

## Chapter 4 : VENDOR SELECTION

### Introduction

The following review of vendor selection methods is brief, since this is a contract procedures and management manual and not a procurement manual. The procurement process plays a significant role in the contracting process, and as such needs to be considered. The procurement method used has a large impact on contract planning, due to the varying lengths of time required to prepare different procurement documents and to conduct the actual procurement process.

It is always important to consider the resultant contract when conducting any procurement. When this is done effectively, it should be clear as to what type of contract the vendor is expected to enter into as a result of the procurement, and all expectations that are required to be completed before a contract can be executed. If there is a particular contract form that is required, include the form with the procurement documentation so that the vendor is aware of all the terms and conditions that will be included in the contract. Clearly spell out all required submittals before the contract can be awarded.

Group I, Group II and nondelegated procurement agencies have differing dollar thresholds for the types of procurement methods reviewed below, (See *Group I and Group II Agencies* in the Introduction). The dollar thresholds are not included in this manual but can be determined by contacting the section, program or office in the agency that handles procurement.

Also, agency specific information may be included at the end of this chapter in the section entitled 'Agency Supplement'.

### Bid Information and Distribution System (BIDS)

The Colorado Bid Information and Distribution System (BIDS) is an electronic notification system which uses commodity codes to notify interested vendors of State bids. A target date of September 1997 has been established where BIDS will begin using general category descriptions in lieu of commodity codes. BIDS is mandated by State Statute and required to be used for all purchases where competition is solicited. If BIDS indicates that a commodity is "closed", notification of potential bidders outside of the BIDS system is prohibited. For commodities that are not closed, it is permissible to notify vendors who are not in the system and allow them the opportunity to compete. Vendors can register in the BIDS by contacting the Colorado Division of Purchasing or any State purchasing office.

## **Vendor Selection Methods**

### ***Exempt Procurements***

The Colorado Procurement Code applies to all purchases except for the following:

- Highway and bridge construction;
- Contracts where no public funds are expended (this includes revenue-generating contracts);
- Contracts where the vendor is specifically named in the grant or gift from which you are expending funds;
- Procurement by Legislative and Judicial Branches and the four elected officials in the Executive Branch: Governor, Treasurer, Secretary of State, and Attorney General.
- Contracts for professional services (architects, engineers, surveyors, landscape architects, and industrial hygienists). Although exempt from the Procurement Code, competition is conducted through the use of a Request for Statements of Qualification. Price cannot be used as a consideration in the award. (See Statements of Qualification, below.);
- Items bought for resale;
- Intergovernmental purchases, (i.e. another State agency, political sub-division, other state or federal government agencies, counties, cities, or countries), and
- Procurements otherwise authorized by law (where vendor selection criteria are specified).

Printing is exempt from the Colorado Procurement Code, but is covered by another statute. The Division of Purchasing has oversight jurisdiction for the purchase of printing.

### ***State Price Agreements***

State Price Agreements, also called State Awards, are “contracts” for goods and services used throughout State Government. The solicitation is conducted by the Division of Purchasing and the resulting agreement made available for use by all State agencies and institutions.

When making any purchase, first check to see if the goods or services are on a State Award. If the item is on a State Award, no additional vendor selection needs to be done. The State agency or institution, after obtaining any required prior approvals, may issue a commitment document (purchase order or contract) pursuant to the agency’s purchasing delegation agreement. Most

State Awards are permissive, meaning that it is not required that an agency use the award. However, using a permissive State Award saves time and money. Mandatory State Awards MUST be used.

### ***Small Discretionary Dollar Purchases***

Small dollar purchases are those below the dollar threshold where competition is required by the Procurement Rules. The dollar threshold at which competition is required varies depending on the agency's level of delegation. This also varies by the type of purchase being made: commodity, service or construction. If you are unsure about the dollar thresholds requiring competition, find out what they are from your agency purchasing contact or the Division of Purchasing.

The dollar threshold above which a purchase order or contract is required is established by State Fiscal Rules. State agencies and institutions, however, may establish a lower limit. According to State Fiscal Rules, purchases below \$3000 may not require a purchase order or state contract (see page 6-2). When in doubt, ask your State agency or institution purchasing contact.

### ***Documented Quotes***

Generally, all purchases over \$25,000 require formal competition, see "Competitive Sealed Bidding and Competitive Sealed Proposals". For purchases above the dollar threshold requiring competition, but below the dollar threshold where formal competition is required, an informal bidding process referred to as "documented quotations" is used. All documented quotes must be entered into the BIDS System. Quotes may be received from vendors by hand, mail, telephone or facsimile.

The time frame allowed for vendors to respond to a solicitation for documented quotes varies depending on the amount of time vendors need to return a quote for the particular purchase and the needs of the agency. Talk to your purchasing contact to find out if your agency has a minimum time frame for documented quotes and if there is a prescribed format for quotes or any other requirements.

### ***Competitive Sealed Bidding***

Competitive sealed bidding, used for construction, commodities, and service purchases when they can be defined in such a way that price is the only determining factor for selection. Competitive sealed bidding is required by the Procurement Rules for purchases over \$25,000, when objective criteria can be written. State agencies and institutions may establish lower dollar thresholds. The time frame that the bid solicitation must be advertised is a minimum of 14 calendar days.

Competitive sealed bidding will be handled by your agency purchasing office. Ask your agency contact what policies are in place for your agency.

### ***Competitive Sealed Proposals***

Competitive sealed proposals is a solicitation method used when the procurement officer determines in writing (R-24-103-203-02) that use of competitive sealed bidding is either “not practicable” or “not advantageous” to the State. Competitive sealed proposals are generally used when factors other than price are to be evaluated or when objective criteria cannot be written. Unlike competitive sealed bidding, competitive sealed proposals use a request for proposals (RFP) to solicit proposals from vendors. The RFP allows discussions with the vendor prior to award for the purpose of clarification and/or to obtain a best and final offer. The RFP process allows evaluation of the relative merit of vendor proposals using criteria other than price. RFPs are also used when objective bid specifications cannot be prepared in sufficient detail to allow vendors to propose firm, fixed prices, or where a discussion with the vendor is necessary in order to understand the proposal. Your agency purchasing office is responsible for the RFP process and will assist you in preparing the RFP and conducting evaluations. Remember that if the RFP is for personal services, pre-approval from the Department of Personnel is required. Contact your agency purchasing contact before beginning the process to find out your agency's procedures, time frames, and required forms.

The following is an overview of the RFP process:

1. Obtain sample Request for Proposals (RFP) and Statements of Work (SoW).
2. Prepare the solicitation document, especially the SoW and specifications. Preparation of SoW and specifications is **CRITICAL** to the success of the entire project. See Chapter 2 for guidance on writing a SoW.
3. Conduct pre-procurement data gathering and obtain any required pre-approvals, such as the Department of Personnel for all personal services.
4. Draft RFP and model contract. Develop procurement timeline. Include in the RFP at least a narrative description of evaluation factors (including price) and their relative weights. Include provisions requiring submission of cost or pricing data in support of the proposal if required, see R-24-103-403-02.
5. Prepare RFP issuance package.
6. Furnish RFP to parties whose approval is needed, attend meetings and make needed changes; make needed copies.
7. Identify commodity codes under which RFP will be issued. (A target date of September 1997 has been established for the State will begin using “plain English” categories instead of commodity codes.)
8. Establish evaluation committee.

9. Review evaluation process with committee members, including conflict of interest disqualification.
10. Verify with the agency purchasing contact that the solicitation was posted on BIDS.
11. Conduct pre-proposal conference, if any.
12. Prepare and distribute written answers to vendor inquiries, if any.
13. Receive and time stamp proposals; identify and flag any confidential data. Be sure to notify procurement officials if proposals are not sent directly to them.
14. Verify proposal compliance with mandatory solicitation requirements.
15. Prepare and distribute rejection letters for non-responsive bidders. A non-responsive vendor in competitive sealed proposals is one who submits an unacceptable proposal, defined as one not reasonably capable of being made acceptable through discussions. A proposal requiring substantial or major revisions or rewrite would generally not be considered responsive.
16. Conduct evaluation, including site visits, if any.
17. Obtain proposal clarification, if needed.
18. Select finalists, those offerors in the *competitive range*. The *competitive range* consists of those proposals determined to be reasonably susceptible of being selected for an award.
19. Prepare and distribute finalist notification letters.
20. Conduct oral or written discussions with those finalists in the competitive range.
  - A. *Discussion* is the process of communication between the State and offerors to clarify proposals and to insure that offerors fully understand and are responsive to the solicitation requirements. Offerors must be accorded fair and equal treatment in discussion and revision of their proposals.
  - B. Discussions may be held in writing or orally to clarify proposals and permit adjustments in services to be performed and in costs and/or prices. Discussions may consist of written notice of deficiencies, oral presentations/system demonstrations and face-to-face meetings with offerors. Discussions need not be done orally.
    - Auction techniques are prohibited. Auctions include disclosure of competing offerors' costs/prices; indicating to an offeror a cost or price that must be met to obtain further consideration; advising an offeror of their price standing relative to other offerors; or successive rounds of requests for the *best and final offer* with primary objective to obtain price concessions.

- *Technical leveling* and *technical transfusion* are also prohibited discussion techniques. *Technical leveling* means helping an offeror to bring their proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from an offeror's lack of diligence, competence or inventiveness in preparing the proposal. *Technical transfusion* means disclosing technical information or approaches from proposals to other competitors in the course of discussion.
- C. Offerors must be given equal opportunity to discuss and submit revisions to proposals. Normally this is accomplished by formally requesting *best and final offers* (BAFOs) at the conclusion of discussions with a date set for receipt of BAFOs. It is wise to caution offerors that substantial proposal revisions which do not adequately identify the changes and explain the scope, risk and reasons for the revisions--as well as the impact on price/cost--may be unfavorably considered during the final evaluation. Commonly, proposal revisions are submitted by *change page* and not complete republication of the proposal.
21. Collect best and final offers on the date established for its submission.
  22. Prepare Evaluation Committee report and recommendation, identifying winning bidder, including written determinations regarding the waiver of any technical irregularities, etc.
  23. Present report to agency management and procurement officials; obtain approval.
  24. Announce procurement results.
  25. Prepare appropriate commitment documentation, usually a contract.

### ***Statements Of Qualification***

Contracts for professional services (architects, engineers, land surveyors, landscape architects, and industrial hygienists) generally use a Statement of Qualification process. Although exempt from the Procurement Code, competition is conducted and award is based solely on qualification. Price cannot be used as a consideration in award. More information can be found in *Annex A, State Buildings Programs*. Contact your agency purchasing contact before beginning the process to find out your agency's procedures and required forms.

### ***Sole Source Procurement***

Sole source procurements are allowed by the Procurement Code when only one item or service will meet the need of the State and when only one vendor can supply that item or service. If a proprietary item is required, a sole source circumstance may exist:

- Where the compatibility of equipment, accessories or replacement parts is the paramount consideration and the items are only available from one vendor.
- Where a sole supplier's item is needed for trial use or testing.
- Where a sole supplier's item is to be procured for resale.
- Where public utility services are to be procured, as in the case of a monopoly.

When there is doubt that the product or service is sole source, competition should be solicited. All sole source purchases, exceeding discretionary dollar limits, must be approved by the State Purchasing Director or the State agency or institution purchasing director, as appropriate. Ask the agency purchasing contact for a sole source purchase request form.

The time to request sole source approval is before negotiating a contract and before the vendor signs the contract. The approving official may not agree that your vendor is the sole source, and may require that competition be solicited.

Insufficient time for solicitation of bids is not sufficient reason to justify a sole source procurement.

### ***Emergency Procurements***

Section 24-103-206 CRS provides for emergency procurements. The statute declares that such procurements may be authorized by the State Purchasing Director, the head of a purchasing agency, or a designee of either officer when there exists a threat to public health, or safety under emergency conditions, as defined by rules.

An emergency condition, as defined by R-24-103-206-01 of the Colorado Procurement Rules, is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failure, or such other reasons as may be proclaimed by the using agency, and approved by the director, head of a purchasing agency, or designee. Such conditions create an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- the functioning of State government, or its programs,
- the preservation or protection of property, or
- the health or safety of any person or persons.

Any State agency may make an emergency procurement when an emergency condition arises and the need cannot be met through normal procurement methods. However, approval by the State Purchasing Director, or a delegate, must be obtained prior to the procurement.

Emergency procurements are to be made with such competition as is practicable under the circumstances, and a written determination of the basis for the emergency and for the selection of the particular vendor must be prepared and placed in the contract file.

Only the quantity of goods or services necessary to alleviate the emergency may be purchased under emergency conditions.

### ***Special Circumstance Procurement***

There are times when circumstances arise that preclude the use of normal procurement methods. In these instances, the State Purchasing Director or the State agency's or institution's purchasing contact may approve the use of documented quotes above the normal dollar threshold. Some examples of special circumstance procurements are:

- When source selection is designed to identify multiple qualified providers with the intent is to make an award to all who are so identified and where fees or reimbursements are predetermined and not negotiable.
- When conditions and fees are fixed, all offers are to be accepted or rejected and availability of providers is limited.

### ***Competitive Negotiation***

This vendor selection method may be used only in two circumstances:

1. The State agency or institution has conducted a solicitation and was unsuccessful in identifying a winning vendor, or
2. There are not enough vendors to establish "adequate competition" (at least 3).

Under either of these circumstances, the agency may negotiate directly with qualified interested vendors. The agency must conduct the discussions without revealing the content of any discussions to any other party. The winning vendor is the vendor who makes the best offer to the State. After the winning vendor is identified the agency must then document the discussion and the basis for determining that the winning offer was the best offer.

### ***Best Value Sealed Bidding***

This vendor selection method is a new variation of competitive sealed bid. What makes this different is that the agency may request and allow bidders to include alternatives, enhancements, and options on top of a "base Bid". Bidders must meet the minimum specifications and may then try to convince the agency that their bid provides the best value by offering these alternatives, enhancements, and options.

### ***Additional Vendor Selection Options***

Additional vendor selection options are available for situations where special circumstances exist or where pre-qualification of a vendor is important. The State agency or institution purchasing contact should be consulted for assistance in using one of these additional vendor selection options.

### ***Lease And Capital Construction***

Capital construction uses many of the procurement methods described above, but laws require certain additional procedures and the use of specific forms. Refer to the State Buildings Annex for details, or contact State Buildings Programs.

Real estate leases require the use of specific forms. See *Annex A*, or contact State Buildings and Real Estate Programs.

## **Agency Supplement (Insert)**

**THIS SECTION IS RESERVED FOR AGENCY SUPPLEMENTARY MATERIAL OR POLICIES RELATED TO THIS CHAPTER.**

**STATE PROCUREMENT CODE AND RULES**

**(AGENCY INSERT)**

**THIS SECTION IS RESERVED FOR AGENCY INSERTION OF THE  
PROCUREMENT CODE AND RULES (IF DESIRED).**