

### **8A.311 Competitive bidding preferences reciprocal application direct purchasing.**

The director shall adopt rules establishing competitive bidding procedures.

1. *a.* All equipment, supplies, or services procured by the department shall be purchased by a competitive bidding procedure as established by rule. However, the director may exempt by rule purchases of noncompetitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa-based businesses if the Iowa-based business bids submitted are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications. If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.

*b.* The department and each state agency shall provide notice in an electronic format available to the public of every competitive bidding opportunity offered by the department or the state agency as provided in section 73.2, subsection 2. The department may establish by rule requirements relating to such notice. A competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this paragraph is void and shall be rebid. A request for proposals for architectural or engineering services may be posted electronically by a department or state agency.

2. Notwithstanding section 72.3, if the competitive bidding procedure used by the department involves the use of a reverse auction or similar competitive bidding procedure requiring the disclosure of bid information submitted by vendors, the department shall disclose the bid information as necessary and appropriate.

3. The director may also exempt the purchase of an item or service from a competitive bidding procedure when the director determines that the best interests of the state will be served by the exemption which shall be based on one of the following:

*a.* An immediate or emergency need existing for the item or service.

*b.* A need to protect the health, safety, or welfare of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

4. *a.* The director may contract for the purchase of items or services by the department. Contracts for the purchase of items or services shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

*b.* Architectural and engineering services shall be procured in a reasonable manner, as the director by rule may determine, on the basis of competence and qualification for the type of services required and for a fair and reasonable price.

5. The director may enter into a cooperative procurement agreement with another governmental entity relating to the procurement of goods or services, whether the goods or services are for the use of the department or other governmental entities. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which that purpose will be accomplished. Any power exercised under the agreement shall not exceed the power granted to any party to the agreement.

6. The director may refuse all bids on any item or service and request new bids.

7. The director shall establish by rule the amount of security, if any, to accompany a bid or as a condition precedent to the awarding of any contract and the circumstances under which a security will be returned to

the bidder or forfeited to the state.

8. The director shall adopt rules providing a method for the various state agencies to file with the department a list of those supplies, equipment, machines, and all items needed to properly perform their governmental duties and functions.

9. The director shall furnish a list of specifications, prices, and discounts of contract items to any governmental subdivision which shall be responsible for payment to the vendor under the terms and conditions outlined in the state contract.

10. The director shall adopt rules providing that any state agency may, upon request, purchase directly from a vendor if the direct purchasing is as economical or more economical than purchasing through the department, or upon a showing that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need. The rules shall include a provision permitting a state agency to purchase directly from a vendor, on the agency's own authority, if the purchase will not exceed five thousand dollars and the purchase will contribute to the agency complying with or exceeding the targeted small business procurement goals under sections 73.15 through 73.21.

Any member of the executive council may bring before the executive council for review a decision of the director granting a state agency request for direct purchasing. The executive council shall hear and review the director's decision in the same manner as an appeal filed by an aggrieved bidder, except that the three-day period for filing for review shall not apply.

11. *a.* When the estimated total cost of construction, erection, demolition, alteration, or repair of a public improvement exceeds the competitive bid threshold in section 26.3, or as established in section 314.1B, the department shall comply with chapter 26.

*b.* In awarding a contract under this subsection, the department shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if the department considers the bids received not to be acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied by a certified or cashier's check or bid bond in an amount designated in the advertisement for bids as security that the bidder will enter into a contract for the work requested. The department shall establish the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The certified or cashier's checks or bid bonds of unsuccessful bidders shall be returned as soon as the successful bidder is determined. The certified or cashier's check or bid bond of the successful bidder shall be returned upon execution of the contract. This subsection does not apply to the construction, erection, demolition, alteration, or repair of a public improvement when the contracting procedure for the work requested is otherwise provided for in law.

12. The state and its political subdivisions shall give preference to purchasing Iowa products and purchasing from Iowa-based businesses if the bids submitted are comparable in price to those submitted by other bidders and meet the required specifications.

13. The director shall adopt rules which require that each bid received for the purchase of items purchased by the department includes a product content statement which provides the percentage of the content of the item which is reclaimed material.

14. The director shall review and, where necessary, revise specifications used by state agencies to procure products in order to ensure all of the following:

*a.* The procurement of products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires. The specifications shall be revised if they restrict the use of alternative materials, exclude recovered materials, or require performance

standards which exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will hamper the intended use of the product.

*b.* The procurement by state agencies of bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with the requirements of section 8A.316.

15. A bidder awarded a state construction contract shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract.

If a subcontractor named by a bidder awarded a state construction contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

16. A state agency shall make every effort to purchase those products produced for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation or other developmental disabilities or mental illness if the products meet the required specifications.

17. A state agency shall make every effort to purchase products produced for sale by employers of persons in supported employment.

18. The department shall not award a contract to a bidder for a construction, reconstruction, demolition, or repair project or improvement with an estimated cost that exceeds twenty-five thousand dollars in which the bid requires the use of inmate labor supplied by the department of corrections, but not employed by private industry pursuant to section 904.809, to perform the project or improvement.

19. Life cycle cost and energy efficiency shall be included in the criteria used by the department, institutions under the control of the state board of regents, the state department of transportation, the department for the blind, and other state agencies in developing standards and specifications for purchasing energy-consuming products. For purposes of this subsection, the life cycle costs of American motor vehicles shall be reduced by five percent in order to determine if the motor vehicle is comparable to foreign-made motor vehicles.

*"American motor vehicles"* includes those vehicles manufactured in this state and those vehicles in which at least seventy percent of the value of the motor vehicle was manufactured in the United States or Canada and at least fifty percent of the motor vehicle sales of the manufacturer are in the United States or Canada. In determining the life cycle costs of a motor vehicle, the costs shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or seventy-five thousand miles, whichever occurs first.

20. Preference shall be given to purchasing American-made products and purchases from American-based businesses if the life cycle costs are comparable to those products of foreign businesses and which most adequately fulfill the department's need.

2003 Acts, ch 145, §30; 2004 Acts, ch 1101, §5; 2005 Acts, ch 52, §3; 2005 Acts, ch 100, §1; 2006 Acts, ch 1017, §16, 42; 2006 Acts, ch 1072, §3

## **Footnotes**

Preferences; see also chapter 73, §73A.21