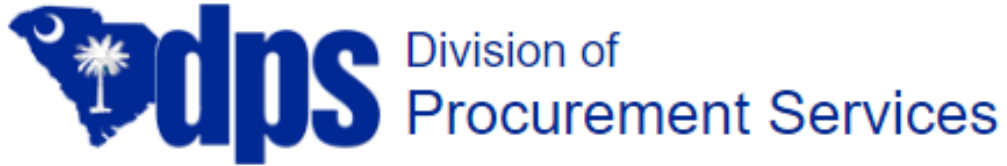


Freedom of Information Act (FOIA), Procurement, & Public Meetings

February 23, 2024

FOIA Documents Webinar

<https://training.procurement.sc.gov/training/webinars>



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Webinars

FOIA Documents Guidance

Date: November 03, 2023

This is the recording for the FOIA presentation that was given by Kimber Craig on October 27, 2023.

[view webinar](#)

Additional Items:

- [FOIA Documents Slides](#)
- [FOIA Documents Transcript](#)

Public Records Laws

- ▶ Chapter 4, Title 30
The Freedom of
Information Act (FOIA)
- ▶ FOIA's meeting rules
apply to any meeting of
a public body including
advisory committees





What is a
public body or
advisory group?

Section 30-4-20(a). Public Body Defined

(a) “Public body” means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds, or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority.



Advisory Groups



- ▶ RFP Evaluation Committees
 - ▶ The SC Supreme Court *Quality Towing, Inc. v. City of Myrtle Beach*, 547 S.E.2d 862 (S.C. 2001)
- ▶ Any other procurement related advisory group
 - ▶ Committees formed to:
 - ▶ Evaluate bid samples
 - ▶ Evaluate best value bids
 - ▶ Evaluate submittals in a request for qualifications

Who makes up the committee?

- Multiple evaluators are not required
- If you have multiple evaluators, they do not have to function collectively

Is a meeting required?

- If the evaluators meet to discuss proposals as part of the evaluation, the Procurement Officer should treat the evaluators as an “advisory body” subject to FOIA meeting rules.
 - If a quorum or simple majority of the evaluators are present, it constitutes a meeting.
- A “meeting” includes telephone conference calls or any other form of electronic communication.

I am having a meeting. What do I do?

Post a notice

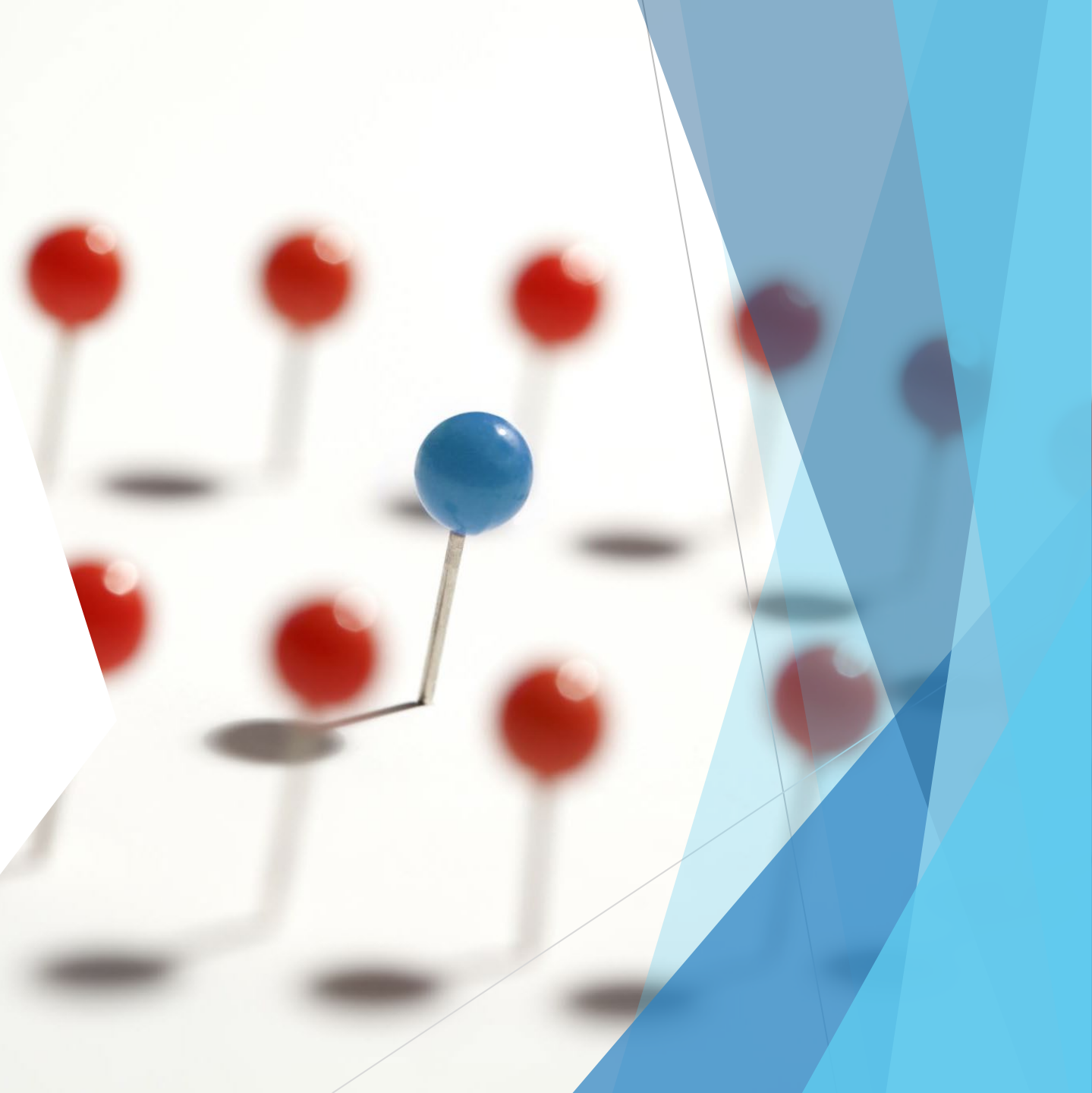
- ▶ When?
 - ▶ As early as practicable
 - ▶ No later than 24 hours before the meeting
- ▶ If meeting concludes, ends, breaks, or adjourns for any reason, a separate notice must be posted for any subsequent meeting.
- ▶ A new notice is not required if the meeting is a continuation of a meeting that began at the same location on the same day or on the preceding business day.
- ▶ Notice requirements apply regardless whether the entire meeting takes place in executive session or not.

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I am having a meeting. What do I do?

Post a notice

- ▶ Where?
 - ▶ Publicly accessible location at the office of the procurement officer responsible for the solicitation
 - ▶ Centralized web page established for this purpose
- ▶ What do I post?
 - ▶ Solicitation name and number
 - ▶ Date, time, and place of the meeting
 - ▶ Identify date and location of posting
 - ▶ Provide an agenda
 - ▶ Only identify overall topics



Sample Charging Meeting Notice

MEETING POSTINGS

Public meetings are listed in reverse chronological order on the Procurement Services Home page under the General Information Section, "Public Meeting Notices".

NOTICE - Meeting of the Request for Proposal Evaluation Panel

Learning Management System Solicitation # 5400025569

The meeting of the RFP Evaluation Panel for the above-referenced solicitation will be held:

February 7, 2024 at 2:00 PM ET

The meeting will be held via Microsoft Teams. If you are interested in attending, please contact the Procurement Officer at akshell@mmo.sc.gov for log in information. Subject line must read: Learning Management System RFP 5400025569- request for panel meeting Teams information.

AGENDA: (Briefing)

- A. REGULAR SESSION
 - 1. Open Meeting
 - 2. Overview of Process

- B. EXECUTIVE SESSION
 - 1. Distribution of Responses
 - 2. Close Meeting

Ashley Kennedy-Shell, CPPO, CPPB
Procurement Officer

Posted: 02/05/24 at <https://www.procurement.sc.gov/meeting-notices>

Sample Scoring Meeting Notice

B. Form #2 – Scoring Meeting Notice

NOTICE - Meeting of the Request for Proposal Evaluation Panel

[Solicitation Description]

Solicitation No. _____

The meeting of the RFP Evaluation Panel for the above-referenced solicitation will be held:

Friday, February 22, 2019 at 9:00 AM

The meeting will be held at:

SFAA, Division of Procurement Services
1201 Main Street, Suite 600
Columbia, SC 29201

AGENDA:

A. REGULAR SESSION

1. Open Meeting
2. Overview of Process

B. EXECUTIVE SESSION

1. Discussion of Proposals

C. EVALUATION OF PROPOSALS

1. Final scoring by evaluators and signing evaluation forms

Posted 2/20/2019 at *[physical location and website address]*

A close-up photograph of a person's hands writing in a white notebook with a yellow highlighter. The person is wearing a blue shirt and a black wristband. The background is blurred, showing a meeting setting.

30-4-80 & 90

Meeting Minutes

- ▶ Public Meeting = Written Minutes
- ▶ Minutes of executive session are not required
- ▶ What do I include?
 - ▶ Date, time, and place of the meeting
 - ▶ Attendees and Absences
 - ▶ Substance of the meeting
 - ▶ Identify date and location of notice posting



Releasing Meeting Minutes

- ▶ Minutes do not need to be approved by the evaluators.
- ▶ When to release:
 - ▶ Only after posting the award or notice of intent to award
- ▶ What to release:
 - ▶ If the minutes contain information from an offeror's proposal, redact the minutes prior to release.

The Meeting - Public Access - Step # 1 Charging the Panel

- ▶ Regulation 19-445.2010(D)
 - ▶ “State personnel with access to proposal information shall not disclose either the number of offerors or their identity, except as otherwise required by law.”
 - ▶ Take steps to avoid disclosing identify or quantity of offerors prior to executive session
- ▶ Convene the meeting in public
 - ▶ Do not identify evaluators by last name
 - ▶ Provide the panel with general instructions regarding the evaluation process including their confidentiality obligations (Reg 19-445.2010)
 - ▶ Distribute any non-identifying forms, but NOT proposals



The Meeting - Public Access - Step # 1 Charging the Panel

- ▶ Make a motion to go into executive session
 - ▶ Motion is approved
 - ▶ Announce: “The panel is going into executive session. The matters to be discussed are incident to a proposed contractual arrangement. The panel will discuss proposals received in response to the solicitation (include solicitation name and number). Then adjourn to review the proposals individually. The panel may adjourn without leaving executive session.”
- ▶ Excuse the Public





The Meeting - Public Access - Step # 1 Charging the Panel

- ▶ Everyone must sign the Non-Disclosure Agreement
 - ▶ If someone will not sign, you cannot move forward
- ▶ Announce the names of the Offerors
- ▶ Distribute and explain the conflict-of-interest forms (Procurement Integrity Representations and Restrictions)
- ▶ Evaluators must sign form certifying no conflict-of-interest exists before they can receive copies of proposals (Reg 19-445.2010(C)(E))
- ▶ After any necessary discussion, meeting can be adjourned

<https://procurement.sc.gov/osp/forms>

C. Form #3 – Charging Meeting Minutes

**MINUTES OF THE STATE PROCUREMENT OFFICE
PANEL CHARGING
September 7, 2018
2:30 PM**

The Evaluation Panel for the contract for *[Solicitation Description]*, Solicitation No. _____, met at 2:30 P.M. on September 7, 2018, at the Division of Procurement Services, 1401 Main Street, Suite 600, Columbia, South Carolina, with the following panel members in attendance:

Mr. _____
Mr. _____
Ms. _____

The meeting was called to order by *[Procurement Officer]*, Division of Procurement Services, Procurement Officer responsible for this procurement.

Distribution of Evaluation Packages

[Procurement Officer] distributed the evaluation packages to each panel member. Each package contained the following information:

- The Evaluation Panel Briefing Instructions
- The Non-Disclosure Agreement
- Evaluator Reports (Sample Score Sheets)

Evaluation Panel Briefing Instructions

[Procurement Officer] conducted the panel briefing and discussed the Evaluation Briefing Sheet, covering each of the items listed therein. In addition, *[Procurement Officer]* discussed and explained the Non-Disclosure Agreement and the Evaluator Score Sheets.

Distribution of Proposals

A motion was made by *[Procurement Officer]* to enter executive session to issue the proposals and was seconded by Mr. _____. All in favor - none opposed. After all attendees signed a non-disclosure agreement, *[Procurement Officer]* distributed the Procurement Integrity Representations & Restrictions Certification and discussed

Sample Minutes - Panel Charging

and explained the obligations under that certification. After all attendees signed a Procurement Integrity Representations & Restrictions Certification, *[Procurement Officer]* distributed copies of each of the proposals submitted in response to the Request for Proposal.

A motion was made by *[Procurement Officer]* to exit executive session and was seconded by _____. All in favor – none opposed.

There being no further business to come before the Evaluation Panel, the meeting was adjourned. The Evaluation Panel will meet on September 26, 2018, at 9:00 am, for the purpose of general discussion concerning the submitted proposals prior to completing their evaluation. The panel members were instructed to contact *[Procurement Officer]* if they had any questions or concerns. No one from the public attended the meeting.

[signed]
Procurement Officer
Division of Procurement Services

As required by Section 30-4-80, notification for this meeting was posted at the Materials Management Office, office of the procurement officer responsible for this solicitation. The notification included the date, time, place and agenda of the meeting. There were no requests from the media outlets or any other organization to be notified of this meeting.

The Meeting - Public Access - Step # 2 Scoring Meeting

- ▶ Convene the meeting in public
 - ▶ Do not identify evaluators by last name
 - ▶ Provide the panel with general instructions regarding the evaluation process
- ▶ Make a motion to go into executive session
 - ▶ Motion is approved
 - ▶ Announce: “The panel is going into executive session. The matters to be discussed are incident to a proposed contractual arrangement. The panel will discuss proposals received in response to the solicitation (include solicitation name and number). The panel will, at the conclusion of their discussions, return to public session.”



The Meeting - Public Access - Step # 2 Scoring Meeting

- ▶ Excuse the public.
- ▶ Conduct discussions.
- ▶ Once discussions are complete, have the panel complete their score sheets and resolve any questions they may have.
 - ▶ Do NOT sign score sheets at that time.
- ▶ Once all score sheets are complete, vote to return to public session and allow public attendance.





The Meeting - Public Access - Step # 2 Scoring Meeting

- ▶ Once in public session, ask evaluators to sign their score sheets and submit them to you.
- ▶ Adjourn the meeting.
- ▶ An open roll-call or other oral action by the evaluators is not required.
- ▶ Do NOT announce or discuss any information appearing in an offeror's proposal.
- ▶ Do NOT announce evaluators' scores or the ranking of offerors.
- ▶ Generally, you should not tally the scores at this time.

D. Form #4 – Scoring Meeting Minutes

**MINUTES OF THE STATE PROCUREMENT OFFICE
PANEL SELECTION
September 7, 2018
2:30 PM**

The Evaluation Panel for the contract for *[Solicitation Description]*, Solicitation No. _____, met at 2:30 P.M. on September 7, 2018, at the Division of Procurement Services, 1401 Main Street, Suite 600, Columbia, South Carolina, with the following panel members in attendance:

Mr. _____
Mr. _____
Ms. _____

The meeting was called to order by *[Procurement Officer]*, Division of Procurement Services, Procurement Officer responsible for this procurement.

Overview of Process

[Procurement Officer] opened the meeting and gave a brief overview of the evaluation review process. A motion was made to go into Executive Session by *[Procurement Officer]*, seconded by _____. *[Procurement Officer]* announced that the panel was going into Executive Session and that all matters to be discussed are incident to a proposed contractual arrangement. No one from the public attended the meeting.

Evaluation and scoring was conducted. A motion was made to exit executive session by *[Procurement Officer]*, seconded by _____. All panel members signed their scoring sheets and turned them in to *[Procurement Officer]*.

[signed]
Procurement Officer
Division of Procurement Services

As required by Section 30-4-80, notification for this meeting was posted at the Materials Management Office, office of the procurement officer responsible for this solicitation. The notification included the date, time, place and agenda of the meeting. There were no requests from the media outlets or any other organization to be notified of this meeting.

Sample Minutes - Panel Scoring



Questions regarding how to conduct meetings
in accordance with FOIA meeting rules?

For additional information, review the *FOIA Meeting Guide: How to comply with FOIA in Conducting Meetings of Advisory, Evaluation, and Selection Committees*

<https://www.procurement.sc.gov/legal/general-info>

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Legal

Standard Clauses & Provisions

General Information - Legal

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General Information - Legal

Procurement Law Basics

Click [here](#) to access the Consolidated Procurement Code, the State's procurement regulations, an index of both, and a list of procurement exemptions.

Ethics Act & Public Contracts

The State's standard bidding instructions require that each offeror certify that it has and will comply with, and has not, and will not, induce a person to violate the ethics laws appearing in [Title 8, Chapter 13](#) of the South Carolina Code of Laws. To access a complete copy of South Carolina's ethics statutes, [click here](#).

For those involved in public contracts, the following sections require special attention:

[Section 8-13-700](#), regarding use of official position for financial gain

[Section 8-13-705](#), regarding gifts to influence action of public official

[Section 8-13-720](#), regarding offering money for advice or assistance of public official

[Sections 8-13-755 and 8-13-760](#), regarding restrictions on employment by former public official

[Section 8-13-775](#), prohibiting public official with economic interests from acting on contracts

[Section 8-13-790](#), regarding recovery of kickbacks

[Section 8-13-1150](#), regarding statements to be filed by consultants

[Section 8-13-1342](#), regarding restrictions on contributions by contractor to candidate who participated in awarding of contract

For a distinct but related rule regarding gifts to government agencies, please see [Regulation 19-445.2165](#)

FOIA Guides

SFAA publishes two guides with recommendations to assist procurement officers in the State's Division of Procurement Services in fulfilling their responsibilities under South Carolina's Freedom of Information Act, or FOIA. One guide describes how to respond to a document request during the procurement process. The other describes how to conduct meetings of advisory, evaluation, and selection committees.

▶ [FOIA Document Guide v3.1](#)

▶ [FOIA Meeting Guide v3.0](#)

Bonus Content from Webinar Discussion: What if I am doing Supplier Demonstrations?

- ▶ Demonstrations are still considered public meetings of the evaluation/selection committee.
- ▶ Those meetings/demos should be handled as you would any public meeting.
- ▶ Efforts should be made to guard against disclosure of the Offeror's identity, or the number of demos being conducted.