

CHAPTER 20
PROCUREMENT OF EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES

[Prior to 6/3/87, Transportation Department[820]—(01,B)Ch2]

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761—20.1(307) Scope and applicability.

20.1(1) Scope. This chapter 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.

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.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

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.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

761—20.3(307) Procurement policy. It is the policy of the department to procure equipment, materials, supplies and services in the most efficient and economical manner possible. It is also the policy of the department that procurement shall be competitive to the maximum practicable extent.

20.3(1) Formal advertising. The formal advertising method of procurement shall be used whenever this method is feasible and practicable under the existing conditions and circumstances and the estimated, aggregate amount of the purchase equals or exceeds \$50,000.

20.3(2) Limited solicitation. The limited solicitation method of procurement may be used if formal advertising is not feasible or practicable, or the estimated, aggregate amount of purchase is less than \$50,000.

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. Procurement by negotiation is determined to be necessary and in the public interest during a period of man-made or natural disaster or emergency.

b. The estimated, aggregate amount of the purchase is less than \$5,000.

c. The procurement is for architectural, landscape architectural, engineering, or related professional 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.

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

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

(1) Equipment, materials, supplies or services can be obtained from only one source.

(2) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw materials, or similar circumstances.

(3) Solicitations have been made available to prospective bidders and no responses to the solicitation have been received.

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

(5) The procurement is for electrical power or energy, natural or manufactured gas, water or other utility services, or the procurement is for construction of a part of a utility system or railroad and it would not be practicable to allow a contractor other than the utility or railroad company to perform the work.

(6) The procurement is for 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) The procurement involves maintenance, repair, alteration or inspection, and the exact nature or amount of work to be done is not known.

(8) The procurement is for commercial transportation.

(9) It is impossible to draft adequate specifications or any other adequately detailed description of the item or services to be procured.

(10) The procurement is for a part or component being procured as a replacement in support of equipment specially designed by the manufacturer, and the data available is not adequate to ensure that the

part or component supplied by another manufacturer will perform the same function as the part or component it is to replace.

(11) The procurement involves construction where a contractor or group of contractors is already at work on the site, and either it would not be practicable to allow another contractor or an additional contractor to work on the same site or the amount of work involved is too small to interest other contractors to mobilize and demobilize.

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

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

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

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

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

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

20.4(1) Bidders list. The department's purchasing 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 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. Subject to concurrence of legal counsel, a bidder's name may be removed from a bidders list or lists for any of the following reasons:

(1) When the bidder has failed to respond to three consecutive requests for proposals.

(2) When the bidder has failed to meet the performance requirements of a previous procurement.

(3) When the bidder has attempted to improperly influence the decision of any state employee involved in the procurement process.

(4) When there are reasonable grounds to believe that there is a collusive effort by bidders to restrain competition by any means.

(5) Where there is a determination by the civil rights commission that the bidder conducts discriminatory employment practices.

d. A bidder may appeal removal from a bidders list or lists by submitting the appeal in writing to the department at the address given in paragraph 20.4(1) "b."

20.4(2) Solicitation documents. The department shall prepare the solicitation documents complete with requirements, specifications and instructions, as applicable, to be sent (or publicly posted) for the purpose of procuring goods or services.

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

(1) A conference may be held to discuss the "preliminary" 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 solicitation shall be accepted, evaluated and answered by the department.

(3) The solicitation requirements may be revised to incorporate approved changes.

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

b. The method to be used by the department in evaluating responses received shall be disclosed in the solicitation.

c. The 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 solicitation shall be sent to all bidders listed on the appropriate bidders list for the item to be procured.

(2) However, where the number of names on a bidders list is considered excessive in relation to a specific procurement, the list may be reduced for that procurement by any method consistent with paragraph 20.4(2)“c.”

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

d. The department shall publicize the procurement by advertising in appropriate media, providing the date and time set for public opening of 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 solicitation.

20.4(3) Response instructions. Each bidder shall prepare the response to the solicitation in the manner prescribed and furnish all information and samples requested in the solicitation. The following shall be adhered to by all bidders when preparing and submitting responses:

a. *Response preparation.* Responses shall be signed and prepared in ink or typewritten in the solicitation documents provided. Telephonic, email or facsimile responses shall not be considered. When available, bidders may respond electronically to a secure authorized system as instructed in the solicitation.

b. *Information to be provided by bidder.* In the space provided, the bidder shall denote brand name, manufacturer’s name, model number and any other required information to assist in identifying each item the bidder proposes to supply.

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

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

e. *Discounts.* Bidders shall quote net discount price. No other discounts shall be considered in making the award.

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

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

h. *Federal and state taxes.* Except for specific items that will be noted in the solicitation, the department is exempt from payment of federal and state taxes. These taxes shall not be included in the 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 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 to reject the submitted response.

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

Any unauthorized change in or addition to the solicitation shall be sufficient grounds to reject the submitted response.

l. *Response submission.* All responses shall be submitted in sufficient time to reach the department’s purchasing section prior to the time set for public opening of submitted responses. Any response received after the time set for public opening of submitted responses shall be returned to the bidder unopened.

Responses received shall be dated and time-stamped by the purchasing section showing the date and hour received. By submitting a response, the bidder:

(1) Agrees that the contents of the 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 solicitation.

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

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

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

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

(2) The purchasing director approves the withdrawal. The purchasing director may base the decision to approve or deny the withdrawal on any factors the purchasing director deems relevant, including but not limited to the best interests of the agency, possible prejudice to other bidders or the bidding process, and the extent of financial hardship on the bidder if withdrawal is not allowed.

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

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

a. Noncompliance with the requirements of this rule or of the solicitation.

b. Financial insolvency of the bidder.

c. Evidence of unfair bidding practices.

d. For any other reason stated in this rule.

20.4(6) *Recommendation of award.*

a. Time frame. Unless otherwise specified by the department in the solicitation, an award shall be made within 30 days after the date and time set for public opening of submitted responses if it is in the best 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 responses. 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. Tabulation of responses. A tabulation of responses with an award recommendation shall be sent to all interested parties including bidders at least ten days prior to award.

d. Protests. Any protest of the recommended 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 within seven days after the recommended award has been posted. The protest shall be considered by the authority making the award. This is not a contested case as defined in Iowa Code section 17A.2.

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. Execution. The successful bidder shall enter into (execute) a formal contract with the department within 14 days after award.

b. Performance bond and certificate of insurance. A performance bond or certificate of liability and property damage insurance, or both, may be required for those contracts involving services or specially constructed equipment. If required, the performance bond and certificate of insurance shall be filed with the department within 14 days after award.

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 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 section. The department may elect to cancel the contract without penalty to either the contractor or to the department.

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.

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 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. If there are federal funds involved in a particular procurement, and the federal procurement regulations conflict with this rule, then the federal procurement regulations shall apply.

c. Procurement of motor vehicles shall be in accordance with Iowa Code section 8A.311(20).

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

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

20.5(1) Bidders lists. The department shall use its current bidders lists (see subrule 20.4(1)) to the extent feasible and practicable. However, the solicitation will also be offered to any qualified bidder that has requested an opportunity to participate.

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

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

1. Original, signed submitted response.
2. Electronically submitted response (facsimile, email, Internet).
3. Oral response (e.g., telephonic).

20.5(4) Award. The award shall be offered to that responsible bidder whose 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 responses are equal in all respects and are tied in price.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

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.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

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.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

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.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

761—20.9 Reserved.

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) Registration of firms providing professional and technical services.

- 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) *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. Complete process. See subrule 20.10(5).
- b. Small contract process. See subrule 20.10(6).
- c. Sole source or emergency selection. See rule 761—20.7(307).

20.10(5) *Complete process.* 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 an 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.

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.

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. *Consultant steering committee.* A consultant steering committee is responsible for reviewing the firms as scored by the selection committee, determining the order of preference for negotiations, and documenting its 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) A firm's ability to complete required tasks in the time allotted, taking into account other work currently under contract.

(2) The volume of work a firm has with the department, both existing and potential.

(3) The department's goal of having a breadth of experienced firms capable of providing quality services to the department.

(4) Other items unique to the particular contract.

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.

g. Notification to firms. The department shall 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 a matrix showing the high, low and average scores for each item evaluated and that firm's score for each item.

20.10(6) 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 \$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.

b. Completion of selection process. After selection committee activities are complete, the department shall determine whether negotiations may begin. If negotiations are approved, the department shall proceed to negotiate with the selected firm.

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. The firm must submit a detailed cost proposal, including a detailed cost proposal for each proposed subcontract. The department shall prepare an independent estimate of the cost of the proposed services, including a detailed estimate of the firm's staff hours needed to complete the contract. Significant differences shall be evaluated and resolved to the satisfaction of both parties. If it is impractical to make an independent estimate, the department shall evaluate the acceptability of the firm's cost proposal on the basis of the reasonableness of the individual elements of the price proposed.

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

(1) An analysis of the firm's cost proposal and financial records for the method of accounting in place to ensure that the firm has the ability to adequately segregate and accumulate reasonable and allowable costs to be charged against the contract.

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

The department shall then initiate negotiations with the firm given next preference, and this procedure 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. Direct the selection committee to select one or more firms with which to continue negotiations, or
- b. Redefine the scope of the project or work and start over. See subrule 20.10(4). Once negotiations are terminated, negotiations cannot be reopened with the same firm.

20.10(10) Evaluation of performance .

a. The department shall evaluate all firms under this rule 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) The quality and adequacy of work performed.
 - (2) The ability to meet established schedules and budgets.
 - (3) General administration of the contract, including substantiation of cost billings, payments to subconsultants, and documentation of claims.
 - (4) Cooperation shown by the firm in responding to requests for information and in revising procedures and products according to directions.
 - (5) Coordination exhibited by the firm in communicating with the department, subconsultants, agencies and others to accomplish tasks and resolve problems.
 - (6) Ingenuity displayed in solving unique and unusual design problems encountered during performance of contract objectives.
 - (7) The ability to obtain an acceptable end product with appropriate department staff guidance.
- b. The firm shall be given an opportunity to review, comment on and sign the evaluation.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

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

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