

Julia McIlroy: 0:06

Hi everyone and welcome to NASPO's Pulse, the podcast that focuses on current topics and public procurement. I'm your host, Julia McIlroy. Today we have Stacy Adams and Delbert Singleton from the great state of South Carolina. This is part two of our interview. We'll be focusing on South Carolina's competitive negotiations. Hi Delbert and Stacy, welcome back to Pulse.

Delbert Singleton: 0:30

Hi, Julia. Thank you for having us back.

Stacy Adams: 0:32

Yes, thanks. So excited to have this conversation with you.

Julia McIlroy: 0:37

Great. Thanks for being here. So South Carolina has embraced competitive negotiations as a procurement tool. Can you walk us through how the strategy works and when it's most appropriate to use?

Stacy Adams: 0:50

Okay, so I will start us out, Julia, with that. So one thing I would say is that it is not for your small projects. Competitive negotiations is truly most appropriate for your complex major acquisitions. And in South Carolina, we think that is so important and so true that we actually limit the ability to use the source selection method to our office. So an individual agency could not do this, use the source selection method without us conducting it on their behalf. So I think that's important to note as well. You're not going to do this if you're buying vehicles or pencils. Now, if you are replacing your ERP system, this would likely be very appropriate. So I think it's important to note that in the context of when would you even consider it to begin with? Because you do spend a good bit of time and a lot of effort and resources when you go through this method. But similar to RFP, but yet very different from RFP, right? So you are going at this, you're looking for proposals to come in and offers to come in to meet your needs, and you're going to evaluate those much like you do your standard RFP. Where you really see the most difference is once you get to that point after evaluation, you narrow down your competitive range of those offers that you receive. And then you actually start negotiations with every single one of them. So what you're looking to do is at the end of that process, is when you go to ink that final contract, when you end that evaluation process, you have say we have four offers. I have four perfectly acceptable contracts to this date that I could execute. I just have to decide what is the one that's the best value and is going to work the most for me in this moment. So that's where it's

drastically different from your RFP, where you may evaluate all four, but I can then only enter into negotiations with my highest ranked responsive and responsible offer. And then if that is unsuccessful, I go to the next one and then maybe the next one. With competitive negotiations, we even have a way around that responsiveness hurdle, if you will. And that was a big driver for us. You know, depending on how your code is written, um, you may handle responsiveness as being the supplier has to be responsive at the time of offer, or it may be that they have to be responsive by the time of award. Well, for us, you have to be responsive at the time of offer if you're doing your standard RFP, which can be problematic because I may have to throw out a perfectly good offer due to a responsiveness issue that otherwise we could have probably worked out or resolved through the negotiations process or through having conversations. Fortunately, with competitive negotiations, that isn't the hurdle there. We get to have those conversations and really work together to see can we get to an acceptable agreement? It also helps us consider and have flexibility in what we receive back from the suppliers. So instead of having to be an apples to apples comparison, maybe I'm comparing an apple and an orange and a turkey sandwich. And I have the ability to do that and truly consider what is going to be most advantageous to the state going forward and consider that as we're evaluating and going through that.

Delbert Singleton: 4:50

I think one of the things that Stacy talked about just then was the establishing that competitive range. And that's different from the normal sort of RFP process. And it allows you to perhaps include those that may that through a regular RFP process may have gotten eliminated outright, but it established that range that may either increase the number of people you may be able to take a look at, or by quite frankly, eliminate some of those that otherwise you should not be looking at. Perhaps the better thing to say is that the best possible outcome for the state in that that instance. Which is one reason why our agency plays a very strong role in determining should this be done by um competitive negotiations or not? We we don't make some folk happy sometimes.

Julia McIlroy: 7:08

Well, that's true about procurement. We try to make everyone happy all the time, but there are policies and procedures. Quick question: is there a dollar threshold when you use competitive negotiations?

Stacy Adams: 7:20

There's not necessarily a set dollar threshold. It's more about the complexity of the procurement. Um, usually there's a a zero or two at the end of the number, you know what I'm saying? So there's there you definitely those large dollar more complex um is is what we

tend to gravitate for, but there is not, it has to be this or higher. It's really about the complexity matrix for that, more so than a dollar.

Julia McIlroy: 7:47

Okay. Sure, that makes sense. So, what are your suppliers saying about this process? So let me make sure I understand. So you need an ERP system, you issue an RFP. I'm assuming that's the title, right, of the document, RFP number one two three for an ERP system. So you issue that RFP, 10 suppliers respond, you read through those 10 responses, you select four finalists at that point, or whatever you call them, we'll just say finalists for today. And then with those four finalists, you enter in, you ask for a contract from each of them and essentially start a negotiation process with all four, ultimate and getting clarification and all other kind of good stuff. At the end, you're going to contract with one and then you're done, and you go on to the next. So, if I understand you correctly, how do the suppliers feel about that? Because in the past, they've written a proposal to your RFP, and really you only enter into negotiations with one of them in the more traditional style. Now you're doing it with four with only one winner. So, what are what are the suppliers saying about it?

Stacy Adams: 9:00

So honestly, we're getting a lot of really positive feedback with that. Um, anytime that our supplier community gets to interact with us or gets to be a part of the process and the final result, they love that opportunity. And so while they have to be, yes, we require the same type of regimented response, perhaps that you would with an RFP. They have the opportunity to have conversations with us and we are negotiating with them. We have more flexibility. We even consider what we call trade-offs, if you will, that you can't do in a standard RFP. So they can present to us maybe some enhancements, if you will, that otherwise would be on the table that we couldn't touch. And so this allows them to even put forward, we heard what you said, but you could also do A, B, C, and D. And so we have the flexibility there. So it really does allow them the opportunity to showcase their expertise and gives us the opportunity to consider that and the unknown that we might not have realized, even though we were doing acquisition planning and trying to figure out market research to do the best. We may, there may be an enhancement we didn't know about or even that came out since the time, you know, especially in IT, it changes by the minute, not even by the day. So something, the next latest and greatest version or or bolt-on is now available that wasn't available before. So you can consider that with this source selection method where you can't with some of the others.

Delbert Singleton: 10:45

And Stacy, as I'm thinking about it, because I had to serve in this capacity, one of the new things that competitive negotiations introduced into the mix was the utilization of a selection executive, if you will. And basically, that selection executive uh as we read our regulations, he or she is put there to help uh steer the solicitation to a certain extent. Um there are certain requirements that that he or she as the selection executive you know may you know may implement um or or require that the the team to to follow. Um we we've utilized it internally ourselves for our SC Pro in terms of when we had to solicit it. And then I served as a selection executive. Um and uh I have the responsibility of reviewing you know what what they did, um, you know, even to the point of you know looking over the solicitation before it went out, uh looking at who they were recommending to be the um the chosen vendor. And so that is uh a new uh role that was introduced into the mix here. Um and I think going forward it it will serve as a as a as a good role to to help bring some more balance, if you will, into the process. And not to say that anyone would do this, but if you've got some skewed evaluation going on, that selection executive is there, and he or she can say, hey, listen, no, you all need to take another look at this. Um, in essence, um as somewhat of a check and balance, if you will, to that process.

Julia McIlroy: 12:36

So going back to the part one of our podcast for just a moment, did you need to make a change to code to introduce competitive negotiations?

Delbert Singleton: 12:46

Yes, that was one of the changes. That was one of the major changes to to the code. Um we had nothing like this. I mean, we we had negotiations talked about in the in the in our code beforehand, but nothing to this extent. Um and it it just gave us more flexibility. We were we were seeing, as I'm sure a lot of states perhaps see, we were seeing as a system when we had these large procurements like for ERP systems and and and the like, um those things um were often problematic in that people may have made you know some minor uh minor mistakes or some some minor misstatements that their competitors would seize upon in a protest situation, and you know it it may have caused us to have to start over. And it just made sense to be able to put the procurement managers in the position, um, and that selection executive in the position that, hey, listen, you know, should we really allow the tail to wag the dog in this particular instance when you've got you know when time may be of the essence, people have spent thousands upon thousands of dollars just to participate in this process and to allow some um some you know technicality, if you will, to overturn it. Why not give the procurement manager um the ability to uh to talk and to clarify beyond some some surface level conversation? Because literally the code says it has to be

clear on its face, if you will. Um, but being able to clarify now that adds a new uh tool to to the mix that we that we have here in South Carolina.

Stacy Adams: 14:43

And to that point, um as well, Delbert, I think it's important to note that sometimes people may hear competitive negotiations and think it's a process, and it's a source selection method. It's not just a different way to negotiate. It is a source selection method where you do negotiate differently. Okay, so the process is different, but I I think it's important to note that you can't just say, oh, well, I'm gonna tweak my negotiation strategy and everything will be fine. This is not that. Okay. So don't I wouldn't want the listeners to think, oh, well, that can just change the way I do negotiations and I'm fine. Absolutely not. Um, it is a source selection method, and so all of the processes that are associated with it have to be thought of differently. We even think about um, you know, our documents, our solicitation documents are crafted different when we do the competitive negotiations. Our contract documents literally are different when we do competitive negotiations. It there's very few things that are exactly the same as it would be for RFP. So I think that's important to note. So it we it you have to craft it and handle it differently. Um, so if somebody were curious about it, would love to have a conversation, that's not a problem. But also, even if you look at if you Google in, you know, intent to negotiate as a source selection method or competitive negotiations, you would see how other places have done it. But we actually are um really loving it. It's really exciting. We're able to do things differently. It gives us that flexibility. Um, it's it's been a tremendous tool for us thus far.

Julia McIlroy: 16:31

That's great. In the end, we want the best value outcome for our institutions, right? And ideally, those processes we use are reflected in the code. And as you said, you made the change that allows you to use this methodology, which is wonderful. Quick question. When did you begin using the competitive negotiations? And have you seen any reduction in protests as a result?

Delbert Singleton: 17:01

We began in 2019, 2020 after the code was was amended. Have we seen any reduction? Well, again, remember, we said that it is very sparingly used. I am thinking we have done maybe a handful or so by competitive uh negotiation. And I think I'm not sure, but I I know ours was not protested. I'm not sure the rate on that, but I I think we've had very few as a result of that. Um we may have had one, uh, I I believe. But um I I'm not sure that an expanded use of competitive negotiations going forward is really going to help reduce the the protest aspect. I I think it depends really on the nature of the thing being solicited. We

just have some some some protests that we know are going to some some solicitations rather we know are going to be protested, um simply because of what what they what they what they are, you know. Um and and so but but we've had we've had very few compared competitive negotiation solicitations, and we had very few of those protests. Again, I'm thinking maybe only one. I could be wrong about that. So don't hold me for that. Hold Stacy.

Julia McIlroy: 18:25

Okay. I will Google that after we're done. Bye. So we've touched on this a bit already, but what advantages has South Carolina seen from using competitive negotiations compared to more traditional procurement methods like sealed bids or RFPs?

Stacy Adams: 18:42

So I would say um some of the benefits that we have seen truly is the unrecognized value potentially that we did not know that was there when we started out. So we um we knew the idea of the outcome we wanted, but we were able to in many cases negotiate for either increased functionality, um, decreased pricing. Typically, you think of in negotiations. Sometimes it's just about, well, could you lower your price a little bit more? And it's so much more than that. It's about the terms and conditions, it's about the functionality, it's about you know what else comes in the bells and whistles. So it truly is a value proposition when you're looking at this for the state and for the agencies that are using it. So we think about we've used it when we were doing our own ERP. I know that's come up a lot, but we also used it when we were doing digital uh governmental services. We've used it now when we're doing the cloud services. Um, so when you have those things that are sometimes you don't always know what's available in the marketplace or it's changing so quickly, you want to be able to consider the latest and greatest. You want to be able to consider the absolute best terms and conditions that are being offered to you that maybe you don't have that answer when you start out. And you want to be able to consider is this really good for me? How much do I care? What do I want to consider from a risk standpoint? Where are you, as one supplier, maybe decreasing the risk that falls in my lap and another supplier maybe isn't? So you have the opportunity in this to truly look at and explore everything with each of them at one time so that it is lower risk or better risk or better value. You get to have the more strategic conversations than the low dollar quick fix.

Delbert Singleton: 20:47

I'll I'll add to that. I think, and this may be sort of an unintended benefit or consequence. I think in the ones that we have seen, there has been the opportunity for greater collaboration between our office and the using agency. Why? Because we have to sign off on it being used, we have to conduct the solicitation for them. And so what that means is

that they've got to have much earlier contact with us before they can go down that road. And so, you know, we have an opportunity to get involved a little bit quicker in the process, as opposed to them spending you know months, uh, months and months of developing something and then throwing it over the transom and then have us react in this situation. You know, that that has, I think, been limited to a to a great extent. And so we've we've we've seen um, I believe, a little bit greater collaboration on the front end before we actually get into the throes of pulling something together.

Stacy Adams: 21:58

Yeah, and to that. Point, Delbert, you know, and to kind of rehighlight and get a little bit more in the weeds, Julia, you did a great summary, but um Delbert brings up a valid point. The first step in our competitive negotiation process is creating an acquisition team. Not just one person, but an acquisition team. And that's gonna be built up of a group of folks that are gonna be bringing and adding value to the process. Then that group and that team is actually going to do acquisition planning together, making sure that it's structured in a way that's gonna be effective, talking with the industry, making sure that they're gonna be able to propose their best possible array of solutions, if you will. We're doing that market research as a part of that as well, trying to see what we should expect and an offer that comes back and how might we adjust to that and really making sure the market's gonna be able to respond. And then they create that acquisition plan, if you will. And then once you've done that, then you actually develop your proposal and you publish it. So then you go through that process. Again, we even have a guide that helps with that process because that document looks so much different. Then we go through what I call evaluation number one. You know, that's your initial evaluation. And then you have to document those results. If you think about that in this mindset of a traditional RFP, that would be your one shot where you would then rank, score, and move to the next step. This one is a little bit different. Here it's not necessarily about ranking. You're doing that initial path and that assessment to say, does this supplier have the ability to truly perform this proposed contract successfully? And if so, are they bringing the most to the table? And so then that flows into the next stage, which is establishing your competitive range. So I'm now going from, like you said, I'm going from 10 to four. And you're making a decision not just based on because I like that four. You know, you really are doing that evaluation process and looking at it. Um, we actually say that we would prefer for that competitive range to typically not be more than three offers, if possible. Because of this next phase that you're getting ready to go into, you don't have time to completely negotiate with 10 offers. And then to your earlier point, Julia, the supplier community is not going to respond well to that guy either. Because you're you're making me do all of this work again and again and again, and to what end? So if I don't have a shot of being the person that's standing across that

finish line, then don't make me run the marathon. Okay. Go ahead and let me bow out of the race, and everybody else can continue forward because I can now start to run a different race that I have a shot of winning. So we we do try to keep it to three offers. And then we start that negotiation process with our most promising, the ones that really stand a chance that we think we can have a successful agreement with. And then we go through after we've got, um, this is the part we didn't capitalize on, but after we've gotten what we think is our final, our final, final, if you will, uh version of that contract, we evaluate again to see truly where we ended up at the end of this process. Because as you've gone through that negotiation, your viewpoint has changed. You've seen things, you've heard things, you've, you know, you've gotten to a different place. You now have a different document than what you started with, because you've got a potential negotiated contract right here at your fingertips, which is different than what your offer started as. So we evaluate one more time. Okay. And then based on that, those evaluator um comments that include what are the strengths, what are the weaknesses, what are the risks, what are the pricing, that's then passed over to the selection executive to review, challenge, question, agree with, where they then have to write up the documentation and say, this is going to be the contract that we go through. So it sounds like a lot and it is a lot, but it is effective, but that's why you don't do it when you're buying pencils. But it's super helpful when you're buying, you know, a huge complex system or you're going through, you know, cloud strategy for the entire state. You know, you might want to know what your options are.

Julia McIlroy: 26:49

Oh, great point. It is a somewhat complex system or methodology, but for complex procurements, right? Not for not for pencils. So how does the how do you ensure fairness, transparency, and accountability during the competitive negotiation process, especially when you're trying to balance flexibility, which this program has, with public trust?

Stacy Adams: 27:16

Everything that we do, just like with a standard RFP, is out there for the world to examine. Okay. So the things that we are evaluating, we put out in the solicitation. We can't suddenly come up with a new evaluation criteria that we, you know, that throws everything out of the water. Okay. So I think that's important to note. We say up front, this is what we're looking for, this is what we're evaluating and what's important to us. Right. So that is still very much like what you would see in that standard RFP process. Everything is still open for the world to see throughout the process. So you still have your NDAs, your conflict of interest that you've got to ensure doesn't come into play with that. You make sure that your evaluators know what they're doing and you're you're guardian of that process just like you are with the RFP. Um and I think that's the big thing. You're advertising it, you're putting it out there just

like you do with everything else. Nothing is done in a vacuum, and every step along the way is available for inspection to ensure that that process was followed the way it should have been.

Delbert Singleton: 28:28

And and that word she just used, follow, that the process was followed the way that it should have been. I mean, we still, you know, are no less required to follow what the law is. And I think we've got a a really tight set of guidelines through statute and through regulations that guide us through this process. Um and and so to that extent, the the fairness and the open aspect of what we do still still applies. It's not done in the night, uh in the night, or it's not done in the dark of day, rather. Uh so so there's a lot of light that is exposed uh here to the process. Now, do all of the Vandors particularly like it? Maybe not, but you know we we adhere to what the law requires, and so you know, we we we look to have a a fair outcome. And and the the good thing about it, you mentioned this word a little earlier, protest. If they thought if they think that something unfair has been done, if they think that they did not get a fair shake out of the process, the process was skewed in that particular instance, they have the right to protest. They they can they can protest uh the the outcome of of the uh uh of the solicitation, and so that is not lost in this process.

Julia McIlroy: 29:54

Well, I used to tell my staff that we follow a process because A, it's the law, it's our politics and procedures, but also if in the chance that we have a protest that we can defend and show every decision we made and the reason we made it, and so we are beyond reproach, right? And it's also the right thing to do. There's that part. So thank you for that detailed explanation. I really appreciate it. So, lastly, from each of you, what has been your most memorable procurement? Gilbert, let's start with you.

Delbert Singleton: 30:29

I would say serving as the division's lawyer for the three three and a half years that I that I did. Um that was I liked being in the courtroom because I had been accustomed to being in the courtroom. And so while that was not a courtroom six situation technically, the those procurement protests, those those those things could get a little tense. I was able to keep my my feet uh in in the arena of of litigating, if you will, for the time that I that I did. And and I'm I'm I'm I'm happy to say that that during that period of time, you know, what what brought me great, you know, I guess some great uh pleasure after leaving that for three and a half years was that I I lost one case. One case. But I always tell folks I didn't really lose that case. The the the the rig was in for that. Something something didn't go right with that case.

Julia McIlroy: 31:36

You needed to protest that decision, right?

Delbert Singleton: 31:39

Yeah, that it was already a done deal before before I got there. You know, I probably shouldn't have said that publicly, but I've said it before. So I it's okay.

Julia McIlroy: 31:49

It's amongst friends, so it's all right. Stacy?

Stacy Adams: 31:52

Um, I would say for me, it's hard to pick just one. I I can tell you though, that my favorites are typically those things. Oftentimes you buy the things that nobody sees and nobody knows, and you're the unsung hero, right? But when you are a part of, you know, the process, say for example, at this our state museum, there's an exhibit there in a whole area, the museum that I was a part of that acquisition. So when you think your community goes and sees and learns and they're a part of it, they can see it, touch it, feel it, they know it. And you know that you've been a part. Whereas they don't think about when you bought that pencil. They don't think about, you know, they'll complain about the potholes in the road that you were a part of, you know, those processes, things like that. But when you look at those success stories and you say, you know what, that truly is making a difference in my community, those are the ones that make me the most proud because you can get that instant gratifications or delay the gratifications for those that take a while of really seeing there it is. That's that's what we did. And I love being able to be a part of giving back and making a difference in the community where our citizens truly see. Oh, you know what? Now when I go to get my license, it's so much easier to do. Oh, when I check out your website, you know what, I can find what I want. Oh, you know, when you put that, you know, renovated that building, that was great. Um, so just that that mindset for me, at any time you you can walk away with that. Those are the wins for me.

Delbert Singleton: 33:24

And there are so many, Stacy, there are so many instances out there of those kind of things that you just talked about. Uh in South Carolina, I don't know about uh other states, but our procurement shop is very, very heavily involved when natural disasters take place here in in South Carolina. Um if if Hurricane Aaron had had hit the coast and and uh you know we would have gotten activated to work right alongside the EMD folk who were s have to respond to that. In 2015, our our division played an important role in the flood recovery and responding to that. And so, you know, people people don't see that side or think about you

know how those things get put into place, you know, the costs, the generators, uh, the bottles of water, the buses to take people from place to place. And so, you know, in the heat of the moment, it can be taxing, and but I think for those who've had the opportunity to have demand and to participate in those emergency sort of situations, um, I think they've walked away feeling um a sense of fulfillment, a sense of I contributed. You know, what I did was was worthwhile, and it's more than just you know buying stuff, you know, acquiring stuff, but really, you know, that's those instances where you really see the impact that the procurement profession has on the states and the communities that we serve.

Julia McIlroy: 35:08

Now, well said for both of you. I very much appreciate it. I think that we can all agree that procurement is about helping the greater good. And it feels wonderful when you are replacing turf at a park and you see children playing on it and it's a safer environment, or you're buying sandbags to prepare for a hurricane that might be you know coming around. So, anyhow, it's a fun profession. I think we all like it a lot.

Stacy Adams: 35:40

And there's never a dull moment.

Julia McIlroy: 35:43

Never. There's never a dull moment, absolutely. Well, Stacy and Delbert, thanks again for joining me today for part two of our podcast. I very much appreciate it.

Delbert Singleton: 35:55

Thanks for having us. You're welcome. We'll be glad to come back anytime. Just let us know.

Julia McIlroy: 36:00

Great, thank you. Well, for sure we're gonna have Dixon on the show too. So maybe it'll be all four of us. So, in closing to our friends in public procurement, remember, we work in the sunshine. Bye for now, so I don't know if you're amazing.