

CHAPTER 20
PROCUREMENT OF EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES

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

761—20.1(307) Scope of chapter. Unless otherwise provided herein, 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. Also, this chapter applies only to procurement from firms, as defined in subrule 20.2(2) herein.

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

20.2(1) “*Department*” means the Iowa department of transportation.

20.2(2) “*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.

20.2(3) “*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.

20.2(4) *Methods of procurement.*

a. “*Formal advertising*” means procurement by competitive bids and awards involving the following basic steps:

(1) Preparing a request for proposals, describing the requirements of the department clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term “request for proposals” means the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.

(2) Distributing the request for proposals to prospective bidders and advertising in appropriate media in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

(3) Receiving bids submitted by prospective contractors.

(4) Awarding the contract, after bids are publicly opened, to that responsible bidder whose bid conforms to the request for proposals and is the most advantageous to the department, price and other factors considered.

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

(1) 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.

(2) As is consistent with the nature and requirements of the particular procurement.

(3) So that the procurement is competitive to the maximum practicable extent.

c. “*Negotiation*” means any method of procurement other than formal advertising or limited solicitation.

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 or technical services.

d. The procurement is for other professional services.

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

f. 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) Bids or quotations have been solicited, and no responsive bids or quotations have been received.

(4) Bids or quotations have been solicited, and the responsive bids or quotations 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 technical or professional 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.

- g. The procurement is for experimental, developmental or research work or for the manufacture or furnishing of property for experimentation, development, research or testing.
- h. It is determined that the bids or quotations received are not reasonable or have not been independently arrived at.
- i. Procurement by negotiation is otherwise authorized by law including, but not limited to, Iowa Code section 73.19.
- j. The manufacturer is willing to sell directly to the state at distributor cost.

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

20.4(1) Bidders list. The department's purchasing office 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.

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, 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) Request for proposals and solicitation of bids. The department shall prepare a request for proposals complete with bidding documents, specifications and instructions to bidders and send (or deliver) the request for proposals to prospective bidders for the purpose of bidding.

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

- (1) A vendor's conference may be held to discuss the "preliminary" proposal 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 shall be accepted, evaluated and answered by the department.
- (3) The proposal may be amended by the department to incorporate approved changes.
- (4) A final request for proposals shall be sent to prospective bidders that participated in the preliminary process.

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

c. The request for proposals 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 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 requests for proposals to others upon request, or the consideration of bids received from bidders who were not invited to bid.

d. The department shall publicize the procurement by advertising in appropriate media, giving the date and time of bid opening, 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.

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

a. *Bid preparation.* Bids shall be signed and prepared in ink or typewritten on the bidding documents provided. Telegraphic, telephonic, E-mail or facsimile bids shall not be considered.

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 bid shall be new, of the latest model or manufacture, and shall be at least equal in quality to that specified.

d. *Bid price.* Where requested, the unit and total price for each separate item, and the total price for all items, shall be provided on the bidding documents. Alternate prices for approved substitutions may be submitted by attaching a bid marked as an alternate bid to the bidding documents. In case of error, the unit price shall prevail. If unit price is not requested on the bidding documents, 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 bid open for action by the department at least 30 days past the bid opening date.

g. *Escalator clauses.* Unless specifically provided for in the request for proposals, a bid 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, the department is exempt from payment of federal and state taxes. These taxes shall not be included in the bid price. 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 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.

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

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

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

(1) Agrees that the contents of the bid 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.

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 shall be supported by a proposal guaranty in the form and amount prescribed in the request for proposals. Bids not so supported shall not be read.

n. Withdrawal of bids prior to opening. Bids may be withdrawn prior to the time set for the opening of bids. Prior to opening, a bidder who withdraws a bid may submit a new bid.

o. Modification or withdrawal of bids after opening. After opening, no bid may be modified. A bid 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 contains a substantial inadvertent error and that the bidder would suffer a serious financial loss if required to perform under the bid, 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 bids. Bids shall be opened publicly and read aloud at the time stipulated in the request for proposals.

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

- a.* Noncompliance with the requirements of this rule or of the request for proposals.
- b.* Financial insolvency of the bidder.
- c.* Evidence of unfair bidding practices.
- d.* For any other reason stated in this rule.

20.4(6) Contract award.

a. Time frame. Unless otherwise specified by the department in the request for proposals, an award shall be made within 30 days after bid opening if it is in the best interests 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. Bids 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. Tabulation of bids. A tabulation of bids with an award recommendation shall be sent to all interested parties including bidders at least ten days prior to contract award.

e. Protests. Any protest of the recommended contract award shall be submitted in writing to: Director of Purchasing, 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. The protest shall be considered by the authority making the contract award. This is not a contested case.

f. 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 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.

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. 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. *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. *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.

20.4(8) Additional requirements.

a. The standard specifications as referenced and adopted in rule 761—125.1(307A), 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 include the calculation and reduction of life cycle costs as specified in Iowa Code section 18.3(1).

761—20.5(307) Limited solicitation of bids.

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 documents soliciting bids shall be as detailed and complete as practicable for the time and resources available.

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

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

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

761—20.6 and 20.7 Reserved.

761—20.8(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services. This rule prescribes procedures for the procurement of architectural, landscape architectural, engineering and related professional and technical services by negotiation.

20.8(1) Prequalification.

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 re-applies 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.

20.8(2) and 20.8(3) Reserved.

20.8(4) Preselection. 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 process.* See subrule 20.8(5).
- b. Selection committee—small contract process.* See subrule 20.8(6).
- c. Sole source or emergency selection.* See subrule 20.8(7).

20.8(5) Selection committee—complete process. This method of selection is used unless another selection method is justified.

a. Selection committee. The department shall appoint a selection committee to:

- (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.

c. Consultant steering committee. A consultant steering committee is responsible for reviewing the top firms selected by the selection committee, determining the order of preference for negotiations, and documenting its decision-making process. 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.

d. 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. 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, the department shall 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.

20.8(6) Selection committee—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.

a. Selection committee. The department shall appoint a selection committee to:

- (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. 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.

20.8(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.

20.8(8) *Negotiation of contract.* The purpose of negotiations is to develop a contract 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 their propriety and allowability.

20.8(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. The substance of terminated negotiations is confidential.

When a selection committee was used, the department shall then initiate negotiations with the firm given second preference, and this procedure shall 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 (preselection).

20.8(10) *Evaluation of performance under a contract.*

a. The department shall evaluate all contracts under this rule after completion of the work. Those contracts which exceed one year in duration shall also be evaluated annually. 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 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.

20.8(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.

These rules are intended to implement Iowa Code sections 18.3(1), 18.6(10), 73.15 to 73.21, 307.10, 307.12 and 307.21.

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CHAPTERS 21 to 24

Reserved