
The “Little White Lie” of Government Procurement:

Comparing bidder proposals during an RFP bid evaluation - why many government managers do it, why no one should, and what to do about it

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Which tie looks better with this shirt? Which political party or candidate will I support in the election? Which long distance savings plan should I sign-up for?

The act of relative comparison is embedded within a decision-making process that we engage in countless times each day. By definition, to “compare” is to examine, in order to take note of the similarities or differences which may exist between any number of competing ideas or offerings.

For many of us, comparative decision-making is an almost instinctive thought process aimed at maximizing our benefits and minimizing our risks, usually involving numerous trade-off considerations, probabilities and other related factors.

Irrespective of whether the available options may be few or many, the implications serious or benign, or the decision-making process instantaneous or protracted, the act of comparative decision-making is for most a very natural thought process in keeping with well established patterns.

When faced with making a decision from amongst any number of competing alternatives, a thoughtful person will compare the relative similarities and differences which exist for the purpose of selecting the option which offers them “the most for the least”. In other words, they will to some extent compare each of the available options before making their decision, ultimately selecting the option which, in their view, delivers the greatest overall benefit as offset by its inherent costs and/or risks.

The literature on decision theory abounds, with countless examples as to how comparative analysis techniques are used to facilitate good decision-making in numerous walks of life. Various decision-making models such as decision-trees, paired-comparison analysis, Pareto analysis, cost-bene-

fit analysis and several others are widely utilized in the fields of medicine, government, commerce, banking, academia and throughout all areas of society. In each instance, these models are used in an effort by both individuals and organizations to make better decisions. A laudable objective, to be sure.

So then, if comparative decision-making is such a well established and effective process, why has it been explicitly prohibited within the government procurement process?

In a recent determination issued by the Canadian International Trade Tribunal (CITT), the practice by public officials of directly comparing technical (i.e. non-financial) elements within one bidder's proposal to technical elements within another proposal, for the purpose of deriving a score, was cited as a breach of the government's obligations under the trade agreements (see CITT File # PR-2004-054).

The underlying principles in the CITT's determination were that each technical proposal must be evaluated individually and separately from all other technical proposals, and that all proposals be evaluated in accordance with only the specific evaluation procedures and/or criteria as set out in the Request-for-Proposal (RFP). In other words, no comparison allowed.

Why the need for such a limited decision-making methodology? Where was this principle first established, and why is it that government procurement decisions are subject to what some would surely describe as an overly rigid, if not counter-intuitive, decision-making process?

A better understanding of these principles and their underlying rationale are, to a certain extent, found within two (2) of the trade agreements, specifically the *Agreement on Internal Trade* (AIT) and the *North American Free Trade Agreement* (NAFTA).

Article 506(6) of the AIT states, in part: “The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.” Article 1015(4) (d) of NAFTA provides the following: “awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation”.

In attempting to interpret these trade agreement provisions and provide greater guidance to federal contracting authorities, the Treasury Board Contracting Policy (Section 10.7.27) advises that: “Contracting authorities should be aware of successful legal challenges to the contractor selection process. The issue arises from the manner in which evaluation factors are to be used to determine the successful bid. The courts have ruled that the factors and their weighting must be established beforehand and adhered to strictly. The principle of applying bid criteria or requirements equally to all bidders is part of Canadian contract law and is applicable to both the public as well as the private sectors. Fairness to all prospective contractors and transparency in the award process are imperative.”

Public sector contracting authorities at every level of government are by now well aware of the need for fairness, consistency and transparency throughout each of the stages of a procurement process; there is nothing particularly new about this.

So why then is the relative comparison of one technical proposal to another considered to be a breach of fairness provisions contained within the trade agreements?

To better understand this apparent contradiction, we must return to the world of decision theory alluded to earlier. Decision theorists have long recognized that cognitive biases can and do creep into our decision making processes, ultimately calling into question the correctness of the decisions we make.

Sometimes referred to as "logical fallacies", some of the more common cognitive biases which afflict human decision-making include:

- *"Selective Search for Evidence"* - the tendency to be willing to gather facts that support certain conclusions, but disregard other facts that support different conclusions;
- *"Selective Perception"* - the screening-out of information that we do not think is salient;
- *"Inconsistency"* - the unwillingness to apply the same decision criteria in similar situations;
- *"Anchoring"* - decisions being unduly influenced by initial information that shapes our view of subsequent information; and
- *"Recency"* - the tendency to place more attention on more recent information, and to either ignore or forget more distant information.

Long recognizing the prevalence of these and other weaknesses in the decision-making process over the years, legal scholars, policy makers and others have attempted to place limits on the latitude and methods of decision-makers, in order to better ensure the compliance of their decisions within a framework of broader objectives.

As each of the above cognitive biases has a high probability of creeping into a decision-making process based on relative comparison, a conscious effort has been made to mitigate the risk of making an incorrect decision in this manner through the insistence that procurement decisions be based solely on the compliance of the proposal with the stated RFP selection criteria, and nothing else.

To better illustrate this point, just think for a moment about how difficult it would be to maintain near-perfect consistency in comparing upwards of 20 different proposals, each one to each and every one of the others? How much easier would it be to maintain consistency (and in so doing, mitigate the risk of cognitive bias - not to mention potential lawsuits and CITT challenges) if each of the 20 proposals was evaluated exclusively against the published RFP criteria, and nothing else?

While it may seem counter-intuitive to the decision-maker (and it very often does), such rigidity certainly does increase the odds of maintaining consistency - which is, after all, one of the primary objectives of public procurement.

So how do public officials reconcile the limitations of this edict with the need to make good decisions during the proposal evaluation stage of an RFP process? What tools or methods can they use to make sound and defensible contractor selection decisions, while suppressing their most basic and intuitive of decision-making skills?

When assisting in the bid evaluation phase of an RFP process, RFP Solutions and others employ a methodology referred to as the "Negative Orientation". This methodology works under the assumption that bidders begin the evaluation process fully compliant with all of the mandatory criteria, and having scored full points on each of the point-rated criteria.

Working within this framework, government evaluation committee members are then instructed to identify and document the reasons why one or more mandatory criteria were either met or not met, by highlighting the specific evidence of compliance which was either located within the proposal, or which the committee felt was missing from the bidder's proposal. If deemed necessary, requests for clarification can also be sent to bidders, placing the onus on them to precisely clarify the specific location(s) within their proposal where the evidence of compliance with the criteria may be found.

For those proposals which fully addressed the mandatory requirements, the same process is used to then evaluate the point-

rated requirements vis-à-vis each proposal, paying careful attention to consistently documenting the references within each proposal where the specific evidence of compliance was either found, or not found. In keeping with this methodology, points are then withheld in areas where specific evidence of compliance was deemed by the committee to be missing within the proposal, and awarded against those evaluation factors where the evidence of compliance was deemed to have been properly presented.

In contrast to more "positively oriented" methodologies which document the rationale for a bidder passing a mandatory criterion, or for awarding points in response to the proposal elements which impressed the selection committee, the Negative Orientation methodology has repeatedly proven itself to be more capable of consistent application. In addition, it has also proven to be better suited to producing a more defensible written report of outcomes, a tool which becomes an invaluable resource if and when an unsuccessful bidder requests a formal debriefing, or submits a bid challenge to the CITT.

Despite the existence of methodologies such as the Negative Orientation, and the procurement policies prohibiting proposal comparison, many public officials still find it difficult to suppress the natural instinct of engaging in relative comparison during a bid evaluation exercise.

And therein lies the "little white lie" of government procurement; many seemingly objective and rational procurement decisions have been (and no doubt continue to be) made to a certain extent on the basis of relative proposal comparison.

While it is difficult for individuals to set aside these tendencies, it is perhaps even more difficult for many to admit that they may, on occasion, be subject to one or more cognitive biases in their decision-making process. As a very wise person once said: "To be aware of a single shortcoming within oneself, is more useful than to be aware of a thousand in someone else".

To learn more about the Negative Orientation and the Proposal Evaluation process, please visit www.rfpsolutions.ca ■