

**Ohio Department of Job and Family Services
Office of Workforce Development**

Transcript of Webinar

**ODJFS Processes for Procurement Planning
and Competitive Procurements**

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[Numbers in brackets indicate the approximate playtime, or time stamp, in the audio version]

[8:50]

GRAIG PELLMAN: Good morning. We apologize for the inconvenience. We had some technical difficulty this morning. I am going to go ahead and begin our presentation at the very beginning. My name is Graig Pellman. I am in the Office of Workforce Development, and we want to welcome you to the third installment in our Legal Compliance Series of webinars. I just have a few announcements that I would like to make regarding today's presentation as well as our series.

First of all, I do want to remind everybody that if you are pursuing the Certificate of Completion for this legal series, please remain on the system for the entire presentation. That is how we record your attendance. If you are watching this as a group, I would ask those who have organized your local viewing to please make sure you email me and request an Attendance Form. I will email that back to you, you can fill it back and return it to us, that way we can know who is in your room and watching this webinar for attendance purposes.

I also want to remind you that at the end of this presentation, sometime later this morning or in the afternoon, I will be sending out to all of you who have registered an evaluation form. It is through this evaluation that we find out how we can serve you better in terms of the technical assistance that we're providing you. We would ask that you fill out that evaluation candidly so we can serve you better in the future. [10:15]

Also, with regard to today's presentation, we have Chris Resch from the Office of Contracts and Acquisitions. She will be talking today about procurement. If you look at the handout that we sent to you yesterday, you will notice there are a couple slides that have question marks on them. Chris has asked that you hold all of your questions until we reach those particular slides. These occur at two points during the presentation. [10:43]

WOMAN: ...Some people are saying they –

GRAIG: Okay. I would ask that during the presentation that you please just wait until you see those question marks. You will ask your questions by typing in the text box. This is Suzanna Haydu, who is directing the technical aspects of this webinar. She will ask our speaker the question, and then our speaker will verbally reply to your question. At this time, I would like to turn the presentation over to Chris Resch, who will talk to you about procurement planning and competitive procurements. Chris.

CHRIS RESCH: Thanks Graig. Good morning everyone. I'm Chris. Some of you have talked to me by phone down through the years. We've taken some questions and done some presentations before. If you've been in these sessions, I apologize for the replication or the duplication, but, as I understand it, there are a lot of people who are fairly new to this, and so we're going to go through this again. This is about RFPs and bidding and things of that sort. It's not exciting stuff, so I'll do my best to make it as painless as possible. We have up here on the... okay, we're having a little bit more difficulties. [12:16]

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GRAIG: Click on the slide.

CHRIS: And, the slides aren't moving.

GRAIG: Just a moment, just a moment folks...

CHRIS: All right. We have just been able to make the change in the slides, so we're back on. The slide that you've got up here right now just gives you some information about my office. Again, I am with the Office of Contracts and Acquisitions. We're part of the Legal Division within the Ohio Department of Job and Family Services. I won't read what we've got there on the screen. You can refer to it later if it's something that you're interested in. [13:10]

I did want to let you know that my daily focus is on contracts and procurement issues for the State, at the state level. We use primarily federal funds, as you can imagine, some of which we send to the county agencies in local areas. I don't know the details of the individual programs that you might be running. My emphasis is on how we do procurement.

I know the how-to's of procurement and of the general federal procurement rules, but I don't really have very much information on the particulars of the programs that you're running. But we do have a couple of things in common, and that is what I'm here to go over with you.

In general, the presentation is going to be on the federal requirements around procurement. We also want to share with you some of the best practices that we have found: The things that have worked for us at ODJFS in terms of procurement. I also want to just remind you that when it comes to any of the legal questions about your programs and about how your individual areas must comply with your local regulations, or any of the detailed legal questions that you might have above the federal programs that you are operating, we have to point you to your county prosecutor's office for those kinds of issues.

I haven't always done things about RFP's. I used to be a teacher, and one of those things that teachers are really good at is to give pop quizzes. So, on the screen right now, you see the form for a pop quiz. Don't worry, nobody's going to grade it, just you. [15:09]

I'm going to give you some instructions here. You don't necessarily have to actually fill this out. Just imagine how you would follow the instructions, and you'll have to follow it very carefully. The instructions are to write the special word on the lines. The special word is "Ohio." Write the word "Ohio" on the lines. Okay. Again, you don't necessarily have to write it, but imagine how you would do it. And, we'll get back to that later on.

Part of our daily lives here in the public sector are the federal requirements that come to us through the Code of Federal Regulations. There is something called the "FAR" – Federal Acquisition Requirement. You can look that up, and I have given you a citation for it there. It's huge, but it is the basis of some of the CFR citations that are more particular to the programs that are implemented by us at the State, and by you at the counties and at the local level. [16:25]

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For things that are related to Department of Labor programs, I have given you the specific citations there, and they get into some of the general details on procurement again, not specific to DOL necessarily. And, in fact, if you look at the next screen here, and look up the federal citations for Health & Human Service Program procurements and the U.S. Department of Agriculture program procurements, i.e. food stamps, or as we're calling them now, SNAP, you'll see that those kinds of regulations really mirror each other.

There is not a whole lot of variation in the particulars of the methods and the requirements about competitive procurement for contractors and sub-recipients, so we've just given you those things. Most of you probably are well-familiar with them, but if you wanted to do some further research, we've given you those citations.

Also, at the ODJFS level, the Office of Fiscal and Monitoring Services has something that they call Fiscal Administrative Procedure Letters, which we not so gracefully call "FAPLs." FAPL Number 2 is dated December 6, 2006, for example, and FAPL 36, from March of 2012, is related to FAPL 2. Those two, in particular, do speak to some of the issues about procurement. So, if you aren't familiar with those, you would probably want to look those up. So we've given you the URL where you might find that on the State Fiscal and Management Services website. [18:23]

Also, the Bureau of County Finance and Technical Assistance has a number of different things that you could refer to. So, again, we've just given you those websites so that you can look those things up if you want to.

Generally, no news flash here, federal funding comes with certain requirements on how it may be used, what it can be used for, and how we have to account for the use of it. Recipients of federal funding have to comply with those requirements. Oftentimes, we are the recipients. We at ODJFS are considered to be the recipient, and funding then is passed down to the local level, and you are then considered to be the sub-recipients. You might disburse it further to lower tier sub-recipients. Sub-recipients and recipients – we all have to follow the same procurement requirements, the terms and conditions always follow the federal money. [19:34]

One of the issues that we always have to talk about in federal requirements would be the distinction between sub-recipients and vendors. It is sometimes difficult to discern sub-recipients from vendors. Some federal money could be used for funding sub-recipient program activities, and the same federal money might be used for purchasing services or for purchasing goods, either one, that support the program.

The same program, the same money could be used for different purposes. For example, we might buy or you might need to buy, additional IT equipment or, some new desktops, or servers, or new software, or the services of some IT specialist to customize some software, and you might need that to be able to implement a federal program for which you are receiving federal funds. That's probably a vendor, the person or the organization from whom you are purchasing those IT things. We probably need to consider those organizations to be vendors. [21:16]

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The flip-side of that is the sub-recipients. Those would be the persons or the organizations that are actually implementing the program. Some of the basic sub-recipient characteristics are: Sub-recipients determine eligibility; they measure their program success by looking at their objectives and whether or not they're achieving their objectives. They might be responsible for programmatic decision-making. They have to carry out the key program functions. They're sub-recipients. They are responsible for the same federal compliance that we would be at the state level.

The flip-side of that again: Vendor characteristics. Vendors provide goods and services, either one or both, they provide it to many different purchasers. It's their standard business. They're not trying to create something new, necessarily, that is used only by a particular federal program. They operate in a competitive environment, and the services and the goods that they're providing to us or to you are considered to be ancillary to the operation of the federal program. [22:38]

The competitive selection process. In that process you do need to make some distinction between the sub-recipients and the vendors because, at the end of the day, the way we account for that funding might be different when we have a sub-recipient relationship and when we have a vendor relationship. So it is important that you are familiar with the type of organization and the purpose of the funding that you're using, even though it is for the same federal funding.

Getting back to the general requirements: Federal, local, and state competitive procurement requirements can vary, but whichever one is the most restrictive is always the one that you're going to have to follow. Federal law dictates that the Simplified Acquisitions Threshold, or the "SAT" is set at \$100,000. Probably, those of you in the counties probably have lower thresholds than that. Probably, significantly lower than that.

You have to use a procurement method or the procurement type that is best-suited to the project, and that might mean that it might be permissible, you might be able to pass an audit, using something that's a lot simpler, that's a lot less restrictive, but that might not be the best method that you could use. [24:30]

So it's an issue sometimes of determining what is the best possible method to achieve your goals, to achieve your need, and also comparing that to the general federal definitions of some of the different approaches to procurement.

We've put here on the screen for you now a grid that identifies on the right-hand side some of the CFRs. According to the CFR standards, a small purchase procedure-type purchase could be used for things that are a standard service or a standard product. In ODJFS terms, we are probably going to be putting out informal bids. That might even be just simply telephone quotes. You know, you contact several different vendors, and you get those quotes and availability from the vendors for what they could do for you.

You do have to document it, of course. But again, that would be used for a standard service or product. In the world of ODJFS, we're going to purchase that through the vehicle of either a contract or a purchase order. A purchase might be of a low enough dollar amount and simple

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enough that we could just do a purchase order, but sometimes we're going to take a look at whether or not there might be some, for example, liability issues.

And, if that's the case, we might think that it would be better to have a contract. Because, within the contract, we could specify some of the terms of liability. So, we might be able to do something more simply, but it might be a better idea to kick it up a notch, to use Emeril's terminology. [26:33]

Also, in terms of the federal standards, or the federal definitions, a competitive proposal is something that is used when you've got the most kind of detailed complex or, in English-teacher terms, complex compound sorts of specialized needs. In the world of ODJFS, we're going to do the procurement for such a thing through what we consider to be a Request for Proposal.

The term Request for Proposal, an RFP, might be slightly turned around a little bit. If we're talking to the Department of Administrative Services, they might have a little bit different terminology; and you, in your local world, you might have slightly different terminology, but it still is the kind of thing that you have to use when you've got a very complex need and you have to look for something that is very specialized in terms of what the vendor can do for you. You might not call it a Request for Proposal, but if it meets the hallmarks according to the CFR, for competitive proposals, you'd have to follow the requirements in the CFR for that type of procurement.

Procurement by sealed bids, or competitive proposals, in ODJFS terms, we're probably talking about a Request for Letterhead Bids, or RLB. It's simplified, less complex than RFPs, but it's most likely still pretty detailed. It's more detailed than informal bids. It would be for the kinds of things where we're looking for a fairly standard service.

For example, if we need a vendor to conduct some sort of a telephone survey, or to do a mailing survey. It's a fairly standard business if they know how to do those surveys, it doesn't really matter what the content is, and it's fairly standard. So we're just looking for their general qualifications and their price.

So, that's probably the kind of thing that we do through a Request for Letterhead Bids. And, again, from the federal standards, it's probably what they would consider to be procurement by sealed bids or competitive proposals. And for us at ODJFS, it could conceivably be a purchase order, if we procured that through state term schedules. But if we didn't procure it through state term schedules, it would be through a contract, after the Request for Letterhead Bids to the open market, and then we would draft a contract.

What I mean by the "State Term Schedule" issue, and some of you do use state term schedules if you're part of the cooperative purchasing plan with DAS, we might need to identify those state term schedule vendors who could provide those services, or those goods and services, and we do a competitive procurement from among them. [29:54]

It is important to note, always, State Term Schedule vendors were not selected through competition. The fact that they are on a State Term Schedule does not mean that they have been

competitively selected. We, at the state level, are still required to do a competition from among those State Term vendors, if that is what we are going to use, but the difference is, at the end of that competitive selection from among State Term Schedule vendors, we would only need to do a purchase order. The terms of the State Term Schedule would essentially be the contract governing the activities and the payment standards and the performance standards for that competition. [30:46]

Also, in our world, we sometimes have to award grants through competitive means. We use a vehicle that we call the RFGA – Request for Grant Applications. It, for us, is the general standards, the general elements, of the same sort of procurement competitive questions that we would use in an RFP or an RLB, but it's only about selecting those organizations, community-based organizations, private not-for-profit organizations, for example, or sometimes it's a county agency. If we don't have enough funding to make the award to all of the entities that could conceivably want it, we have to select and award it only to certain ones of those from that universe of potential applicants.

We have to be able to justify and make sure that we're passing out the funding to the most qualified vendors, or organizations, and the ones that will be able to give us the most success with the federal funding. We would be writing a particular type of contract that we refer to as a grant, but we're still using the competitive proposal-type standards that the Federal Government has given us through the various CFR citations. [32:27]

Moving along, I mentioned the Simplified Acquisition Threshold. With any purchase that would be below the SAT, the Federal Government considers that to be a small purchase procedure. That would be all that's necessarily required. Again, talking about what is required at the federal level, you also have to consider what the requirements at the local level are and, if it's more restrictive at the local level or at the state level, you would need to use that regardless of what the federal small purchase procedures might say.

But again, with the federal standards, anything that you're purchasing that is below the SAT, you would be using simple and informal procedures – you'd probably just be looking at getting prices or rate quotes from multiple vendors. I think the general wording in all of the CFR citations about procurements requires that we get responses from more than one, and, of course, you have to document it.

A lot of what we're talking about here is our ability to comply with one of the basic federal requirements, and that is our ability to account for the funding that is received – what did we do to make the selection of a vendor or a grantee, and what was the outcome of that procedure? Should there be an audit, that is the kind of information you'll want to have. Also, as you will see in the header there, I am referring only to the particular CFR citation for the Department of Labor funds. But again, you'll find this in all of them, whether we're talking about HHS or the Department of Agriculture. [34:30]

The next level of complexity is procurement by sealed bids. It is required that it be publicly solicited. It is something that is going to be for a firm, fixed price contract, and it would be awarded to the lowest-priced responsible bidder. Now, to be able to do this, the federal

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standards and common sense would say that we have to have good and complete realistic specifications that are part of this that explain to vendors what it is that you are trying to purchase. It is also part of the federal standards that you have two or more responsible bidders competing in order for it to be a competition. And, procurement by competitive proposals, also, again, by the federal standards are, of course, publicly solicited. [35:25]

All evaluation factors and the relative weight to those factors are included. In other words, we always publish the rules of the game, and we don't change the rules once they are published. We have to say what are the standards that we are looking for and how we are going to evaluate those relative to each other. And we stick by it. It's a detailed system for the technical evaluation of the proposals, and it's very detailed for how we are going to go about making the selection of the final vendor or vendors. But all of that has to be published with the procurement. In this case, we are talking about an RFP – it would all be published, and that is what we always do. Our score sheets are always posted, along with the RFP. [36:15]

While the general requirement for this is that the competitive proposals process means that we can award the contract to the responsible vendors who are offering the most advantageous proposal, it may be based on both price and quality, or price and other factors. We're not just talking about the lowest price. You might indeed end up with the selection of a vendor who has a little bit higher-priced proposal, but for that price, the value to be received is significantly better.

How do we identify what is "significantly better?" Well, that gets back to the evaluation factors and the relative weights of those factors that were published with the RFP. It is very complicated, but there is no one way to do it. We're talking about RFP's. There is no simple, standard way of doing things. No simple instructions. What works best for that project, what works best for that industry from which you are making the selection – those are the kinds of factors that you will have to look at. [37:40]

Now, we get into procurement by non-competitive proposals. Honestly, that is a rather odd way of saying – when we can't do selection through competitive means or we tried it and it didn't work. According to the federal standards, that is permissible in one of several different circumstances. Of course, if there is a public emergency, then we can forego the competition. But again, you will have to be sure that there is adequate documentation of the emergency. Of course, if it's a flood, I think that's pretty clear. But other kinds of emergencies may not be quite so clearly and unarguably in existence. [38:35]

Solicitation from only one source, or after the competition was attempted and you got inadequate responses, or you got only one response, or you got no response, or you got responses but they did not meet your needs. If you have attempted that, and you've attempted it again, that's probably going to be considered by the federal standards to have met your due diligence in terms of competition.

Even in this situation, you still have to have some sort of a cost analysis. If you've attempted the competition, but you didn't get the proposal that you feel you can use, you have to go out and

negotiate it with some vendor. How do you know that the vendor's price that you negotiated to is something that is reasonable?

If it's federal money that you're using or, for that matter, if it's state money, or if your money – we're all taxpayers – what do we do to know for certain that the price that we're being asked to pay is reasonable? You have to do some kind of a cost analysis – even that non-competitive situation. And again, back to the county finance website that I mentioned a few slides back, they do have some information there about doing a cost and price analysis, so you might want to refer to those slides for that sort of information. [40:10]

The awarding agency may approve non-competitive selection. If you feel like you have good business reasons to either forego competition – either not make the attempt, or that you have made the attempt but you are not very confident that the responses you got were adequate, or were clearly inadequate, to meet your needs – at that point you may want to proceed with a contract through non-competitive means, but you might want to seek approval of the awarding agency. [40:53]

Or, in this case and in many cases, the awarding agency would be ODJFS, so seeking approval from us for your non-competitive selection of a vendor is explained through the Fiscal Administrative Procedure Letter No. 2, and the subsequent minor revision, FAPL No. 36, which was reworded to make it a little bit clearer. I don't think Fiscal Administrative Procedure Letter No. 2 was written in the clearest possible way, so the follow-up was meant to make that a little bit clearer, but it does not change anything that was stated in the first. So, FAPL No. 2 and FAPL No. 36 is your procedure for how to do this non-competitive selection approval through ODJFS. [41:58]

What is a “sole source?” Genuine sole source situations are not common, but when you do encounter one it is probably completely justifiable. Sole source is not the same thing as an unbid contract. You can't just say we're going to sole source this. That really doesn't make any sense – either grammatically or in terms of the federal standards. Just because you call something a sole source, that doesn't mean that it really is a sole source.

A sole source is a situation where you really do not have another choice. You have purchased some significantly expensive, complex computer system last year, and guess what? You are pretty well fenced in to the type of services and software that you can use – determined by that major system. You have no other choice. You can't put Apple equipment on a PC. I have to say it that way because I don't know anything about computers. I will make that clear, and I just really like it to stay that way. [43:27]

So if you are looking at a sole source situation, it means that you really do not have any choice. A sole source is not a situation where you really like this training program labeled something like “Humans are Wonderful.” Well, you can only go with ABC Company because it is the one that produced “Humans are Wonderful.” Well, you know what, maybe “Humans are Wonderful” has competition out there: “Humans are Interesting.” Why do you need only “Humans are Wonderful”? If it is not reasonable, if you don't have a really firm, clear business reason why you have to purchase from one particular brand or one particular manufacturer, it cannot be

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considered to be a sole source. It cannot be something that you simply forego the competition on. [44:30]

However, unbid contracts are not always unjustifiable. If you feel like you have the justification for it, you document and detail your substantial and compelling business reasons, you send it to ODJFS through the procedures outlined in Fiscal Administrative Procedure Letter No. 2, and you might be able to use that as the approval to just proceed ahead without any competition or without further attempts at competition.

I did try to compress an awful lot into a little bit of time. We got a late start, so I hope I wasn't talking too fast, but this is a point for questions. [45:33]

We actually have a question from Ron Weber in here today.

RON WEBER: This is Ron Weber from Central Office, and you mentioned emergencies as a situation where we wouldn't have to do competitive bidding. What we have is a windstorm that occurred back in June or July, and we are going back several months later to clean up debris. FEMA did declare it a disaster. Is this a situation where we wouldn't have to do competitive procurement? Or when you say emergency, do you mean we are in the middle of the emergency? [46:00]

CHRIS: I think from the federal standpoint, it is referring to those things that are an emergency right now. Going back, like a decade or so, all of the mass flooding that occurred around Shadyside, Ohio, we needed at that time to acquire tents and trailers and blankets and things of that sort. Obviously, we didn't do the competition at that time, because people were out of their homes. In a situation like this, where if there are any federal awards that are coming along for these kinds of clean-up activities, we would have to take a look at the specific wording in that award to see what that award says about competition.

Obviously, in that case, we're not in the middle of that emergency, we are in a situation that has been an emergency and there is a time limit, of course, for getting the work done. Otherwise, it becomes a problem that just grows and grows, but we would have to take a look at the wording of that federal fund source says. [47:13]

SUZANNA HAYDU: I have another question: For an RFP, I know cost analysis is required. Is an independent estimate of the cost also required?

CHRIS: Let's see if I can anticipate what the question might be. If you are starting off with no idea as to what this purchase should cost, you're not starting off from a very good standpoint. Admittedly, we often start off with procurement from the standpoint of, well, we have this much money available. We don't know how much it really should cost, but we have only this much to spend. Well, that's a reality, but what we need to do for our due diligence, when we're looking at spending money that is tax dollars, is to make sure that we know that the cost we are getting is valid, realistic, and reasonable.

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Competition is part of that. We're using competition to make sure that we are getting good prices. That's one of the problems with not using competition. We could be getting a price that is completely outlandish, and how would we know? So, it is always a good idea to have some sort of an independent analysis of what that price would be, and that might be something as simple as doing our own research via the internet to find out what are the standard prices that that particular industry uses these days. [49:00]

SUZANNA: Okay. I have several questions coming in. So everybody just give me a moment to see what the next one is. We have a lot of questions. I have another question, did we just answer the one on the NEG?

It says: In a situation such as the Windstorm NEG, wouldn't very short federal timelines for program startup potentially contribute to an emergency situation regarding procurement?

CHRIS: I'm sorry, Ron it seems like you –

RON: We've known about this declaration for several months, and we put in for it back in, I think, August, and we still do not have the NOO (Notice of Obligation). But we knew it was coming, so even when we get the funding it doesn't start until October 1. So I don't know that DOL would agree that we're under a real tight timeframe to get started. [50:28]

CHRIS: And certainly when you're in a situation where you know that some sort of need is coming along and the funding is coming along, there is nothing to prohibit you from beginning the procurement preparation. Just because you release an RFP, that does not mean that you actually have to proceed with the purchase. You might not want to actually release the RFP, but if you know something is in the works, you might want to be getting your procedures in place, your information in place to be able to act as soon as possible once the notice is received.

SUZANNA: Our next question says: Does an RFP have to be placed in newspapers if you send it out to a large list of vendors? [51:21]

CHRIS: We at ODJFS have moved to using the internet for the publication of all of our procurement opportunities. My office has posted things via our own ODJFS procurement website for probably 10 years. Also, in the last couple of years, we at the state level are required to post everything that is for procurement to result in a purchase of at least \$25,000 on the DAS website for procurements. So, we do it that way.

I have heard in the past that at the local level, there might still be some requirement existing here and there about legal notices in the newspapers. I'm afraid I don't know the details of that. They could be sporadically still effective around the state. Again, I have to point you to your county prosecutor for that. But for something that is efficient, something that is very widespread, and something that does not cost anything, we have moved to internet publication. We still send out, electronically and/or via hard copy letters, notices to as many vendors as we can identify who could conceivably be interested in that particular procurement. We say we have this. It's on the website at this location. Please take a look and see if you'd be interested. [53:03]

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SUZANNA: We have about three more questions coming in. The next one: For an example, maybe two or three years ago, we determined that the TABE Test purchase is a sole source provider. This is a subscription that is renewed annually. How often do we need to perform our due diligence, as this is a sole source provider after the first acquisition? Many thanks.

CHRIS: I don't know what the TABE Test is.

RON: It's a test of Basic English and math skills, and the vendor needs to score it, and proctor it, and so on. There is a cost to it. As a general rule, a lot of times the Department of Labor says three years. That would be a two-year contract with a one-year renewal and then (inaudible 53:51).

CHRIS: Yes, for us, we don't have at the state level, we don't have any particular set standard for the number of years for which we can renew the same contract from one RFP. But, we always like to think along the lines of: Have any companies come along that could have invented a better mousetrap? And, has the industry changed so much that it is just a matter of more companies are out there doing the same thing, therefore, prices could have dropped, so it is reasonable to do it every so often just for those kinds of reasons. [54:33]

SUZANNA: Okay. The next question: We have been told by the state that we have to conduct and document an independent estimate of a contract for services, such as to operate a WIA youth program.

RON: I think we once said something about price and cost analysis, and I will have to dig that up. There is even a worksheet that you can fill out. This is going back a few years, but it might be referring to the idea of a price and cost analysis. I will dig that out and send it out.

CHRIS: And again, there is that information about the cost and price analysis and how to conduct them on the ODJFS Office of Fiscal and Management Services, I think in the County Finance website.

RON: I think that is where I heard about that. [55:31]

SUZANNA: Okay. Let's see. We've got a couple more questions that just came in, so everyone, just bear with us while we go down through these. Is there a requirement for the amount of time that a public notice needs to be posted?

CHRIS: Once again, I think we are getting into that question about a requirement that you do public notices. I think that is something that is more specific in certain localities. I don't know where that rule exists or that guidance exists. I have heard of that from various questions, but I have never been able to locate it myself. I would have to point you to your county prosecutor for specifics.

But, in terms of the way that we at ODJFS post our procurements, we try to follow general DAS standards. I do believe that DAS will keep pretty much any procurement open for at least two

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weeks. Now, that is not the same thing as buying an ad or a legal notice in a newspaper for two weeks. So again, I think I would have to see some of these requirements specific to purchasing or placing public requirement in newspapers to be able to answer that effectively. In lieu of that, I'm sorry, you'll have to talk to your county prosecutor. [57:04]

SUZANNA: [Inaudible] Revised Code?

CHRIS: If it's in the Revised Code or the Administrative Code, I have not found it of late. By the way, if anyone does have any citation on that to offer, if you could send that in, I would be happy to take a look at that, and maybe we can get some information out later on.

SUZANNA: Okay. This last question is, if we receive approval for a software program that had a cost of \$5,000, and are renewing the contract the following year, do we need to get approval again?

CHRIS: If you purchased a system and you have to purchase things that are compatible with it, and you have the approval for that original purchase, it would not seem to me that you would need to continue to seek any future approval for that sort of thing. Now again, with a continuing renewal, you have to be very cautious that you are not going way beyond what is reasonable in terms of the value of the computer equipment, and what is currently available and what is the life span of what you purchased. [58:45]

SUZANNA: I have another question that just came in. They say, I think it is important to clarify the necessity for procurement on the NEG grants. If the county is submitting an NEG request/application for funding, could our application/proposal include a partnership which identifies or names the project operator as part of the initial request prior to the NEG grant approval?

CHRIS: If you are submitting a proposal for funding, is that what this means?

RON: We've had this come up a number of times.

CHRIS: We've been joined here by Jay Easterling, who is my deputy director. He is also the ODJFS Agency Procurement Officer, and he has some information on that. [1:00:05]

JAY EASTERLING: In your grant application, if you are documenting partnerships or people you wish to work with, we've deemed that to be an approved vendor, not necessarily a competitively-bid vendor. Because you put it in your grant agreement, doesn't necessarily meet the competitive nature of what you need to do. You should still go through with your competitive procedures.

SUZANNA: I have someone who just sent in the Revised Code, Notice of Competitive Bidding, Contents of the Notice is in O.R.C. 307.87. That is the citation that we were trying to give you, the contents, which is a long read. So if you want to take a look at that, it is at O.R.C. 307.87. And then, they mentioned that competitive bidding is required by Section 307.86. So, when you

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have a chance, please take the time to look those up. We can also get copies to send out to everyone if you'd like. Because it is a long notice.

Thank you Mr. Fuller for sending that, because it is a lot of information and I don't want to try to read it. We have several other questions, but we can get copies of this and send it out to people if you'd like, or you can look it up. The Revised Code is online. [1:02:04]

And, the next question is: Yes, the independent estimate is different from the CP analysis as part of the RFP process. We were told we have to come up with a pre-estimate of how much the services would cost, such as the cost of the contractor to operate the youth program for the year, – for an example \$100,000 – to serve as a baseline comparison to proposals received. I assume, based on what I heard, that this is required. Correct?

RON: I will confirm that and let the person know.

SUZANNA: Okay. Mr. Weber will get back with you on that question also.

CHRIS: Again, that gets into the details of some of the specific federal programs and we would have to take a look at that.

SUZANNA: Okay. We have more questions coming in. How would we competitively bid for a service that we have not yet been awarded? [1:03:13]

CHRIS: If you are aware that you are going to be in need of a vendor who will be creating a new community-based program of some sort, you might be able to identify some of the basics that you would expect of the vendors from the selected parties, if the funding was awarded. And you might be able to begin to develop the standards that you would want in terms of the applicants' experience and qualifications.

If you don't know the details of what the federal award or the program will require, then it's probably not a good idea to actually proceed with actually releasing the procurement. The procurement itself really needs to identify all of the factors the selected vendor will have to do and what the outcomes would be.

If you can't really identify all of those, you can't really complete it. But if you know that something is coming up, and especially if you know what is coming up is something that you've done before, you have a pretty good reason to anticipate the same thing, then you've probably got the beginnings, at least, of what you would need from your selected vendors. [1:05:02]

SUZANNA: Okay. We have a couple more questions: We procured a service with a vendor to provide us with a customer tracking system for our One-Stop. The original RFP provided that the contract would be for one year with an option for two additional years. That period of time lapsed in June, and we are trying to determine what our true needs will be based on enhancements that may be coming with the OMJ system. Is there the ability to extend beyond the original timeframe that was shared, without having to go through the entire procurement process again?

CHRIS: That's a very good question. If you know that there is a likelihood of changes coming down the pike and you don't know what they're going to be, but it's a reasonable thing to expect that there will be some significant changes, it is probably not a good idea to try to make those changes or switch to a new vendor for now, because you will just have to do it again very soon.

That might be the situation in which you explain your compelling business reason, via the FAPL 2 procedures, and request a waiver so that you can renew the same contract once more until the new federal guidelines do come along. That might be one way to go. Again, it is a matter of whether or not it is a good, compelling business reason, well explained. But it seems like a reasonable situation. [1:06:53]

SUZANNA: Our last question so far until more pop up: For the disaster NEG, we were provided a list of auction items, vehicles, etc. for sale by the State. Can we just purchase these or must we get three price quotes?

CHRIS: I would have to look up the NEG requirements on that. I'm not familiar with them.

RON: The Department of Transportation is downsizing their fleet, so we could acquire their items for a very low price. They could go on the website and enter bids and hopefully win these items, like dump trucks and so on, that ODOT no longer needs. I think if they were to go look at prices of similar items, I think they would find it cheaper on here anyways. The costs are so low, they may be small purchases rather than something that would require an RFP. [1:07:54]

Jay: I think our office has given some guidelines on that. Again, I will need to verify that and get with John.

SUZANNA: Does anyone have any more questions? They've all been really good ones. And, if I miss a question, please go ahead and type in your box and let me know. Okay. We'll move on.

CHRIS: You'll see on your slides here – maximum, practical, and free and open competition – you will see the citation. Some of the things that the CFR does provide for us are some indications of what we need to avoid in our attempts at competition. Things that would restrict competition are unallowable: Unreasonable requirements, requiring excessive experience, brand name specification... Think about what is reasonable. That is what is required by the federal government. Of course, as we all know, common sense is not so common, but we have to do our best. The CFR, no matter what federal program we are talking about, requires that there be a written code of conduct for all of us who do competition, who do the contracting. [1:09:28]

We expect that there would be no conflicts of interest, and if there are, at ODJFS, we would expect that those employees would simply recuse themselves from that particular situation. There can, of course, be no gratuities. Those kinds of things have to be written into your Code of Ethics, your Code of Conduct for Procurement Related Staff.

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Also, the federal requirements say that we have to have procurement procedures written out, and it's a good idea. It provides your staff with the appropriate guidance of what they do to make those decisions on how they proceed to the next step. Those things should be written out in your procurement procedures. And it is those procurement procedures that you've written that will be used by auditors to determine whether or not you are in compliance with your own steps, as well as with the federal steps.

One of the things that we really adhere to at ODJFS is that we know that the appearance of impropriety hurts us, as the enormous state agency that we are, just as much as the real thing. So, we really try to think about whether or not this would play well on the front page of The Cleveland Plain Dealer or the Columbus Dispatch. We want to make sure that we're doing things that really can't look like there is a possibility of impropriety going on. [1:11:05]

Again, about cost and price analysis. Just a little bit of information here: Even with the unbid contracts, you have to do your homework and you have to document it. For us at ODJFS and again, when we're talking here about things that we do, we at the state level can be doing things differently from what are required for you at the local and the county level. One of the things that we are able to do in the RFP in the selection process that is explained and posted/published with our RFP, is we provide the pricing analysis via that selection methodology. It's right there. It's very specific and very clearly laid out, so that's how we do it.

Required procurement records, of course, are part of the federal standards. There is a citation that you can go to and look at what those required minimum records would be. Also, a written system must be in place for contract administration. Full contract administration is a little bit beyond the simple issue of doing a procurement. It includes monitoring, evaluating your selected vendor and documenting the performance.

It's also a very handy step-by-step guide for how procurement and contract management staff have to do their work. For us, an RFP or RLB, any written procurement document, is a three-sided mirror. It's an old image, you've seen it before if you've been to any of these trainings, but it's still valid, and it's still what we use. [1:12:57]

The first side of the mirror: We talk about what we need. The second side of the mirror has to reflect that. It has to reflect that in terms of giving the instructions to the vendors who are interested in how they have to tell us back in their proposals, how what they have to offer meets with our standards of what it is we're looking for. Then, the third side of the mirror that reflects those previous sides is the scoring. We're scoring their proposal based on what we said we need and why we need it.

Again, the first side is the clear communication of the need. It describes what we need, why we need it, when and how we need to have it done or provided, to what level of standard, who's qualified, what kind of vendors are qualified to do the work – again, you have to be very careful here – and this is one of the things that the federal standards warn us against. Don't require excessive experience by vendors, because it looks like you're steering the contract to certain vendors you are very familiar with, as opposed to giving a fair shot to any other vendor.

Actually, I've seen it in the past where, in an RFP we did many years ago, we required 10 years' experience from the organization that was doing that work. It was a federal program that had only existed for about six years, so it really didn't make sense. I don't think we had much success with that particular RFP. These are the kinds of things that we have to communicate. [1:14:50]

By the way, in terms of an RFP vs. an RLB, this second bullet point on your screen of why we need it and the final bullet point on how the work or product of the successful will be used – those are two factors that might be a very good thing to include in RFPs and RLBs. But in an RFP, generally we're looking for a vendor's creative and interesting new idea for how they can solve our business problem.

Sometimes, if we can explain why we need something and how their end product, their work, or how their services will be integrated into the implementation of the program, that would be helpful to them, to be able to understand more clearly what it is that we are looking for. Again, with an RFP, we are looking for something that is pretty complex and pretty specific to our program. With an RLB, we're looking for something a little bit more standardized. We probably just need to describe what it is that we need and the level of standard that we're looking for that we believe will be successful for the work. [1:16:13]

Identifying the deliverables in that first side of the mirror – they have to be enforceable and that means, of course, that, to the best of your ability, you need to make them clear, specific, meaningful and measurable. By deliverables, in some cases we can be specific, that the deliverable must be a certain product, a new process developed, a curriculum that has been developed – very specific. But in other cases, it might be an outcome.

An outcome – that is, a percentage of five percent of greater compliance with certain programs by consumers who are using that particular program. So the outcome or the deliverables – those two might be interchangeable, not necessarily in the same RFP. But you might talk about deliverables in some procurements and you might be talking about outcomes in others. But either way, you have to be clear enough about what it is that we need and specific enough about what you are looking for or what you are trying to achieve, and have some sort of meaningful, measurable standards that are expressed, so that you know whether or not the vendors are offering to us. [1:17:42]

According to the Federal Government and according to common sense, deliverables can't be so specific that only one vendor could possibly win that competition. That's called steering the contract. Also, if it is not in the RFP or in the vendor's proposal, it's not in your contract. Ohio is a four-corner state.

If it's not written on the page, it does not exist in the contract and therefore, it is not enforceable. It may be something you hope for, but it's not something that you could enforce. Enforceability in a contract is important, and it's based upon a meeting of the minds. In development of an RFP, think about balance and, as we said here, the more definitive you can be about the outcome or the deliverables you need, then the greater the selection emphasis can be on the vendor's costs.

But, if you're looking for something that is very creative or very specialized to your program, then you probably want to put a little bit more emphasis on the vendor's technical quality. And again, a little bit of this is about the difference between an RFP and an RLB. In our world, if we are looking at something that is primarily about the cost, we're looking at a Request for Letterhead Bid or a Request for Quotes. An RFP is something that uses both quality and cost and does not necessarily mean we are selecting the lowest priced vendor. [1:19:26]

Other considerations in whatever type of procurement it is, we always want to make sure that we are reserving our right to amend the RFP. And, we've had to do that many, many times. Once we have released an RFP, we sometimes get questions in from vendors that say to us, "Well, gee whiz, I guess we didn't think about that. We need to amend the RFP to make the change and to express that." For us, that means we would amend the RFP, we would post the appropriate notice for it, and if we need to give vendors more time to respond to that, then we do so.

We identify how long the selected vendor would be under contract: how many renewal periods there are; what's reasonable for that project. This gets back to some of the questions we had in the previous question section. If it is possible that your vendor has a lot more competition these days than when you first selected them four years ago, it might be a very good time to make sure that you are doing a new competition.

Competition brings in good price, but don't make one competition last too long, because you might be blocking yourself out of better, newer opportunities. And, keep in mind, no matter how many renewals you might say that you're putting into the contract, renewals are always made optional. Just because we said we plan to renew this for three biennial periods, we always also say "at the option of ODJFS" provided that we have the appropriate money and provided that the vendor continues with good performance. [1:21:11]

On to side two of that three-sided mirror: The Proposal Competition.

We have to tell the vendors how to respond in order to say to us what it is that will convince us that they're the right vendor for the work. We give them those kinds of instructions, we tell them how to present this information to us, how to organize it, and what documentation to provide, of course, when and where to submit the proposals. It's really a good idea to say more than: You must show us that you've got this kind of experience.

Well, how do you want that shown? Do you want it shown via a narrative explanation? Do you want it shown by way of resumes of the staff? You have to identify what the documentation would be, what the explanation would be. These are instructions that are helpful to vendors and they're also instructions that, if the vendors comply with those instructions, it is a whole lot easier for the review team to score and evaluate the proposals that you get. This is one of those ways to be kind to your proposal reviewers. [1:22:37]

Scoring: Emphasis on what is most important in the vendors' proposals and their plans. The scoring should identify the appropriate weighting of the criteria, some criteria are important and some criteria are Important. We give appropriate weight to those. We do weighting in a couple

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of ways: one way is to simply say that this criteria is worth a weight of 3, and other criteria are worth the weight of only 1 or 2. Or we simply ask a lot more questions over a certain area, so overall, at the end of the day, you've asked them a lot more questions and therefore would be awarding more points for a particular area of the vendor's proposal.

The scoring amounts to our explanation of the rules of this particular bid qualification. It is the set of rules that we're creating for this. It is our set of those things that disqualify the vendors, and it is an explanation of the minimum that we will accept. All of those things have to be laid out in our scoring plan and stated so that vendors know how to present their proposals to us.

Weighing the relative importance of cost and quality, there are a lot of balances that we have to consider within any RFP or RLB – balancing the weight of one area of technical quality against another, balancing the relative importance of cost and quality, and we have to explain all of those things within the RFPs. [1:24:42]

Pardon me, I was talking rather fast there in going through those because we have just a little bit of time left. Are there any questions at this point?

SUZANNA: I do. There are some questions. There are a couple that came in, and one of them I'm kind of identifying as an (inaudible 1:24:57) question, where they received their training, because I took a training last year with you and I know that information is going to be a little different. This person is asking: If it's not in the RFP and/or proposal, it's not in the contract. We were told in other procurement training that after the vendor is selected, the contract is negotiated to get best results.

CHRIS: After a contract is awarded, after a vendor is selected, there can be some reasonable negotiations. But those kinds of things are probably going to have to be limited by the general scope of what it is we had in the RFP. You can't suddenly add a bunch of new deliverables. For example, something that we frequently see at ODJFS in terms of Medicaid contracts, is that we have a vendor who is doing something for one particular Medicaid program.

As you know, Medicaid is really many different programs. As new populations or new programs are brought into some other new service, the vendor we selected for one component of Medicaid has been doing this particular portion of the population, we might be able to amend the contract to negotiate it again so we are bringing in a different additional Medicaid population, and the vendor would provide the same services for that new population. We would still require it to be within the same general scope of work, but there are going to be some limitations but there could still be some further negotiations.

Now, we are probably talking in ODJFS terms about amending the contract, as opposed to negotiating, right then and there, between the time the procurement is completed and the vendor is selected, and the time the contract is drafted. There, I think you have to be a little bit cautious in terms of whether or not we are doing something that would look to some of the vendors who wanted that contract who could come back and say, if I had known it was going to go in that direction, I would have bid differently. You don't want to be in a situation where those

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negotiations could end up resulting in litigation by unhappy vendors who feel like it was an unfair process. [1:27:30]

SUZANNA: If an RFP contains language allowing for contract renewals, for example one year with two renewals, and the performance is met, but that language is not in the completed contract, then is it still allowable to extend the contract past the initial year?

CHRIS: That gets into probably an area that you should talk to your county prosecutor about; however, there is always in ODJFS Contracts and RFPs a legal hierarchy. We address whether or not any inconsistencies between the two would have to follow which path – which one rules. So, we would answer that ourselves in terms of what our RFP and our contract language says. In your case, I'd say you will have to talk to your county prosecutor to be specific to your agency. [1:28:53]

SUZANNA: The next question: Do you have a good independent estimate and cost price analysis, one that has been scrutinized and passed on it, one that you can share as an example that will help us in modeling them for our agency?

CHRIS: A cost and price analysis model. In Contracts and Acquisitions, in my office, we do not. If we were looking for something of that sort, that would be the kind of thing that we would go to our Fiscal & Monitoring Services Office for and ask them to put that together. But again, at ODJFS, we do procurements for all of the different federal causes and agency programs. We do lots of procurements for grants, from fatherhood programs at the county level to some of the huge Medicaid program procurements. There are just so many different variables there, we don't have just one standard thing. I'm sorry. [1:30:09]

RON: Within ODJFS, each area has a fiscal supervisor from the Bureau of County Finance and Technical Assistance, and that might be a source to go to for something like that. Yes, each should have a Fiscal Supervisor.

SUZANNA: The next question. Regarding cost price analysis, is this done only for new proposals, or does cost-price analysis need to be conducted each time an existing contract budget is amended?

CHRIS: That's a very good question. I would say that the reason for the amendment, if you are looking at adding new deliverables, you'd have to look at whether that is a reasonable thing to do, but if you're adding new deliverables that weren't in there originally, you probably will need to do something along the lines of a new cost-price analysis to make that something that would be admissible to an auditor.

SUZANNA: So, essentially, if there is anything that could potentially change that cost price, you probably should look at it then?

CHRIS: In our world, we very, very rarely amend contracts to add new services for which we don't already have the pricing or the rate included. That's just something that we at ODJFS just do not do. Essentially, it amounts to awarding an unbid contract because you're asking the same

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vendor selected for something else to do something different. So, we're probably not going to be doing that. But, if there is – and I won't say that there is never going to be a situation where that wouldn't be the reasonable thing to do – but if that were the case, then I'd say you'd still need to have something that tells you that the pricing is appropriate. [1:32:18]

SUZANNA: We went out for an RFP last year and selected a sub-recipient with the option to renew one year. Due to funding cuts, we have decided to do some of the items in-house this coming year. Do we need to go back out for an RFP or can we renew the contract?

CHRIS: Again, in terms of ODJFS's world, if we had terminated the contract, it no longer exists. We can't renew something that no longer exists.

RON: I think they have a renewal option that they want to renew the services and do them in-house, and then the vendor will do only some of the services.

CHRIS: Oh, the contract will still exist but just not for the full range of work? That could be an entirely reasonable thing to do without re-bidding it. It's conceivable that you're going to have some costing problems with the vendor, because their initial cost proposal may have been for the whole program and, if they spread some of their general unit costs or administrative costs over the whole thing, well, if they're losing some of that revenue, then they may need to transfer some of those administrative costs back into some of the units. I think it's doable, but again, I think it's something that you want to go over with your County Fiscal Supervisor. [1:33:57]

SUZANNA: Okay. Here's an example: We know in our youth target, we have a maximum of \$100,000 available for a potential contractor to provide youth element services for the entire year. Do we supply this amount in the RFP, so bidders know what dollars are available, or do we leave it open and, if so, we could get bids from \$50,000 to \$200,000 or higher?

CHRIS: That's a tough line to walk. We know when we are trying to bid out something to vendors and we are trying to purchase things, we avoid posting the amount of money we have available, because generally, if we say we have \$100,000, most likely we're going to get bids in that are really, really close to \$100,000. Even though if we were doing a cost price analysis, we might find that the work needed to only cost say \$80,000. So we try not to do that when we are trying to purchase goods or services.

But when we are dealing with the administration of programs, there is a specific grant amount that is available. There are going to be unit costs for services to individuals. And if you only have funding available that can provide that service to 10,000 people in a two-year period of time, well then, maybe that's what you need to say. If it is about the administration of a program, it might be more reasonable, because you are telling the organizations that are submitting proposals what are the realistic fiscal parameters for what they have to work with.

Your responsibility then, in terms of selecting based on price, would be some sort of way to weigh whether or not the services that the organizations are proposing are truly meaningful – are the best way to utilize that funding. Do you want sort of B-quality service for more people or do you want A-quality service for fewer people? Those are the kinds of things that you might have

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to consider and you'd have to explain that in the procurement, explain what you are looking for. Does that answer that question? [1:36:49]

SUZANNA: If that answers your question, please let us know. Okay, the next question we have is: What is the best way to negotiate profit and what are some examples?

CHRIS: I think the requirements are that profit would be negotiated separately from costs. But again, I don't have examples of that. That is just not within the kinds of things that my office is generally involved with. That might be something for your Fiscal Administrative Supervisor, but there are some instructions within the federal guidelines about negotiating for profit.

SUZANNA: Two more questions: If a winning proposal includes a vendor, such as payrolls, does that vendor have to be separately procured, or is it covered in the original proposal?

RON: They have, for example, a provider who wants to use a payroll issuing company so on their proposal they were *** that amount and this other entity will do everything else – can they come in together as one bid and be *** [1:39:00]

CHRIS: I would imagine that would be done as a subcontractor sort of relationship. ODJFS contracts are always between ODJFS and the prime. We don't have any direct connection with the subcontractor. If we wanted to parse out some functions, it would be two separate procurement activities and two separate contracts, most likely, unless the same vendor got both. In this case, I think as long as the vendor, the applicant for the program is proposing their subcontractor, we always want to see who the subcontractor is going to be as part of the proposal, then I think that's probably permissible without it being a separate procurement.

RON: You said earlier that if the vendor is a subrecipient, they are subject to the same procurement rules and must then procure the payroll.

CHRIS: Now, if the payroll service is ancillary to the program, that's probably a vendor relationship, and not a subrecipient relationship, so that does make a little bit of a difference. [1:40:25]

SUZANNA: Okay, this last question is kind of interesting: One of our local non-profit entities claims that non-profits can, indeed, make a profit. Do you have any federal citations that would guide us in finding the answer as to why non-profits cannot make a profit?

RON: I think the issue may be related to a fixed price contract or a cost reimbursement contract with a unit rate – it could be your unit rate was too high, but you should not negotiate a separate line item for profit with a non-profit entity.

CHRIS: Of course, non-profit entities have to cover all of their costs. It is not a separate line, it could be something that occurs by virtue of the budget that the non-profits are providing in their proposal.

SUZANNA: That's it.

CHRIS: Okay, we'll move along. [1:41:33]

In the ODJFS RFPs, we generally will have a Q & A opportunity. We want to be able to allow the vendors the opportunity to ask questions. We benefit from that. We allow them to point out to us oversights. It is especially helpful if we are doing a procurement for something we never have done before, some new program. It allows us to benefit from the knowledge of the vendor base or the potential applicant grantee base. So decide if it's useful.

For us, we have not done a bidder's conference in years, with the possible exception of a couple of procurements for the Governor's Office of Faith-Based Community Initiatives, where there were other reasons to bring the potential vendors together for networking purposes. Generally, we're going to do an online anonymous question and answer process. It is posted and clarified within the RFP itself, and in that clarification process, we make it very clear that there will be no personal responses to questions.

Everything that any vendor asks will be subsequently posted, the questions will be posted, they will be identified and our answer will be posted for everyone to benefit from. So, it's not just the vendors who are smart enough to ask the questions who get the benefit of the answers. Everybody gets it, and that makes it fair and open. The agency's final official answers are provided to all vendors simultaneously – that is, we post the answers at the same time. We allow enough time for the vendors to take our answers into consideration, so they can then post or prepare their proposals for us. [1:43:39]

Then, we do a proposal review process once the vendors' proposals come in. We have to work hard though that the composition of the Proposal Review Team – and we do call it that, a team – meets the needs of the project. We have the right expertise represented on the team so they are able to understand the proposals that come in and understand the needs of the program. For us, again, making that distinction between this is what we do. I'm not saying it's what you must do, but it's what has worked for us.

We require that all of the PRT members are available from start to finish – all of the PRT members have to be in the meeting room and present at every point at which the reviewers come together. Somebody can't be there for some of the meetings and some of the discussions, but not all of them. They have to be there 100 percent of the time. The PRT has to follow the standards for proposal review that we set and published in the RFP. We require that the reviewers all do an individual review of all proposals – we don't split them up and have three reviewers review 10 proposals and three other reviewers review 10 other proposals, because chances are they won't use the same sort of essential determining factors of what meets and what doesn't meet.

They all have to work together on all of them. And we want them all to contribute to the group effort. And, we use consensus scoring – we don't average. Individual proposal reviewers do not give us their score and then we average them. We require consensus. That is our procedure. That is part of our agency policy. It is a process that really does seem to develop further a complete contribution by all the reviewers and I think it is the kind of thing that also protects the individual reviewers from litigation from the unhappy, unselected vendors who may want to

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depose the individual reviewers on why one may give them a very high score and somebody else gave them a very low score. We have none of that to worry about when we use the consensus process. [1:46:23]

We also make sure that all of our reviewers all sign a Disclosure Form where they are affirming that they have no conflicts of interest. Consensus scoring, again, is a process in which all team members have an equal say in the outcome. It is not based on averaging. We achieve full agreement among most all the team members of the outcome of the Proposal Review Process, or at least they all agree to the fairness of the process.

Maybe somebody really wanted to change some of the scores on some of the criteria and they talked and they talked and they talked, but they could not get the rest of the review team members to agree with them. It's one in which there is give and take, but as long as they can all agree that they did their best, they tried and we've got something that everybody can live with – that's what we consider to be a good consensus process. [1:47:31]

In the vendor selection process for us, we always produce a Selection Summary Document for the record. I don't know about you folks, but I'm getting older and don't always remember things in as much detail as I used, so we have that document for later. It identifies the recommended vendor, the process used, the details of it and whether there were any anomalies in the process, such as if we had to do a clarification – or, if once we started the review process, we hit upon something in the proposals which showed us that we had such disparate responses from vendors that we looked at the RFP and said, maybe we did not explain this well since we had such differing interpretations of some element of the RFP from the different vendors – so, we issued a clarification request.

We say to vendors who submitted proposals we really meant this. Now, give us your response to that one element. So that kind of thing would always have to be explained in the Selection Summary Document that we complete. For us, our Selection Summary Document explains the recommendation to the director. Because, for us, only the Director of ODJFS has the authority to commit the agency to any kind of fiscal or other obligation – the director, or any of the director's specific signatories for that process. So, we take our Selection Summary Document from the Proposal Review Team and ask for the Director's agreement. That's the way it works for us. It's an executive summary and our historical record. [1:49:15]

We spend a certain amount of time right after the vendor selection process putting together the appropriate notices to all the vendors, telling them whether or not they were selected for the award. We let everybody know essentially, at the same time, if we're sending things electronically. We do often send things electronically to get that notice out to them quickly. We want it to happen quickly, usually because at the end of the RFP process, we have a specific amount of time left before we have to have our selected vendor working on the project.

So we send out the notices as soon as we can, but all of them have to be dated, so, even though we send it electronically, we also send a hard copy by mail as well. The date on the notices to all of the vendors, whether they have been selected or not, is important because that is the beginning of the protest period. The federal standards, for whichever federal agency we're looking at, all

require the inclusion of a protest process. It is not specific in the federal requirements what that process has to be or how long it has to be; it simply requires that there be one. The date on the letters to the vendors saying whether or not they were selected is the date we use to count the protest period. We say that protests over that selection have to be received in seven business days, ten calendar days – it varies from project to project. But we specify what the period is, and the date on the letter is the kick-off of that protest period. [1:51:35]

Protests, if they are received, can throw everything that you thought you completed out the window. It is possible, but if you have done as much good preparatory work in the RFP as possible, and if you have stuck to the rules of the game that were spelled out in the RFP and in the Score Sheet, chances are you're going to be successful, even if you get a protest that slows things down.

If any of you have been following the news lately, you probably have seen that ODJFS has had a few of them that sent ripples into the financial market around the world. We are that big with our Medicaid program. We have been receiving requests for records on some of those procurements that we have done recently for Medicaid from London financial institutions, but with only one variation: We were successful because we stuck with the rules that we have laid out. I won't say that we were completely successful, but that was a very complicated situation. But, for the most part, it worked well and, where it didn't work, there were a couple of things that we simply did not anticipate or we did not see it coming, and a couple of other things where we made some minor mistakes that we had to swallow – which we did. But for the most part, the results turned out pretty much the way we had expected them to at the beginning.

It was difficult; it was litigious. But we have the documentation, and that documentation that we've been talking about all along really is important. The documentation and the records retention schedule. Make sure you've got a legally-supportable outcome and you have to document that. The paper trail is part of the federal requirements and is also going to be critical if there is any litigation. There are records retention requirements, and you have to have policies in place that specify how you will be retaining your records. And we do certainly get lots of public records requests at ODJFS over these things. [1:54:14]

Why the hassles over all of this stuff? Compliance, competition, stewardship, no impropriety, it's our taxpayer money too. Why did we do the little quiz about "Ohio"? I can't see how you answered the quiz at the beginning. I gave you the instructions this way: Write the word "Ohio" on the lines. How many of you wrote "Ohio" 4 times? How many put one letter on each of the 4 lines?

What's that all about? Instruction. Clarity of instruction. That's really an important issue in how we put together a competitive procurement. We have to be clear about what it is that we need, why we need it, and how we're going to select vendors from what we get in. The instructions that we give can be critical to whether or not we get proposals that do the job, that end up serving Ohioans and utilizing our taxpayer money well. And, with that, that's the end of this one.

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GRAIG: Hello, this is Graig. I know we're after the 11 o'clock hour; however, Chris has graciously agreed to stay beyond 11 o'clock, so if you have a couple questions, we'll field two or three of those between now and when she has to leave. So let's go ahead with our questions.

SUZANNA: I just have one question, but I have two comments that are very positive comments about what we've been discussing today. The one question is: I am understanding that the consensus scoring has a scoring sheet for each vendor. Or, is it one combined document for only the vendor selected?

CHRIS: What we do at ODJFS is we have Proposal Review Team members who are actually doing the evaluation of the proposals, and we have team facilitators who are not reading the proposals. They are generally my staff. They are the ones who record the scores for each individual proposal that we have received using a separate score sheet for each one, but there is only one score sheet for each proposal. We don't have a score sheet from each of say five different members of the Review Team: We just have one score sheet for each proposal for the entire team. [1:57:04]

RON: So the team comes together and agrees on a score for each item?

CHRIS: Right. The team comes together. We go through the score criteria – it could be 12 criteria, it could be 250, or I've seen things a lot bigger than that – and as a team, they decide on the score for each of those criteria for each vendor. One score sheet records all of those, and then we sum that up, but it's done via the consensus. We don't record a score until the team, as a whole, agrees with that score.

SUZANNA: And it looks like the last question. If we have any more, you might want to put them up before we sign off. The next one we have is: How do we request the Certificate of Completion?

GRAIG: Oh, this is regarding the program. What we are doing with this particular series is that we are keeping track of everybody who is attending and after the fourth videoconference session is completed, our office will make sure who has attended all four sessions and we will be e-mailing the Certificates of Completion out to you directly. That's one of the reasons we asked for your e-mail address when you registered. Please note that the Certificate of Completion is only awarded the people to attend all four sessions.

RON: And this is only the third one – there's still one more.

GRAIG: There will still be one more. I don't want to give out the date yet until we actually tie it down, but it hopefully will be in late October on Personal Data Security. You should stay for the entire length of the session. Are there any other questions for Chris or for anyone else here? [1:58:48]

SUZANNA: I do have one more: If someone missed a session, is there a way to make up the missed session?

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GRAIG: The answer is yes, if you e-mail me, Greg Pellman and request a DVD, we will send it out to you. Then I will need an e-mail back that you watched the session via DVD. Any other questions?

Chris, I want to thank you for your presentation. It certainly was very informative and, of course, by the number of questions, we know that our audience is very interested in the topic. Again, we will be sending out an evaluation. In that evaluation, we will have a section where you can ask any questions or make comments if you have any follow up. We will look at those. Again, we want to thank you for your participation and your attention and, hopefully, we will see you all next month. Good bye.