

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to purchasing practices and processes and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 20, “Procurement of Equipment, Materials, Supplies and Services,” and Chapter 25, “Competition with Private Enterprise,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 307.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 8A.302(1); section 8A.311(20) as amended by 2018 Iowa Acts, Senate File 2416, section 25; and sections 23A.2, 73.15 to 73.21, 307.12 and 307.21.

Purpose and Summary

This proposed rule making amends Chapter 20 to update the rules to reflect current purchasing practices, add definitions, and clarify the procurement and professional and technical services consultant selection process. Professional and technical services contracts may be procured in two manners:

- First, by way of the general purchasing process where contracts are awarded competitively with cost as a factor.
- Second, by awarding a professional and technical services contract based on the qualifications of the vendor, with contract costs being negotiated after the selection of a vendor.

Chapter 20 incorrectly addresses only professional and technical services contracts as qualification-based contracts. This rule making proposes wording to distinguish between both types of scenarios listed above.

The proposed amendments also modify the qualification-based awards process to remove the prequalification wording and insert registration requirements. These amendments are proposed because evaluation for prequalification will occur once the vendor has been selected for consideration. This evaluation will allow the Department to prequalify only those vendors considered for award versus trying to qualify all vendors who registered.

The following further explains the proposed amendments to Chapter 20. The proposed amendments:

- Clarify that this chapter also applies to procurements financed with other program funds authorized for Department use. Current rule 761—20.1(307) omits purchases procured from other program funds the Department is responsible for administering. It is the intent of the Department that all procurements, regardless of fund, follow the procedures as outlined in this chapter.
- Rescind existing rule 761—20.2(307) and adopt new rule 761—20.2(307) concerning definitions. The amendments make the following changes to this rule:
 - Correct the formatting, retain existing definitions, and modify the definition of “methods of procurement” to include updated references to “solicitations” and “responses.”
 - Add the terms “bidder,” “response,” and “solicitation” to update the rule language for situations involving quotations, bids and proposals. Current rule language addresses a purchase only as an opportunity to bid; it does not include the opportunity to propose or offer.
 - Add a new definition of “professional and technical services” to identify the two types of “professional and technical services” situations in which a contract is awarded: first, by way of general purchasing processes where contracts are awarded competitively with cost as a factor (outlined in rules

761—20.3(307) through 761—20.5(307) and proposed rule 761—20.6(307)). Second, a professional and technical services contract may be awarded based on qualifications of the vendor, with contract costs being negotiated after the selection of a vendor (outlined in renumbered rule 761—20.10(307)). Both are professional and technical services contracts, awarded in different manners. The definition of “professional and technical services” was inserted to define the term as applying to both types of contracts awarded in differing manners as defined by the rules referenced.

- Amend subrule 20.3(3) concerning the negotiation method of procurement to:
 - Add a new paragraph to state that the negotiation method of procurement may be used when cost is one of many factors considered to determine the award. This amendment acknowledges there are several factors which can be used to determine an award which is in the best interest of the state.
 - Add terminology to reflect current purchasing practices.
 - Update rules to include the terms “bidder,” “response” and “solicitation.”
- Amend rule 761—20.4(307) to:
 - Correct the state agency responsible for certifying targeted small businesses for eligibility and participation in the program as a result of 2017 Iowa Acts, chapter 160, section 5. The Iowa Economic Development Authority is now responsible for certification instead of the Iowa Department of Inspections and Appeals.
 - Revise the rule to use updated and consistent terminology, include electronic means of communication where applicable, and remove an outdated communication mode.
 - Make changes to state that the protest must be in writing and must be received by the director of purchasing within seven days after the contract award has been posted. This amendment is proposed to clearly identify an award date and to indicate that protests could be filed within seven days of that date. The current rule states that “a written protest must be received by the director of purchasing at least three days prior to the posting of the recommended contract award.” Vendors do not know for sure when the Department is going to “make an award” as it could be anytime up until the final deadline. Vendors could easily miss the three-day window of opportunity. The amendment clarifies the deadline for the submission of the protest based on a known date and to state the contract terms may provide for liquidated damages to be assessed for any other reason as specified in the contract.
 - Incorporate the amendment to Iowa Code section 8A.311(20) made by 2018 Iowa Acts, Senate File 2416, section 25, which added new language requiring the purchase of certain vehicles to be awarded to the lowest responsive and responsible bidder based solely on bid price.
- Amend rule 761—20.5(307) to reflect current purchasing practices, include the terms “solicitation” and “response,” and allow for submission of responses electronically using a variety of modes of submission to accommodate current technologies.
- Add rule 761—20.6(307) concerning professional and technical services procured through the purchasing procurement process outlined in rules 761—20.3(307) through 761—20.5(307). Rule 761—20.6(307) is added to identify procedures related to professional and technical services contracts awarded through the procurement process when cost is a factor. This process is separate from the process of an award based on qualifications as outlined in renumbered rule 761—20.10(307) and therefore requires the Department to establish a new rule to address this situation. Previously, this process was interpreted to be part of renumbered rule 761—20.10(307), which was incorrect.
- Move the content of current subrule 20.8(7) concerning sole source or emergency selection to proposed rule 761—20.7(307) and move the content of current subrule 20.8(11) concerning conflicts with federal requirements to proposed rule 761—20.8(307) because both of these rules apply to all contracts covered by Chapter 20 and not just to rules that were previously included under current rule 761—20.8(307), which is now renumbered rule 761—20.10(307). The amendment also removes qualification wording and adds wording related to work categories and satisfactory completion. The prequalification wording was replaced with registration requirements because evaluation for prequalification will occur once the vendor has been selected for consideration. This evaluation will allow the Department to prequalify only those vendors considered for award versus trying to qualify all vendors who register. Vendors sign up to be registered for future award opportunities; they do not sign up to be automatically reviewed for prequalification.

- Amend renumbered rule 761—20.10(307) to add other types of professional and technical services to the series of services listed. Surveying, general engineering consultant, and construction inspection were omitted from the rule previously. Wording was added to the introductory paragraph to clarify that the firm selection is based on qualifications, and contract costs are negotiated after selection is determined based on qualifications. This clarification was added to differentiate professional and technical services contracts procured in accordance with 23 CFR Part 172 when cost is not a factor from professional and technical services contracts procured when cost is a factor, but not the only factor, as outlined in proposed rule 761—20.6(307). The amendment also incorporates the information about registration of firms and updates the information to comply with changes to 23 CFR Part 172.

The proposed amendments to Chapter 25 update the activities that are exempted from the provisions of Iowa Code section 23A.2(1) to remove “state aircraft pool operations” and “daycare.” The Department has not owned state aircraft since the 1990s, and 2015 Iowa Acts, chapter 123, section 1, updated Iowa Code section 23A.2(9) to remove state aircraft pool operations. Since the early 2000s, the Department has not provided facilities for daycare services on Department property.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2019. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

February 7, 2019
9 a.m.

Department of Transportation
Administration Building
First Floor, South Conference Room
800 Lincoln Way
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—20.1(307) as follows:

761—20.1(307) Scope of chapter and applicability.

20.1(1) Scope. ~~Unless otherwise provided herein, this~~ This chapter of rules pertains only to the procurement of equipment, materials, supplies and services by the Iowa department of transportation with funds from the department's operating budget or from the materials and equipment revolving fund established in Iowa Code section 307.47 or other program funds authorized for department use. ~~Also, this chapter applies only to procurement from firms, as defined in subrule 20.2(2) herein.~~

20.1(2) Applicability. Rules 761—20.4(307) through 761—20.6(307) apply to professional and technical services procured using the general purchasing process where contracts are awarded competitively and cost is a factor. Rule 761—20.10(307) applies to professional and technical services contracts that are awarded based on qualifications when the cost is negotiated after the vendor is selected.

ITEM 2. Rescind rule 761—20.2(307) and adopt the following **new** rule in lieu thereof:

761—20.2(307) Definitions. As used in this chapter, unless the context otherwise requires:

“*Bidder*” means a respondent to a solicitation as a bidder, offeror or contractor.

“*Competition*” means the efforts of three or more parties acting independently to secure a contract with the department to provide equipment, materials, supplies or services to the department by offering or being in a position to offer the most favorable terms. “Favorable terms” includes, but is not limited to: price, speed of execution, anticipated quality of the product to be provided judged according to the expertise and experience of the provider, or ability to produce a desired result or to provide a desired commodity.

“*Department*” means the Iowa department of transportation.

“*Firm*” means any bona fide contracting entity, including individuals and educational institutions. Except for educational institutions, the term shall not include governmental agencies or political subdivisions.

“*Methods of procurement*” means formal advertising, limited solicitation, or negotiation as follows:

1. “*Formal advertising*” means procurement by competition and awards involving the following basic steps:

- Preparing a solicitation that describes the requirements of the department clearly, accurately and completely but avoids unnecessarily restrictive specifications or requirements which might unduly limit the number of responses.
- Distributing the solicitation to prospective bidders and advertising in appropriate media in sufficient time to enable prospective bidders to prepare and submit responses before the time set for public opening of responses.
- Receiving responses submitted by prospective contractors.

- Awarding the contract, after responses are publicly opened, to that responsible bidder whose response conforms to the solicitation and is the most advantageous to the department, price and other factors considered.

2. “*Limited solicitation*” means procurement by obtaining a sufficient number of quotations, bids or proposals from qualified sources:

- As is deemed necessary to ensure that the procurement is fair to the department, price and other factors considered, including the administrative costs of the procurement.

- As is consistent with the nature and requirements of the particular procurement.

- So that the procurement is competitive to the maximum practicable extent.

3. “*Negotiation*” means any method of procurement other than formal advertising or limited solicitation to seek the best and final offer which is most advantageous to the department.

“*Professional and technical services*” means services that are unique, technical, or infrequent functions performed by independent contractors whose occupation is the rendering of such services. Contracts may go to partnerships, firms, or corporations as procured through formal advertising, solicitation or negotiation methods outlined in rules 761—20.3(307) through 761—20.6(307) and architectural, landscape architectural, surveying, general engineering consultant, construction inspection, or engineering services and other related professional and technical services as outlined in rule 761—20.10(307).

“*Response*” means the submittal of written documents by a prospective bidder, offeror or contractor as a response to any type of solicitation issued by the department for a quotation, bid or proposal.

“*Solicitation*” means the request by the department for a quotation, bid or proposal. This includes but is not limited to the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of responding to a solicitation.

ITEM 3. Amend subrule 20.3(3) as follows:

20.3(3) *Negotiation.* The negotiation method of procurement may be used if formal advertising or limited solicitation is not feasible or practicable, or in any of the following instances:

a. and b. No change.

c. The procurement is for architectural, landscape architectural, engineering, or related professional ~~or~~ and technical services.

d. The procurement is for other professional and technical services.

e. When cost is only one of many factors considered to determine the award.

~~e. f.~~ The procurement is for services to be rendered by an educational institution.

~~f. g.~~ It is impracticable to secure competition through formal advertising or limited solicitation, such as when:

(1) and (2) No change.

(3) ~~Bids or quotations have been solicited,~~ Solicitations have been made available to prospective bidders and no responsive bids or quotations responses to the solicitation have been received.

(4) ~~Bids or quotations have been solicited,~~ Solicitations have been made available and the responsive bids or quotations submitted responses do not cover the quantity requirements of the solicitation. In this case, negotiation is permitted for the remaining quantity requirements.

(5) No change.

(6) The procurement is for ~~technical or~~ professional and technical services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(7) to (11) No change.

~~g. h.~~ The procurement is for experimental, developmental or research work or for the manufacture or furnishing of property for experimentation, development, research or testing.

~~h. i.~~ It is determined that the bids or quotations responses received are not reasonable or have not been independently arrived at.

~~i. j.~~ Procurement by negotiation is otherwise authorized by law including, but not limited to, Iowa Code section 73.19.

~~j. k.~~ The manufacturer is willing to sell directly to the state at distributor cost.

ITEM 4. Amend rule 761—20.4(307) as follows:

761—20.4(307) Formal advertising procedures and requirements.

20.4(1) *Bidders list.* The department's purchasing office section shall maintain current bidders lists by commodity classification.

a. These lists are developed using available sources such as technical publications, telephone books, trade journals, commercial vendor registers, advertising literature, Internet resources and targeted small businesses certified by the ~~department of inspections and appeals~~ Iowa economic development authority. Solicitations will be posted as required on the Iowa economic development authority's targeted small business website no later than 48 hours prior to the issuance of the solicitation.

b. Any firm legally doing business in Iowa may be placed on an appropriate bidders list or lists by submitting a written request to: DOT Director of Purchasing, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

c. and d. No change.

20.4(2) *Request for proposals and solicitation of bids Solicitation documents.* The department shall prepare a request for proposals the solicitation documents complete with bidding documents requirements, specifications and instructions to bidders and ~~send (or deliver) the request for proposals to prospective bidders,~~ as applicable, to be sent (or publicly posted) for the purpose of bidding procuring goods or services.

a. In special situations (e.g., the procurement of new model equipment), the ~~request for proposals solicitation~~ may be marked "preliminary" and sent to prospective bidders requesting their review of the ~~proposal solicitation~~ to determine their ability to ~~bid respond~~ and meet the requirements of the procurement request. The "preliminary" ~~proposal solicitation~~ process involves the following steps:

(1) A ~~vendor's~~ conference may be held to discuss the "preliminary" ~~proposal solicitation requirements with prospective bidders~~ when the item in question is a new acquisition for the department.

(2) Written requests for variations, deviations or approved equal substitutions to the ~~proposal solicitation~~ shall be accepted, evaluated and answered by the department.

(3) The ~~proposal solicitation requirements~~ may be ~~amended by the department~~ revised to incorporate approved changes.

(4) A final ~~request for proposals solicitation~~ shall be sent to prospective bidders that participated in the preliminary process.

b. The method to be used by the department in evaluating ~~bids responses~~ received shall be disclosed in the ~~request for proposals solicitation~~.

c. The ~~request for proposals solicitation~~ shall be sent to a sufficient number of prospective bidders so as to promote adequate competition commensurate with the dollar value of the procurement.

(1) Generally, the ~~request for proposals solicitation~~ shall be sent to all bidders listed on the appropriate bidders list for the item to be procured.

(2) No change.

(3) The fact that less than an entire bidders list is used shall not in itself preclude the furnishing of ~~requests for proposals the solicitation~~ to others upon request, or the consideration of ~~bids responses~~ received from bidders who were not ~~invited to bid originally included in the bidders list.~~

d. The department shall publicize the procurement by advertising in appropriate media, ~~giving~~ providing the date and time set for public opening of bid opening submitted responses, a general description of the item to be procured, and the name and address of the person to contact to obtain a copy of the ~~request for proposals solicitation~~.

20.4(3) *Instructions to bidders Response instructions.* Each bidder shall prepare the ~~bidding documents~~ response to the solicitation in the manner prescribed and furnish all information and samples requested in the ~~request for proposals solicitation~~. The following shall be adhered to by all bidders when preparing and submitting ~~bids responses~~:

a. *Bid Response preparation.* ~~Bids Responses~~ shall be signed and prepared in ink or typewritten ~~on~~ in the bidding solicitation documents provided. ~~Telegraphic, telephonic~~ Telephonic, ~~E-mail~~ email or

facsimile bids responses shall not be considered. When available, bidders may respond electronically to a secure authorized system as instructed in the solicitation.

b. No change.

c. New merchandise. Unless otherwise specified, all items bid offered shall be new, of the latest model or manufacture, and shall be at least equal in quality to that specified.

d. Bid Response price. Where requested, the unit and total price for each separate item, and the total price for all items, shall be provided on in the bidding documents bidder's response. Alternate prices for approved substitutions may be submitted by attaching a bid response marked as an alternate bid to the bidding documents original response. In case of error, the unit price shall prevail. If unit price is not requested on the bidding documents in the solicitation, the total price per item shall prevail.

e. No change.

f. Time of acceptance. The bidder shall hold the bid offered prices open for action by the department at least 30 days past the bid opening date time set for public opening of submitted responses.

g. Escalator clauses. Unless specifically provided for in the request for proposals solicitation, a bid response containing an escalator clause shall not be considered.

h. Federal and state taxes. Except for specific items that will be noted in the request for proposals solicitation, the department is exempt from payment of federal and state taxes. These taxes shall not be included in the bid price bidder's response. Exemption certificates shall be furnished to bidders upon request.

i. Delivery dates. In the space provided, the bidder shall show the earliest date on which delivery can be made. When the request for proposals solicitation shows the acceptable delivery date for an item, the proposed delivery date may be used as a factor in determining the successful bidder.

j. Ties and reservations. No ties or reservations by the bidder are permitted. Any tie or reservation stipulated by the bidder shall be sufficient grounds for rejection of the bid to reject the submitted response.

k. Changes and additions. No changes in or additions to the request for proposals solicitation shall be permitted unless a written request for a change or an addition is submitted to the department's purchasing office section in sufficient time to allow an appropriate analysis and response to all bidders, and the change or addition is approved by the purchasing office section. The purchasing office section shall notify all bidders of approved changes or additions by means of addenda.

Any unauthorized change in or addition to the request for proposals solicitation shall be sufficient grounds for rejection of the bid to reject the submitted response.

l. Submission of bids Response submission. All bids responses shall be submitted in sufficient time to reach the department's purchasing office section prior to the time set for the opening of bids public opening of submitted responses. Any bid response received after the time set for bid opening public opening of submitted responses shall be returned to the bidder unopened. Bids Responses received shall be dated and time-stamped by the purchasing office section showing the date and hour received. By submitting a bid response, the bidder:

(1) Agrees that the contents of the bid response will become part of the contract if the bidder receives the award.

(2) Shall be assumed to have become familiar with the contents and requirements of the request for proposals solicitation.

m. Proposal guaranty. A proposal guaranty may be required as security that the bidder will execute the contract if awarded to the bidder. If required, each bid response shall be supported by a proposal guaranty in the form and amount prescribed in the request for proposals solicitation. Bids Responses not so supported shall not be read.

n. Withdrawal of bids responses prior to opening. Bids Responses may be withdrawn prior to the time set for the opening of bids forth in the solicitation. Prior to opening, a bidder who withdraws a bid the response to a solicitation may submit a new bid response if desired.

o. Modification or withdrawal of bids responses after opening. After opening, no bid response may be modified. A bid response may be withdrawn after opening only if:

(1) The bidder submits, at least three days prior to ~~contract~~ award, a sworn statement asserting that the bid response contains a substantial inadvertent error and that the bidder would suffer a serious financial loss if required to perform under the bid response, and

(2) No change.

20.4(4) *Public opening of bids responses.* Bids Responses shall be opened publicly and read aloud at the time stipulated in the request for proposals solicitation.

20.4(5) *Consideration of bids responses.* The department reserves the right to accept or reject any or all bids responses. Individual bids responses may be rejected for any of the following reasons:

a. Noncompliance with the requirements of this rule or of the request for proposals solicitation.

b. to d. No change.

20.4(6) *Contract Recommendation of award.*

a. *Time frame.* Unless otherwise specified by the department in the request for proposals solicitation, an award shall be made within 30 days after bid opening the date and time set for public opening of submitted responses if it is in the best interests interest of the state. If an award is not made within the applicable time frame, the procurement shall be canceled unless an extension of time is mutually agreed to by the department and the apparent successful bidder.

b. *Tied bids responses.* Bids Responses which are equal in all respects and are tied in price shall be resolved among the tied bidders by giving first preference to an Iowa bidder and second preference to the bidder who satisfactorily performed a contract the previous year for the same item at the same location. If the tie involves bidders with equal standing, the award shall be determined by lot among these bidders. A tied bidder or the bidder's representative may witness the determination by lot.

~~c. *Small business.* Rescinded IAB 11/29/89, effective 1/3/90.~~

~~d. c. *Tabulation of bids responses.*~~ A tabulation of bids responses with an award recommendation shall be sent to all interested parties including bidders at least ten days prior to ~~contract~~ award.

~~e. d. *Protests.*~~ Any protest of the recommended ~~contract~~ award shall be submitted in writing to: Director of Purchasing, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. A written protest must be received by the director of purchasing ~~at least three days prior to contract award~~ within seven days after the recommended award has been posted. The protest shall be considered by the authority making the ~~contract~~ award. This is not a contested case as defined in Iowa Code section 17A.2.

~~f. e. *Return of proposal guaranty.*~~ Unsuccessful bidders' proposal guaranties shall be promptly returned by the department after award is made. The proposed guaranty of the successful bidder shall be returned in accordance with subrule 20.4(7).

20.4(7) *Contract execution and performance.*

a. and b. No change.

c. *Return of awarded bidder's proposal guaranty.* The proposal guaranty of the successful bidder shall be returned following execution of the contract. However, if the successful bidder fails to execute the contract and file an acceptable performance bond and certificate of insurance (if they are required) within 14 days after award, or fails to comply with Iowa Code chapter 490, the award may be annulled and the proposal guaranty forfeited.

d. *Assignment of contract.* The contractor may not assign the contract to another party without written authorization from the department's purchasing office section.

e. *Strikes, lockouts or acts of God.* If the contractor's business or source of supply has been disrupted by a strike, lockout or act of God, the contractor shall promptly advise the department's purchasing office section. The department may elect to cancel the contract without penalty to either the contractor or to the department.

~~f. *Removal of trade ins.* Rescinded IAB 2/5/03, effective 3/12/03.~~

~~g. f. *Payment.*~~ Unless otherwise stated in the contract, payment terms shall be net following the department's receipt and acceptance of the item(s) procured and receipt of an original invoice.

~~h. g. *Liquidated damages.*~~ The contract terms may provide for liquidated damages to be assessed if the contractor fails to complete the contract within the contract period or for any other reason as specified in the contract.

20.4(8) *Additional requirements.*

a. The department's standard specifications as referenced and adopted in rule 761—125.1(307A) for highway and bridge construction, as available on the department's website at www.iowadot.gov, where applicable and not in conflict with this rule or with the requirements of a particular procurement, shall apply to formal advertising procurement activities.

b. No change.

c. Procurement of motor vehicles shall include the calculation and reduction of life cycle costs as specified in be in accordance with Iowa Code section 48.3(1) 8A.311(20).

ITEM 5. Amend rule 761—20.5(307) as follows:

761—20.5(307) Limited solicitation of bids procedures and requirements.

20.5(1) No change.

20.5(2) Form of solicitation. The ~~documents soliciting bids~~ solicitation shall be as detailed and complete as practicable for the time and resources available.

20.5(3) Form of bid response. Bids Responses shall be submitted in writing or electronically when practicable. Written bids responses will prevail over oral bids responses in case of discrepancies, disputes or errors. Following is the order of preference:

1. Original, signed bid submitted response.
2. ~~Electronic bid~~ Electronically submitted response (facsimile, ~~E-mail~~ email, Internet).
3. Oral bid response (e.g., telephonic).

20.5(4) Award. The award shall be offered to that responsible bidder whose bid response meets the requirements of the solicitation and is the most advantageous to the department. An Iowa bidder will be given preference over an out-of-state bidder when bids responses are equal in all respects and are tied in price.

ITEM 6. Adopt the following new rule 761—20.6(307):

761—20.6(307) Professional and technical services. This rule applies to professional and technical services procured through the purchasing section using formal advertising, solicitation or negotiation methods outlined in rules 761—20.3(307) to 761—20.6(307). Professional and technical services procured based on qualifications are covered by rule 761—20.10(307).

20.6(1) Request for proposal (RFP). A solicitation prepared by the department shall include at least the minimum requirements for the type of goods or services sought. The solicitation is sent to prospective offerors and is publicly posted on the department's website.

20.6(2) Evaluation committee. A committee is established for the purpose of reviewing and evaluating proposed responses based on a set of criteria as outlined in the RFP. "Evaluation criteria" will define categories with assigned weighted values to be used as a scoring measure to determine the best overall solution for the department based on technical expertise and price, including but not limited to:

- a. Overall content of written submitted proposal information.
- b. Business knowledge.
- c. Work experience in required skills sets.
- d. Presentation or demonstration.
- e. Cost.

20.6(3) Award. The award shall be offered to a firm whose properly submitted compliant response best meets the requirements of the solicitation and receives the highest overall score of the weighted criteria.

ITEM 7. Adopt the following new rule 761—20.7(307):

761—20.7(307) Sole source or emergency selection. Sole source or emergency selection applies to all services, including professional and technical services. The department shall fully document and include in the contract file the justification for use of sole source or emergency selection and the basis on which a particular firm is selected.

20.7(1) Sole source selection. The department may select a single firm which meets the requirements of the required work categories to perform the work with which to negotiate when one of the following conditions exists:

a. Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more likely to most satisfactorily complete the work than another firm.

b. The services involve work that is of such a specialized character or nature, or related to a specific geographical location, that only a single firm, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.

20.7(2) Emergency selection. The department may select a single firm which meets the requirements of the required work categories to perform the work when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:

a. A condition that threatens the public health, welfare or safety.

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

c. A situation in which the department must act to preserve critical services or programs.

ITEM 8. Renumber rule **761—20.8(307)** as **761—20.10(307)**.

ITEM 9. Adopt the following new rule 761—20.8(307):

761—20.8(307) Conflicts with federal requirements. If any provision of this chapter would cause a denial of federal funds or services or would otherwise be inconsistent with federal law, federal law shall be adhered to, but only to the extent necessary to prevent denial of the federal funds or services or to eliminate the inconsistency with federal law.

ITEM 10. Reserve rule **761—20.9**.

ITEM 11. Amend renumbered rule 761—20.10(307) as follows:

761—20.10(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services. This rule prescribes procedures for the procurement of architectural, landscape architectural, surveying, general engineering consultant, construction inspection, engineering and related professional and technical services by negotiation where selection is based on qualifications in compliance with 23 CFR Part 172. Contract costs are negotiated after a qualification-based selection.

20.10(1) Prequalification Registration of firms providing professional and technical services.

a.—General information.

~~(1) When procuring any of these services, the department shall consider for contract award only those firms that are prequalified with the department in the category of work to be contracted.~~

~~(2) Prequalification of subconsultants is also required if a work category exists for the services to be provided by the subconsultant. If no category exists, normal methods of acceptance shall be used such as experience, typical licensure, certification or registration, or seals of approval by others. A subconsultant is a firm contracted to the “prime” firm for the performance of work contracted by the department to the prime firm.~~

~~(3) When another party (e.g., a political subdivision), under agreement with the department or as prescribed by law, must obtain the department’s approval of a contract between the party and a firm for provision of any of these services, the firm to be awarded the contract must be prequalified with the department in the category of work to be contracted.~~

~~*b.—Web site.* Application forms, descriptions of the categories of work for which firms may be prequalified, the minimum qualification standards for each work category, and a list of firms prequalified in each work category are available on-line on the department’s Web site. The home page is www.dot.state.ia.us. Prequalification information is found by clicking on the link “Doing Business with the DOT” and then the link “Professional and Technical Consultant Utilization.”~~

~~*c. Consultant coordinator.* Information regarding prequalification is also available from the Consultant Coordinator, Engineering Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.~~

~~*d. Application forms.* A firm wishing to prequalify with the department in one or more categories of work must submit Forms 102111 and 102113. An applicant firm may either submit the forms on-line or complete hard copies of the forms and mail them to the consultant coordinator. On-line submission is encouraged.~~

~~(1) On Form 102111, the applicant firm shall provide general information regarding the firm.~~

~~(2) On Form 102113, the applicant firm shall provide detailed information regarding the firm's qualifications to perform a specific category of work. A separate Form 102113 must be submitted for each category. The firm shall support its application for prequalification for a particular category of work on the basis of adequacy and expertise of personnel, specialized experience in the field or fields required, performance records, and the minimum qualification standards set forth for the category.~~

~~(3) The department does not recognize joint ventures for the purpose of prequalification. Each firm will be prequalified in terms of its own capabilities; i.e., the major, significant aspects of the work can be accomplished using the firm's own personnel and equipment.~~

~~This requirement does not preclude consideration during the department's selection process of joint ventures or firms in the practice of subcontracting for specialized services.~~

~~*e. Initial prequalification.*~~

~~(1) A firm may apply for prequalification at any time.~~

~~(2) The department shall evaluate each Form 102113 submitted in terms of the minimum qualification standards for the work category and, if applicable, the past performance of the firm on contracts with the department for work falling within the category.~~

~~(3) If the department prequalifies a firm for a particular category of work, the department will update its Web site to indicate the firm is prequalified for that category. If prequalification is denied, the department shall notify the firm; see paragraph "h" of this subrule.~~

~~(4) A firm's prequalification status for all approved categories of work is effective during the calendar year of application and for one year thereafter, to expire on December 31.~~

~~*f. Reapplication and renewal.* At least two months but not more than three months prior to the expiration date, the department shall advise affected prequalified firms to reapply. A firm that reapplies on-line need only revise its on-line forms. A firm that does not reapply on-line must submit new Forms 102111 and 102113. The department shall process reapplications in the same manner as initial prequalification. A firm's renewal of prequalification is effective for two more years, to expire on December 31.~~

~~*g. Amendment or expansion of prequalification.* A prequalified firm may submit amended prequalification forms or apply for prequalification for additional categories of work at any time.~~

~~(1) Amended forms shall be accompanied by a separate statement explaining the submission. The firm must first contact the consultant coordinator for instructions on how to proceed.~~

~~(2) If the submission affects the minimum qualification standards or if it is an application for prequalification for an additional category of work, the department shall process the submission in the same manner as initial prequalification. However, the prequalification expiration date assigned to the firm will remain the same.~~

~~*h. Denial or cancellation of prequalification.* Prequalification may be denied or canceled if the firm fails to meet the minimum qualification standards or if the firm's performance on a contract with the department was unacceptable. Prequalification may also be denied or canceled for good cause including, but not limited to, omissions or misstatements of material fact on the application forms that could affect the prequalification status of the firm.~~

~~The department shall notify the firm by E-mail or in writing of denial or cancellation, the reason(s) therefor, and the person to contact in writing to protest the department's action.~~

~~*a.* A firm wishing to provide professional and technical services to the department as a consultant may register to receive information through the GovDelivery portal available at the department's website at www.iowadot.gov. The firm is responsible for keeping the firm's information updated. For~~

information, persons may contact the consultant coordinator at the Office of Project Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at (515)239-1803.

b. The department shall maintain a list of work categories, descriptions and requirements for each work category online.

20.10(2) and **20.10(3)** Reserved.

20.10(4) *Preselection Request for professional and technical services.* Prior to selecting a firm with which to initiate negotiations under this rule, the department shall document the need for outside services, a description of the needed services, the time frame within which the work must be performed, and the method of selection to be used. One of the following methods shall be used to select a firm with which to initiate negotiations:

a. ~~Selection committee—complete~~ Complete process. See subrule ~~20.8(5)~~ 20.10(5).

b. ~~Selection committee—small~~ Small contract process. See subrule ~~20.8(6)~~ 20.10(6).

c. Sole source or emergency selection. See ~~subrule 20.8(7)~~ rule 761—20.7(307).

20.10(5) *Selection committee—complete* Complete process. ~~This method of selection is used~~ The complete process method will use the following process and will be used unless another selection method is justified.

a. *Request for proposal (RFP).* The department shall prepare a RFP which will include the scope of the work, duration of the contract, list of applicable work categories, evaluation criteria (excluding cost), any established disadvantaged business enterprise or targeted small business goal for the proposed work, type of contract anticipated, submission details including the point of contact for the RFP for any questions, the time by which the RFP should be received by the department and anticipated date of selection. The RFP will not require any cost information to be submitted by the proposing firms.

b. *Website.*

(1) The RFP will be posted on the Iowa department of administrative services' website no later than 48 hours prior to the issuance of the RFP.

(2) The RFP will be posted on the department's website. The notification of the RFP being posted will be sent to all users who have signed up to receive the notification via GovDelivery. The notification will include the link to the website where the RFP is posted. See subrule 20.10(1).

(3) The department will post any questions received on the RFP and answers thereto on the website indicated in the GovDelivery notification.

a-c. *Selection committee.* The department shall appoint a selection committee to: become familiar with the RFP, review the firms that have responded to the RFP to determine if they meet the requirements of the work to be performed, and evaluate the firms that meet the qualifications per the evaluation criteria. The selection committee will, if necessary, interview the firms, score the firms, document the committee's decision and provide the scoring to the consultant steering committee.

(1) ~~Review the credentials of the firms prequalified to perform the services needed.~~

(2) ~~Determine which firms will be sent a request for proposals (RFP). The committee may limit the number of firms sent an RFP to eliminate the effort required by a firm that submits a proposal for the work but, based on the evaluation criteria, would have a limited possibility of being selected.~~

(3) ~~Establish weighted criteria for evaluating the firms submitting proposals. See paragraph "b" of this subrule.~~

(4) ~~Prepare an RFP and send it to the firms identified in subparagraph (2). The department shall also notify all prequalified firms that an RFP has been issued and post the RFP on the department's Web site.~~

(5) ~~If necessary, interview firms submitting proposals.~~

(6) ~~Evaluate the firms submitting proposals. Select the top (three or more) firms.~~

(7) ~~Document the committee's decision-making process.~~

b. *Evaluation criteria.* The selection committee is responsible for establishing criteria for evaluating each firm submitting a proposal, assigning weighted values to the criteria, and rating each firm on each criterion. Evaluation criteria are tailored to the needed services. Typical evaluation criteria are listed below. The list is not exhaustive, nor is each criterion mandatory.

(1) ~~Staffing expertise consistent with special project needs.~~

~~(2) Past experience with similar types of work.~~
~~(3) Performance evaluations by the department and references included in a firm's proposal.~~
~~(4) Proximity to the project area, particularly when extensive field services are required.~~
~~(5) Current workload and commitment of key personnel.~~
~~(6) Specific qualifications of key staff who will be forming the firm's project team.~~
~~(7) Resources the firm has available and proposes to use on the project, including the firm's use of equipment and automated technology and their compatibility with equipment and technology used by the department.~~

~~(8) Identification of proposed subconsultants and the work they will perform.~~

d. Evaluation criteria. The selection committee is responsible for establishing criteria for evaluating each firm submitting a proposal, assigning weighted values to the criteria, and rating each firm on each criterion. Evaluation criteria are tailored to the needed services. Typical evaluation criteria are listed below. The list is intended as a guideline only; it is not exhaustive, nor is each criterion mandatory.

(1) Staffing expertise consistent with special project needs.

(2) Past experience with similar types of work.

(3) Current workload and commitment of key personnel.

(4) Specific qualifications of key staff who will be forming the firm's project team.

(5) Resources the firm has available and proposes to use on the project, including the firm's use of equipment and automated technology and the firm's compatibility with equipment and technology used by the department.

(6) Identification of proposed subconsultants and the work the subconsultants will perform.

e. e. Consultant steering committee. A consultant steering committee is responsible for reviewing the top firms selected as scored by the selection committee, determining the order of preference for negotiations, and documenting its decision-making process decision. The number of firms selected shall include at least two alternate firms. The committee shall document its reasoning when the number of selected firms is less than the minimum requirement. The consultant steering committee shall consider not only the selection committee's scoring but other factors such as:

(1) to (4) No change.

f. Completion of selection process. After selection committee and consultant steering committee activities are complete, the department shall determine whether negotiations may begin. If negotiations are approved, the department shall proceed to negotiate with the firm that is first in order of preference.

e. g. Notification to firms. The department shall notify those firms submitting proposals of the names of the top firms selected and the order of negotiations. Along with the notification, post the results of the selection on the website identified in the GovDelivery notification. For firms not included on the ranked list of firms, the department shall also provide each firm other than the top firms a matrix showing the high, low and average scores for each item evaluated and that firm's score for each item.

20.10(6) Selection committee—small Small contract process. The small contract process may be used to identify a single firm with which to negotiate when the estimated work under the contract can normally be completed within a 12-month period and the estimated cost of the contract will not exceed ~~\$100,000~~ \$150,000.

a. Selection committee. The department shall appoint a selection committee to: identify at least three firms that meet the requirements of the work categories involved in performing the work; document the names of the firms considered, if necessary; interview the firms; select a firm with which to initiate negotiations; and document the committee's decision.

~~(1) Review the credentials of the firms prequalified to perform the services needed.~~

~~(2) If necessary, interview firms.~~

~~(3) Select a well-qualified firm with which to initiate negotiations.~~

~~(4) Document the committee's decision-making process.~~

b. No change.

~~20.10(7) Sole source or emergency selection.~~ The department shall fully document and include in the contract file the justification for use of sole source or emergency selection and the basis on which a particular firm is selected.

~~a. Sole source selection.~~ The department may select a single prequalified firm with which to negotiate when one of the following conditions exists:

~~(1) Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more qualified than other firms.~~

~~(2) The services involve work that is of such a specialized character or related to a specific geographical location that only a single firm, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.~~

~~b. Emergency selection.~~ The department may select a single prequalified firm with which to negotiate when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:

~~(1) A condition that threatens the public health, welfare or safety.~~

~~(2) A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.~~

~~(3) A situation in which the department must act to preserve critical services or programs.~~

20.10(7) Selection dispute resolution. Any dispute of the recommended selection shall be submitted in writing to the consultant coordinator. A written notice of the dispute with supporting evidence must be received by the consultant coordinator within 15 calendar days from the date the selection is posted on the department's website. This is not a contested case as defined in Iowa Code section 17A.2. The department will inform the selected firm(s) of the dispute and inform the firm(s) that the department reserves the right to proceed with negotiations with the selected firm(s) pending resolution of the dispute or claim.

20.10(8) Negotiation of contract. The purpose of negotiations is to develop a contract that is mutually satisfactory to the department and the selected firm.

~~a. No change.~~

~~b. The department may perform a preaudit. A preaudit typically includes:~~

~~(1) No change.~~

~~(2) An analysis of the firm's proposed direct costing rates and indirect overhead factors to ensure their the firm's propriety and allowability.~~

c. For contracts with federal funding, the department shall verify federal suspension and debarment actions and eligibility status of firms prior to entering into an agreement or contract.

20.10(9) Unsuccessful negotiations. If a mutually satisfactory contract cannot be negotiated, the department shall formally terminate the negotiations and notify the firm in writing. Termination of negotiations is without prejudice and at the department's discretion. The substance of terminated negotiations is confidential.

~~When a selection committee was used, the~~ The department shall then initiate negotiations with the firm given ~~second~~ next preference, and this procedure shall ~~shall~~ may be continued until a mutually satisfactory contract has been negotiated. If a satisfactory contract cannot be negotiated with any of the selected firms, the department shall either:

~~a. No change.~~

~~b. Redefine the scope of the project or work and start over (preselection). See subrule 20.10(4).~~ Once negotiations are terminated, negotiations cannot be reopened with the same firm.

20.10(10) Evaluation of performance under a contract.

~~a. The department shall evaluate all contracts firms under this rule after completion of the work. Those contracts which exceed one year in duration shall also be evaluated annually based on the contracts that were active during the fiscal year.~~ Both the firm's performance and quality of the final product shall be evaluated. The evaluation shall consider:

~~(1) to (7) No change.~~

b. ~~The evaluation may include a recommendation that the firm's prequalification be canceled (see paragraph 20.8(1) "h"). The firm shall be given an opportunity to review, comment on and sign the evaluation. The evaluation is confidential.~~

~~**20.10(11) Conflicts with federal requirements.** If any provision of this rule would cause a denial of federal funds or services or would otherwise be inconsistent with federal law, federal law shall be adhered to, but only to the extent necessary to prevent denial of the federal funds or services or to eliminate the inconsistency with federal law.~~

ITEM 12. Amend **761—Chapter 20**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~48.3(1), 48.6(10), 8A.302(1), 8A.311(20)~~, 73.15 to 73.21, ~~307.10, 307.12 and 307.21.~~

ITEM 13. Rescind and reserve subrule **25.2(9)**.

ITEM 14. Amend subrule 25.2(14) as follows:

25.2(14) Use of departmental facilities or services by persons providing services to or representing departmental employees including, but not limited to, the following services or persons: food, credit union, ~~day care~~ and employee organizations.