

PRESENTED BY **NC DOA**
Department of Administration
Purchase & Contract

BAFOs Baffle Me Navigating Vendor Negotiations

2025 **PEAK** BREAKOUT SESSION

ELEVATING NC PROCUREMENT TOGETHER



BAFOs Baffle Me Navigating Vendor Negotiations

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Introduction

- What does B-A-F-O stand for?
- BAFO is an acronym for Best and Final Offer
- What does it "do" in a procurement?
- 01 NCAC 05A.0112 (2) "Best and Final Offer" ("BAFO") is a document that memorializes the details of **Negotiations** between the State and a Vendor and mutually modifies the Vendor's Offer.
- Where can I find the BAFO?
- The template can be found in either eVP or PIP



<p align="center">STATE OF NORTH CAROLINA</p> <p align="center">Department of <INSERT></p> 	<p>REQUEST FOR BEST AND FINAL OFFER NO. <NUMBER></p>	
	<p>Offers will be received until:</p>	
	<p>Issue Date:</p>	
<p>Refer ALL inquiries regarding this BAFO to:</p> <p><INSERT NAME></p>	<p>Commodity Number:</p>	
	<p>Description:</p>	
	<p>Using Agency:</p>	
<p>See page 2 for Submission Instructions</p>	<p>Requisition No.:</p>	

NOTICE TO VENDOR: Offers submitted in response to this Best and Final Offer (BAFO) for the furnishing and delivering the goods and services described herein, subject to the conditions made a part hereof, will be received through the Sourcing Tool until <TIME> Eastern Time on the day of opening. Refer to page two for submission instructions. Offers submitted in any other way in response to this BAFO will not be accepted. Offers are subject to rejection unless submitted on this form.

EXECUTION: In compliance with this Request for BAFO, along with the terms and conditions in the original solicitation, as maybe modified herein, the undersigned offers and agrees to furnish any or all goods and services which are offered, at the prices agreed upon and within the time specified herein. Pursuant to GS §143-54 and §143-59.2 and under penalty of perjury, the undersigned Vendor certifies that this offer has not been arrived at collusively or otherwise in violation of Federal or North Carolina law and this offer is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting an offer for the same commodity, and is in all respects fair and without collusion or fraud.

Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers will not be accepted.

VENDOR:		EMAIL:	
STREET ADDRESS:		P. O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO:
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:		DATE:	

Offer valid for ninety (90) calendar days from date of opening unless otherwise stated here: ____ days.

ACCEPTANCE OF OFFER: If the State accepts any or all parts of this offer, an authorized representative of the Agency shall affix his/her signature to the Vendor's response to this Request for BAFO. The acceptance shall include the response to this BAFO, any provisions and requirements of the original Solicitation which have not been superseded herein, and the North Carolina General Terms and Conditions. These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

<p>FOR STATE USE ONLY: Offer accept and Contract awarded this [Enter Day] day of [Enter Month], 20[Enter 2 Digit Year], as indicated on the attached certification, by _____</p> <p>(Authorized Representative of [Enter Agency Title])</p>
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SUBMISSION INSTRUCTIONS: Vendor shall submit its offer through the Sourcing Tool. Any files submitted shall not be password protected and shall be capable of being copied to other media.

REQUEST FOR BEST AND FINAL OFFER (BAFO):

This request is to solicit a best and final offer from Vendor for **<INSERT GOODS OR SERVICES DESCRIPTION>**. The offer should integrate the previous response to the Solicitation and any changes listed below. Any individual Vendor may receive a different number of BAFO requests than other Vendors.

NOTE: This Solicitation is still in the evaluation period. During this period and prior to award, possession of the BAFO, original bid response, and accompanying information is limited to personnel of the Issuing Agency and any agencies responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e., assist in evaluation), will be in violation of purchasing rules and their offer will not be further evaluated or considered.

Specific requests begin on the next page. Vendor may copy requests onto additional pages, as needed, to provide sufficient space for its response.



Where within the seven stages of the procurement process is the BAFO used?



The Seven Stages of Procurement



- The BAFO template is located in Ariba, under the “Tasks” tab, subsection *06-Negotiate and Award*.
- Ariba has the each of the “tasks” listed in the order of the seven stages, to help the procurement professional to know exactly when during the procurement process the BAFO should be used.

1. Where does one find the definition of “negotiation”?

- The definition is in the Administrative Code

2. Where does one learn when it appropriate to negotiate?

- The Administrative Code also sets out the instances when negotiations are permitted during procurement process

3. Where do we find out when during the negotiation process the BAFO should be used?

- The NC Procurement Manual provides us with the timing for using a BAFO in relation to negotiations



Where is "negotiation" defined?

01 NCAC05a.0112-Definitions

(19) "Negotiation" means oral or written communications in a waived or open competitive Procurement between the State and Vendor undertaken with the intent of allowing a Vendor to revise its Offer. Revisions may apply to **price, schedule, technical requirements, or other terms** of the proposed Contract. Negotiations are specific to each Offer and shall be conducted to maximize the State's ability to obtain best value based on the evaluation factors set forth in the Solicitation. **Negotiations shall be memorialized in any resulting Contract.**



When do we negotiate?

01 NCAC 05B .0503-Negotiations

(a) The Purchasing Agency may negotiate with **one or more Responsive** Vendors or **reject all Offers** under the provisions of Rule .0501 of this Subchapter and negotiate with **one or more sources of supply** that may be capable of satisfying the requirement. Negotiations may also be conducted under conditions that merit a **waiver of Competition** pursuant to Rule .1401 of this Section.



Five Instances of Negotiations

- One responsive vendor
- Multiple responsive vendors
- Rejecting all offers and negotiating with one source of supply
- Rejecting all offers and negotiating with multiple sources of supply
- Waiver of Competition



How is the BAFO used?

6.11 Negotiation: Offers and counteroffers may be made as necessary with each vendor to secure mutually agreeable contracts. After negotiations, the state will select the vendor(s) with the most advantageous proposal. Vendors shall submit written confirmation of modifications and final terms and conditions of the proposal. **BAFO documents shall be used to document changes made through negotiation** unless, for instance, a revised RFQ is issued after negotiation.



Scenarios



Scenario One

An Agency needs to purchase a set of widgets for its lab equipment. Prior to issuing the solicitation it finds that only one vendor can supply these widgets. The Agency decides to issue an RFQ. The Vendor responds with multiple changes to the Terms and Conditions as well as pages of additions of its own Terms and Conditions. The Agency would like to negotiate the terms and conditions with the vendor.

What should be the Agencies next steps?



Scenario One Answer

- a) Get a copy of the BAFO, add all of the terms and conditions that are at issue and put them on the draft BAFO, send the copy to CMS for them to review the vendor's proposed edits to the Ts and Cs. Allow CMS to comment/provide feedback. Send the draft BAFO to the vendor to review CMS input and if there is a need for the Agencies business to address the Vendor's changes to the Ts and Cs that CMS has identified as a business decision. Once the Vendor and Agency have addressed the comments/feedback, return to CMS for next steps.
- b) Follow the same process above in a Word document (not a pdf.) and once everything has been finalized and all of the issues have been addressed, put the results on the BAFO.



Scenario Two

A University issues a solicitation for lawncare services. It receives several responses from “mom and pop” companies that provide quality service but none of which can provide the detail of service necessary for the size and number of campuses.

What should be the Universities next steps?



Scenario Two Answer

- The University will reject all offers because none of the vendors can meet the requirements or the specifications. It may then:
 - a) issue an RFQ with one or more Vendors who are sources of supply who can provide the needed services and negotiate;
 - If an RFQ is issued, and items are being negotiated a BAFO is not needed because the information will be captured in the RFQ
 - b) negotiate with any of the Vendors who have responded to the bid
 - A BAFO may be used to capture the items that have been modified from the original solicitation and the vendor's bid.



Scenario Three Question

An Agency has evaluated vendor proposals. Based on the evaluation results and the number of qualified vendors, the Agency would like to "negotiate" with numerous vendors. The only item to be negotiated is price. The Agency issues BAFO #1 and in it there contains an area for each vendor to provide its updated pricing. The Agency reviews the new price schedule and has decided it would like to award to several of the Vendors and would like each vendor to charge the same price. The Agency then issues a BAFO #2 to the vendors each BAFO contains the same price. A few of the vendors do not agree but several sign BAFO #1 and BAFO #2.

Was this the correct use of the BAFO for this negotiation?



Scenario Three Answer

- This is not ordinarily the best practice when working with a vendor to negotiate terms and pricing.
- The best practice is to work with the Vendor to come to an agreed upon price. A chart, an email, a meeting or even a Word Document to capture the following information:

PRODUCT OR SERVICE	Date	VENDOR PROPOSED RATE	Date	AGENCY COUNTEROFFER	Date	VENDOR 2 ND PROPOSED RATE	Date	AGENCY FINAL OFFER

- Once the information has been gathered and a final agreement has been reached by both the Vendor(s) and the Agency, the information should be captured in a BAFO.



Challenges with multiple BAFOs

- Trying to understand and identify the final provisions of the contract.
- Contract management is more difficult
- Having to review both changes in the addenda and changes made by the BAFO. The contract then consists of the Solicitation, the Attachments, the Addenda, the Vendor response and the BAFOs.
- Consider all of the above when you have a solicitation with multiple vendors awarded the contract.



Final Points

- Negotiations can be verbal and can lead to results oftentimes quicker than emailing documents back and forth over several iterations.
- Documenting the results of the negotiation is vital to the efficient conclusion of such activity and, more importantly, critical in formulating the resulting contract document.
- Both parties must agree that the information gained through the documentation process is accurate.
- The results of the negotiation will eventually be incorporated into the formal contract file.
- Whenever issuing a BAFO, make an allowance for the Vendor to provide updated pricing. They do not have to, but they often feel compelled to do so.
- Issue only one BAFO
- The BAFO should contain the final negotiated items and changes that have been agreed to by both the State and the Vendor.





Thank you



Resources

- Negotiations
 - *Getting to Yes: Negotiating Agreement without Giving In* by William Ury, Roger Fisher
 - Harvard Law School Program on Negotiation
<https://www.pon.harvard.edu/>
 - NASPO Procurement U
 - 104-Introduction to Negotiation;
 - 204-Negotiation Strategies
 - P&C
 - NCP-Intro to Neg
 - NCPO-Advanced Neg
 - Either of these as a standalone course (registration in LMS)

