

## CHAPTER 4 PURCHASING

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 5]

**705—4.1(99E) Applicability of competitive bidding.** All “major procurements” shall be obtained as a result of competitive bidding. “Major procurements” includes consulting agreements and the major procurement contract with a business organization for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game.

Items, including goods or services, other than “major procurements,” which are expected to cost in the aggregate in excess of \$500 will be obtained as a result of competitive bidding conducted by the lottery or through the department of general services whenever feasible and when such procurement is in the best interests of the lottery. Items other than major procurements expected to cost less than \$500 in the aggregate may be obtained in any manner deemed appropriate by the lottery.

The lottery may exempt an item from competitive bidding if the item is noncompetitive, is purchased in quantities too small to be effectively purchased through competitive bidding, if there is an immediate or emergency need for the item, if the purchase of the item facilitates compliance with set-aside procurement provisions, or if the lottery determines that the best interests of the lottery will be served by exemption from the bidding process and the item to be purchased is not a major procurement.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.2(99E) Methods of obtaining bids or proposals used by the lottery.** Bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the lottery shall choose the method of bidding to be utilized.

**4.2(1)** Formal bids may be required for any item if cost is the major criterion for selection. If cost is the major criterion for selection, formal bids shall be required for all items costing in the aggregate more than \$5000.

The lottery shall prepare a written invitation-to-bid form and shall mail the form, along with a specially marked return envelope or identifying label to be used on the return envelope, to selected vendors in the business of providing the goods or services sought by the lottery.

The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

Bids received prior to the time set for the bid opening on the bidding document shall be opened publicly and made available to any interested party on the date and hour designated on the bid form. As the bids are opened they will be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations will be maintained at the lottery for one year following the date on which the bids were opened.

An award shall be made within 60 calendar days from the date of the bid opening unless a different time frame is stated by the lottery in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

**4.2(2)** Informal bids may be required for any item if cost is the major criterion for selection and if the item is expected to cost in the aggregate less than \$5000. Informal bids may be obtained by the lottery either through use of a written bid form or over the telephone. When requesting informal bids, the lottery shall contact selected vendors supplying the goods or services sought by the lottery and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid.

Written informal bids shall be opened as received and informal telephone bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. Following the bid due date, the lottery shall tabulate the bids received and make the award.

The bids and the tabulations shall be available to interested parties after the bid due date and shall be maintained by the lottery for one year following the date on which the bids were due.

If an award is not made within the time frame indicated by the lottery when requesting bids, all bids shall be deemed rejected.

**4.2(3)** Whenever a requirement exists for an item and cost may not be the sole criterion for selection, the lottery may issue a request for proposal. The purpose of a request for proposal is to provide the vendor with sufficient information about the lottery's requirements and goals to allow the vendor to propose a solution to the lottery's requirements.

The lottery shall prepare a written request for proposal and shall mail the proposal, along with a specially marked envelope or label, to selected vendors in the business of supplying the goods or services sought by the lottery.

Proposals shall be opened publicly at the time designated in the proposal and made available to any interested party on the date and hour designated in the proposal.

An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the lottery in the request for proposal or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

At a minimum, a request for proposal shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process including the due date for the proposal and the date and hour of the proposal opening; administrative requirements for submitting the proposal and the format required by the lottery; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the lottery anticipates may affect the terms of the vendor's proposal.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.3(99E) Items purchased through the department of general services.** Goods and services may be obtained by the lottery through the department of general services whenever procurement through general services is possible and in the best interests of the lottery. Items procured through general services may be obtained by general services in any manner deemed appropriate by general services.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.4(99E) Advertising solicitations.** Formal bids and requests for proposals issued by the lottery shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.5(99E) Contract purchases.** The lottery may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.6(99E) Blanket purchase agreements.** If the lottery foresees a requirement for frequent purchases of off-the-shelf items, the lottery may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the

number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.7(99E) Prospective vendor selection.**

**4.7(1)** Any firm or business legally conducting business within Iowa may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the lottery. The lottery may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor which the lottery chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons: failure to respond to three consecutive solicitations; failure to deliver within specified delivery dates; failure to deliver in accordance with specifications; attempts to influence the decision of any state employee involved in the procurement process; evidence of agreements by the vendor to restrain trade or impede competitive bidding; and any other activities of the vendor which the lottery determines would render the vendor unsuitable.

The lottery shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the lottery. If the lottery ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the lottery's action to the lottery board pursuant to the criteria for vendor appeals contained in these rules.

**4.7(2)** The lottery shall select vendors to receive solicitation documents based on the lottery's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the lottery. The lottery shall also provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.8(99E) Bids and proposals to conform with specifications.** All bids and proposals must conform to the specifications indicated by the lottery. Bids and proposals which do not conform to the specifications stated may be rejected. The lottery reserves the right to waive deficiencies in the bids or proposals if in the judgment of the lottery the best interests of the lottery would be served by the waiver.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.9(99E) Time of delivery.** When evaluating bids or proposals the lottery may consider the time of delivery when determining the successful vendor.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.10(99E) Cash discounts.** When evaluating bids or proposals the lottery may consider cash discounts.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.11(99E) Tie bids.** The lottery shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses.

If it is necessary to draw lots the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the lottery shall document the drawing.

This rule is intended to implement Iowa Code sections 99E.9(2), 99E.9(3) and 99E.9(6).

**705—4.12(99E) Time of submission.** All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the lottery prior to the date and time set for the opening of the bids or proposals. All informal bids shall be submitted by the vendor in time to reach the lottery prior to the time specified by the lottery. Bids and proposals shall be marked by the lottery with the date and time received by the lottery. Bids and proposals received after the date and time set for opening or for submission shall be returned to the vendor unopened. All vendors to whom invitations to bid or proposals are sent shall be notified of any changes in the time of submission.

If a formal invitation to bid or request for proposal is canceled prior to the time set for opening the bids or proposals any responses already received shall be returned unopened. If an informal invitation to bid is canceled prior to the time set for receiving bids, any bids already received shall be destroyed.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.13(99E) Modification or withdrawal of bids.** Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope which properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the lottery if the lottery finds that an honest error was made by the vendor which will cause undue financial hardship to the vendor and which will not cause undue financial hardship or inconvenience to the lottery.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.14(99E) Financial security.** The lottery may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the lottery, or any other form specified by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.15(99E) Rejection of bids and proposals.** The lottery reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the lottery's requirements, or for any other reason if the lottery determines that the best interests of the lottery will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the lottery at any time deemed convenient by the lottery.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.16(99E) Background and informational statements.** Bidders may be required to submit to criminal history checks and background investigations as conditions for submitting a bid. Bidders may also be required to describe their organizational structure, to identify key personnel and to submit personnel to criminal history checks and background investigations. Any changes in key personnel during the bidding process or during the contract term must be reported to the lottery before the change occurs.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

**705—4.17(99E) Vendor appeals.** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may appeal the decision by filing a written notice of appeal before the Iowa Lottery Board, 2015 Grand Avenue, Des Moines, Iowa 50312, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the lottery's award. Following receipt

of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

This rule is intended to implement Iowa Code sections 99E.9(2) and 99E.9(3).

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## CHAPTER 5

Reserved

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