

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]