

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

7 CSR 10-24.330 Discussions

PURPOSE: This rule describes the “discussions” type of information exchange.

- (1) After receipt of proposals and determination of the competitive range, the commission may use discussions to maximize its ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation.
- (2) If discussions are held, they will be conducted with all proposers in the competitive range. If the commission wishes to hold discussions and did not formally establish a competitive range, then the commission will hold discussions with all responsive proposers.
- (3) Discussions should be tailored to each proposer’s proposal. Discussions will cover significant weaknesses, deficiencies, and other aspects of a proposal (such as cost or price, technical approach, past performance, and terms and conditions) that could be altered or explained to enhance materially the proposal’s potential for award. The commission’s discretionary judgment will set limits for the scope and extent of discussions.
- (4) In situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, the commission may hold discussions regarding increased performance beyond any mandatory minimums, and the commission may suggest to proposers that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.
- (5) In a competitive acquisition, the commission may employ discussions that may include bargaining. The term bargaining may include: persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.
- (6) In competitive acquisitions, the solicitation will notify proposers of the commission’s intent to use or not use discussions. The solicitation will either:
 - (A) Notify proposers that discussions may ~~or may not~~ be held depending on the quality of the proposals received (except clarifications may be used as described in 7 CSR 10-24.300). Therefore, the proposer’s initial proposal should contain the proposer’s best terms from a cost or price and technical standpoint; or
 - (B) Notify proposers of commission’s intent to establish a competitive range and hold discussions.

(7) The commission may elect to hold discussions when circumstances dictate. The rationale for doing so will be documented in the contract file. Such circumstances may include situations where all proposals received have deficiencies, when fair and reasonable prices are not offered, or when the cost or price offered is not affordable.

(8) The commission may inform a proposer during discussion that its price is considered to be too high, or too low, and reveal the results of the analysis supporting that conclusion. At commission's discretion, commission may indicate to all proposers the estimated cost for the project determined at a point subsequent to the cost estimate published as part of the public notice of Request for Qualifications provided by section 227.107.18, RSMo.

(9) Final Proposal Revisions as a Result of Discussions.

(A) The commission may request or allow proposal revisions to clarify and document understandings reached during discussions. At the conclusion of discussions, each proposer ~~shall~~ will be given an opportunity to submit a final proposal revision.

(B) The commission will establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions ~~shall-will~~ advise proposers that the final proposal revisions shall be in writing and of the intent to make award without obtaining further revisions.

(10) The commission may further narrow the competitive range if a proposer originally in the competitive range is no longer considered to be among the most highly rated proposers being considered for award. That proposer may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the proposer has been afforded an opportunity to submit a proposal revision. Commission will provide a proposer excluded from the competitive range with a written determination and notice that proposal revisions will not be considered.

(11) The commission may determine a need to hold more than one (1) round of discussions with proposers, but only at the conclusion of discussions will the proposers be requested to submit a final proposal revision, also called best and final offer (BAFO). Thus, regardless of the length or number of discussions, there will be only one (1) request for a revised proposal (i.e., only one (1) BAFO).

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004.
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**Original authority: 226.020, RSMo 1939; 226.030, RSMo 1939, amended 1965, 2003, 2004;
and 227.107, RSMo 2002.*