



Responding to Competitive Requests for Proposals in the Cannabis Industry

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- What is a competitive request for proposals?
- Why are these RFPs so competitive?
- How to craft a winning response
 - Determining goals and objectives
 - Creating winning themes
 - Building partnerships
 - Drafting a complete response
- How are the RFPs scored?
- Is the process fair?



What is a competitive request for proposals?

- In states in which cannabis is legal, states typically limit the number of licenses available to cultivate, manufacture and sell cannabis, whether to medical users or adult users
- License limitations are seen to serve public policy goals:
 - State control of industry development
 - Benefits to localities
 - Protection of industry participants from competition
 - Ability to engineer policy goals into the industry
 - Social Equity (IL, NJ)
 - Local Ownership/Participation (MO, OK, UT, NJ)
 - Medical Research and Partnerships (PA, VA, NJ)
 - Unionization of Workforce (IL, NJ)
 - Development of Underutilized Agricultural or Urban Areas (FL, GA, MO)
- An RFP is a “Request for Proposals” (sometimes called an RFA or “Request for Applications”) – it’s an application for a license

What is a competitive request for proposals?

- States run competitive requests for proposals to award licenses
 - Applications typically have detailed requirements and scoring criteria, comprised of both narrative responses and required documents
 - Applications are sometimes scored by state regulators, and sometimes by outside vendors
- In highly competitive contests, there are often far more applicants than there are available licenses
 - In New Jersey in 2018, for example, 146 applicants vied for only six licenses
 - In Illinois, the state received many hundreds of applications for only several dozen licenses
 - Each year, the RFPs get more competitive and the quality of the applications improves

Why are these RFPs so competitive?

- Capped license jurisdictions are more profitable to companies than open license jurisdictions
- Cost of entry is lower than M&A
 - Cannabis Licenses trade for millions (sometimes tens or hundreds of millions), while the cost of submitting an application is much lower
 - Most MSOs have full-time licensing staffers that work on applications
 - Some RFPs do not require interest in real property, employees, etc.
- Recent jurisdictions with competitive RFPs



Illinois



West Virginia



Missouri



Utah



New Jersey



Arkansas



Maryland



Pennsylvania

- Upcoming: Georgia, Virginia, Rhode Island
- Future: NJ (again), Vermont, Illinois, more

- Different states have different priorities and different levels of comfort with cannabis businesses
- Statutes, regulations, the RFPs, and extra-regulatory statements of regulators (such as guidance documents or FAQs) often identify the overall goals of a request for proposals
- Because request for proposal processes are typically run by an executive branch agency, it is also important to understand the priorities of the executive, often expressed by the statements of a governor and/or his/her subordinates or in the enabling statute
- At minimum, common themes are:
 - Experience in the Industry
 - Technical Experience (“SOPs on Steroids!”)
 - Regulatory Compliance
 - Local Participation
 - Minority Participation
 - Financial Ability

- Most states identify goals in one or more of the following areas, though how much they focus on those goals varies:
 - Creating a highly compliant industry, by prioritizing licensees with a strong history of compliance in cannabis or similarly highly regulated industries, such as pharmaceuticals, food service, and similar.
 - Spurring economic development in struggling areas, by prioritizing projects in areas of high unemployment and prioritizing applicants with a strong commitment to professional development and workforce training (particularly for individuals who need re-training from other careers).
 - Creating concrete benefits for host communities, in the form of payments to local towns, charities, or both, as well as provision of technical and other forms of support.
 - Ensuring (limited, regulated, tightly-controlled) competition within the market by diversifying ownership of cannabis establishments.
 - Beginning to undo historical disparate impacts of cannabis criminalization on persons of color, and create opportunities for ownership and equity for persons of color, women, and veterans.

- Every applicant is strong in some areas and weak in others
- It is important to identify strengths and weaknesses in relation to the goals identified in the request for proposals
- Where possible, determine whether an application contains “deal-breakers,” that is, elements of the application that are scored so highly that you are unlikely to win if you cannot receive full or partial credit for them
 - Translate your strengths into themes for your application that fit with goals
 - Address every “brownie” point
 - Case in Point: Veteran Bonus in Illinois

Crafting a Winning Response – Improving the Application and Building Partnerships

- Local and other support is critical to winning competitive requests for proposals, and for addressing weaknesses in an application
- Identify and approach local organizations who may want to partner on such issues as economic development, workforce training, substance use disorder prevention, and similar issues
- Dialogue with local government and non-profit leaders to understand and address local concerns
- Ensure that your application team has necessary expertise in all areas, and supplement where expertise is lacking

- Work backwards from the due date of the request for proposals to create interim deadlines
- Create a project management structure that permits necessary personnel to draft and edit responses within their area of expertise
- Keep track of all required application elements through a spreadsheet or similar mechanism, and retain an understanding of who is responsible for each element at all times
- Work in a manner that allows for expansion as the process goes on, such as the addition of new partners or local supporters
- **Do not submit your response on the last day!**

- Be clear and answer the questions asked
- Make the reader's job easy
 - Typically, applications are divided into sections and readers are assigned to review a specific part of each application. This means that a reader may read dozens or hundreds of responses – often dry, technical subjects – on the same subject.
 - Address each part of the question in a prominent fashion
 - Explain complicated information with graphics as appropriate
 - Where you are addressing a specific statute or regulation, make sure to note it
- At the same time, ensure that your responses have personality and convey the characteristics of your application team
 - Again, application readers will read dozens or hundreds of similar responses. It is important to stand out and leave a strong impression

How Are RFPs Scored?

- Outside vendors
 - Illinois
 - Missouri
- Staff of the Cannabis Regulatory Agency
 - New Jersey
 - Utah
- Grading is theoretically based on “scoring sheets”



- Practically every RFP leads to litigation
- Scoring is naturally subjective
- Even with inherent subjectivity, discrepancies are common
- Politically connected influence?



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Jeremy has substantial experience with assisting providers in complying with regulations and understanding ongoing regulatory developments, and advising on regulatory risks and opportunities in acquisitions, financings, and similar transactions.



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