensive plan identifying specific strategies, approaches, methods, processes, and procedures is to be developed collaboratively between agency staff and the examination services provider after the award of a contract.

Ownership, Confidentiality and Proprietary Interests

- Advise the potential vendors/service providers whether or not materials and information they submit in response to the RFP is subject to any "open records" provisions. (In many jurisdictions, most of the material submitted in response to an RFP becomes the property of the jurisdiction and may be reviewed by any person after a contract award is made, subject to limitations outlined in the provision concerning Proprietary/Confidential Information.)
- Require that any restrictions identified by the vendor/service provider on the use or inspection of material(s) and information contained within the proposal be clearly stated in the proposal itself. The vendor/service provider must state specifically the elements of the proposal that are to be considered confidential/proprietary. Confidential/proprietary information must be readily identified, marked, and packaged separately from the rest of the proposal. Commingling of confidential/proprietary and other information should be noted as not acceptable. Neither a proposal, in its entirety, nor proposal price information should be considered confidential and proprietary. In most cases, any information that will be included in any resulting agency contract cannot be considered confidential.
- Make it clear that all reports, examination data, documentation, and material developed or acquired by the examination services provider pursuant to the contract may become the property of the agency. This includes, but is not limited to, the jurisdiction specific examination item bank in its entirety, candidate handbooks, and all examination data and reports. This agency right of ownership

does **not** include the national or uniform examination item bank, which without exception will be identified in proposal responses as the proprietary work product of the examination services provider, including development methodology and all systems capability to assemble and administer examinations.

- Remember that examination security is of the utmost concern to both the regulatory body and the examination services provider. Keep requests to review examination materials (test questions) reasonable, flexible, and respectful of the serious security concerns. Allow vendors/service providers the opportunity to present examination materials in a supervised on-site review or through a secure website (or more secure option) rather than distributing copies to evaluators or reviewers. When examination questions are compromised, the integrity of both the examination program and the agency is damaged, examination validity becomes questionable, and the compromised materials are expensive to replace.

References (Due Diligence)

- The RFP should require that vendors/service providers list all client jurisdictions currently using the vendor's/service provider's real estate licensing examinations as well as past clients (within the last three years) and provide references from the agencies using or having used the examinations. The information needs to include a contact name, address, telephone number, how long services have been provided, and a description of the services provided.
- Contact as many references as needed. Prepare a list of specific questions that can be used in the evaluation (e.g., Describe a recent problem or issue needing action by the examination provider; were they responsive to the need; was the matter resolved to your satisfaction?). Ask clarifying questions to determine how the stated problem/issue relates to your program needs. Consider appropriately scaled weighting of references when evaluating proposal responses.
- Seldom do business relationships go as smoothly as planned or anticipated. There are always contributing factors and two sets of perceptions in every unsatisfactory experience. Before completing the evaluation, consider whether negative comments you may have received when checking on references are germane to the program.

Limitations and Controlling Factors

- Statutes and rules should be referenced and included as appendices to the RFP. In addition, the RFP should include a narrative of the practical effect of statutes and rules on the examination program with an annotated reference to the specific rule or statute that the vendor/service provider can then research. Only the agency can explain the internal policies and operational considerations that affect the implementation of these rules and statutes.

Example

Candidates who are required to pass both the national (uniform) and jurisdiction portions of the examination (see Rule A.2) are not required to take both portions of the examination at the same time (see Rule A.4). A candidate may schedule separate test dates for either portion (see Rule A.5). A candidate taking both portions of the examination on the same date and failing one part of the examination must re-take only the failed part (see Rule A.7). There is no limit on how many times a candidate may re-take the examination (see Statute 12-61-404). Examination scores are valid for one year after completing the full (both parts) of the examination (see Rule A.8)

- Include copies of or links to statutes and rules affecting examination administration as an appendix to the RFP.

Contract Provisions

- Consider including the contract terms and conditions as an appendix to the RFP. Few things are worse in the RFP, proposal, evaluation, and contracting process than awarding a contract only to learn that the successful vendor/service provider did not calculate costs/fees for expenses resulting from an unknown contract requirement, or the vendor's/service provider's legal counsel objects to some wholesale indemnification clause of the contract, or some other unexpected hurdle occurred.

Example

*Except as modified herein, the standard Contract Terms and Conditions and the Model Contract (see attached Appendix A) included in this RFP shall govern this procurement and are hereby incorporated by reference. Appendix A lists provisions that will be incorporated into the contract between the agency and the successful vendor/service provider for this RFP. Please note this sample contract lists the required legal provisions and does not necessarily include the specific scope of work/requirements for this RFP; these specifics will be included after the solicitation process is completed. Vendors/service providers agreeing to abide by the requirements of the RFP are also agreeing to abide by the terms of the sample contract. Therefore, vendors/providers should identify any problems with contract wording in their proposal, or in their initial questions about the RFP so that any inadvertent oversights can be corrected prior to proposal preparation. It may be possible to negotiate some of the wording in the final contract, but there are many provisions, such as all of those contained in the General and Special Provisions pages, that **cannot** be changed.*

Costs/Fees

- Sometimes knowing the quoted fees for services before reviewing proposal responses can negatively affect the proposal evaluation. The evaluator may unconsciously be less diligent in the review and comparison of a response if a fee quoted by one vendor/service provider is higher than another's or higher than the agency's known threshold cost. One way to help ensure an impartial review and evaluation is to require that the costs/fees be submitted in a sealed package separated from the responses to the specific requirements and clearly marked with the words "Fees Proposal." Instruct evaluators not to review cost/fee quotes until they have completed reviewing and evaluating the specific requirements response sections. Alternatively, have pricing reviewed by procurement or a representative not evaluating the proposals.
- Include in the RFP a separate section requiring vendors/service providers to address the itemized costs/fees associated with the specific RFP requirements and various permutations of examination administration.

Example

All costs for performing the work and providing services required under the RFP and contract must be covered in entirety through fees paid by examinees. It is mandatory that the costs of supplies, notices to examinees, and any other related documents or services be included in the fee. Such fees are to be collected by, and paid directly to, the examination services contractor. The agency shall have no obligation to pay for any work or services provided and will incur no revenues or expenses.

Vendors/service providers shall submit a fee quotation that must be held firm and will be binding for the initial three-year term of the contract. Estimated fees or incomplete fees may be used as a basis for rejection of a proposal. For any contract extensions, which may be granted at the sole discretion of the agency, the fee may not be increased by more than the consumer price index. Responses must detail the fee to the examinee for each examination as described following:

Initial administration of examination - both portions (national/uniform and jurisdiction)
Initial administration of examination - only one portion (national/uniform or jurisdiction)
Retake of failed examination - both portions (national/uniform and jurisdiction)
Retake of failed examination - only one portion (national/uniform or jurisdiction)
Cancellations or Rescheduling - Describe policy and any fees charged
Value Added - If additional services, benefits or enhancements are offered/proposed in the value-added section, include the associated fees.

Q&A (Pre-Proposal Information Exchange)

- Invariably RFPs will elicit questions and requests for clarification by vendors/service providers before they can develop proposals. The RFP should allow a period of time for questions by the potential vendors/service providers that are to be addressed by the agency. The agency should disseminate issues and questions that are appropriate for clarification to all vendors/service providers.
- Allow sufficient time between posting of answers to questions by vendors/service providers and the proposal response deadline.

Value Added

- Consider including a section within the RFP that allows vendors/service providers to describe enhanced services, capabilities, and benefits that may not have been required or identified in the core requirements section. Often, an appreciable value-added service or capability (something extra outside the specified requirements of the RFP) is provided by the vendor/service provider at no or minimal additional charge or increase in fees.

Evaluation and Award

- To the extent permitted by procurement rules, agencies should avoid the obvious pitfalls of “bottom-line thinking” and structure the evaluation method to avoid automatic award to the lowest bidder. Consider quality and capability in evaluating proposals. Any vendor/service provider can “buy” a contract by simply quoting a very low fee. However, in the long term, low fees may hurt the overall program. (You get what you pay for, and it is difficult to maintain high service levels with low fees/revenue.) Evaluation should be based on the “best overall value” to the jurisdiction. Consider appropriately scaled weighting of: (1) Administrative, Technical, and Management Requirements, (2) Experience/Qualifications; (3) References, (4) Value Added and (5) Costs/Fees.
- Provide vendors/service providers with the specific information on evaluation criteria. Be up-front about the methods you will use to evaluate and compare proposals. If formulas will be used to evaluate, they should be clearly stated. If there are major categories that will have different weights during the evaluation, those weights should also be listed.

Debrief the Vendors/Service Providers

- Examination service providers put a lot of time, effort and money into responding to an RFP. In most instances, the evaluation scores are close, and there are identifiable reasons that the contract is awarded to the successful vendor/service provider. To the extent allowed by legal counsel, contacting each vendor/service provider with a critique and overview of the contributing factors that determined the contract award will help them with their business development and “raise the bar” for services the next time there is a need to issue an RFP.