

Structuring RFPs: Using Public Lands to Achieve Public Objectives

A sample of the many issues:

Certainty: *How can the RFP process increase certainty?* Assuming that an RFP is predicated on an assignment of risks between the public entity and a respondent, are the rewards to the respective parties commensurate with the risks assigned? One might argue that any respondent would pay less for an opportunity that assigns them greater risks (accepting more uncertainty).

Valuation: *How does one place a value on a business transaction, given that value represents more than just the value of the underlying asset?* Clearly the RFP is not just to acquire land, it is to acquire a business opportunity? Obviously, this valuation takes on many complexities when a range of policy objectives are integrated into an RFP.

Transparency: *What does this actually mean?* What proponent wants to transact business with government in a “fishbowl”? How does one find the right balance between the need for confidentiality and the public’s “right to know”?

Market: *Is there a market and is the timing right?* Is the RFP realistic in terms of market conditions? Does it reflect what planners want or what consumers desire?

Pricing: *How does a public agency price mandated social, environmental, and economic objectives that are required within an RFP?* Should the proponent estimate and break out these costs as part of their offer, or should the public entity pay them up front? If these costs are assigned to the RFP, and are not priced, how does one know that the proponent has accounted for them in the proposal?

Subjectivity: *How do you adjudicate and weight criteria that cannot be monetized.* If the exchange of money is not the only criteria in making an award, how are other criteria that are “subjective” in nature dealt with? How do you explain this rational?

Media: *To what extent has media coverage shaped the RFP process?* What is the influence of such high profile events as the MFP inquiry (Toronto), Union Station (Toronto) the Gomery inquiry (Ottawa), East Village (Calgary)? Is this good or bad?

Politics: *What do politicians actually expect from an RFP?* Do they see the RFP as the “magic bullet” that delivers a high return at no risk? How does one mitigate some of the political risks and temper some of these expectations?

Performance: *Who decides whether the RFP has succeeded or not?* Is it the media, politicians, staff, or stakeholders? Does a successful RFP process mean a successful project? Do the means justify the end?

Divorce: *If an RFP is a marriage contract, how does the divorce work?* Is it even remotely possible that a public agency can withdraw from a venture in progress for other than cause? What if the deal proves to be a bad business deal? What if it becomes clear that the objectives cannot be met within the framework of the current arrangement?

Failure: *When do you abort an RFP?* What do you do when you realize that the RFP itself is flawed? What do you do when faced with the prospect of a relationship with a proponent that has a less than savory reputation, but meets all conditions set out in the RFP? Would you consider just one bid?

James McKellar
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