

LAWS OF DELAWARE
VOLUME 84
CHAPTER 489
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 428

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE PROCUREMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6902, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6902. Definitions [For application of this section, see 82 Del. Laws, c. 36, § 3].

For purposes of this chapter:

(11) “Electronic procurement advertising system” means the advertising system on which all state agencies must submit public notice of bid solicitations, other solicitations, and awarded contracts subject to the public advertising requirements of this chapter.

Section 2. Amend § 6908, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6908. Section powers and duties.

(a) In addition to the powers and duties prescribed by other sections in this chapter, the Section shall do all of the following:

(7) Administer on behalf of all agencies the State’s centralized procurement computer system or software that is used for contract development, solicitation, evaluation, and contract ~~administration.~~ administration, including public posting of notice of awarded agency contracts. The Section may, with written approval of the Director, authorize an agency to operate, with approved integration, a separate bidding or contract administration platform provided that all information is readily shared with the statewide portal managed by the Section. The announcement of bid solicitations, other solicitations, and associated notices for the required duration on a site designated by the Section satisfies the public notice and advertisement requirements of this chapter.

(b) ~~The Office~~ Section shall not charge any agency any fee for central contracting services. ~~The Director of the Office~~ Section ~~director~~ may charge any agency of this State local government unit or volunteer fire departments within the State for which the ~~Office~~ Section makes purchases, supplies, contractual services or to which it distributes materiel a reasonable service charge. ~~The Office~~ Section shall deposit such charges into a special account to be used to effectuate the purposes of the ~~Office.~~ Section.

Section 3. Amend § 6911, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6911. Authority and responsibilities.

(a) The Section shall act as the exclusive contracting agent for all purchases of materiel and nonprofessional services and may act as the exclusive contracting agent for professional services not subject to the small purchasing procedures made by contracting agencies and as outlined in this subchapter and made by 2 or more covered agencies except for lodging and interstate and international travel and except as provided for in subsection (d) of this section.

(e) The Administrator of the Section may waive the requirement that a covered agency use a state contract in the event the Administrator deems such a waiver is in the best interest of the State.

Section 4. Amend § 6913, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6913. Contracting and purchasing advisory council.

(a) There is established a Contracting and Purchasing Advisory Council to consist of all covered agency heads or their designee and 1 additional member representing all public school districts. ~~The Administrator of the Section~~ director shall be a nonvoting member of the Council.

(c) The purpose of the Council is to advise as to the effectiveness of and make recommendations for changes to the State’s procurement laws, policies and practices to the Director of the Office and the ~~Administrator of the Section.~~ Section director.

(e) A Contracting and Purchasing Committee shall also be established. The Section ~~Administrator~~ director shall appoint representatives to the Committee, with the approval of the Council. The Section ~~Administrator~~ director shall chair the Committee. The Committee shall staff the Council, monitor the effectiveness of the State's procurement process, recommend changes to the procurement process, policies and procedures and any other duties deemed necessary by the Council.

Section 5. Amend § 6923, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6923. Competitive sealed bidding.

(b) *Advertising requirements.* — (1) If the probable cost of the materiel or nonprofessional services estimated to annually exceed the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, the procurement shall be made only after public advertising announcement and the receipt of sealed bids as provided for in this subchapter. The ~~advertisement~~ announcement for such bids shall be published ~~at least once a week~~ for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section director. ~~in a newspaper published or circulated in each county of the State.~~ Public advertising shall require electronic publication accessible to the public in a manner prescribed pursuant to § 6902(11) of this title for 2 consecutive ~~weeks.~~ weeks unless a shorter advertisement period has been approved by the Section director.

(2) The advertisement for bids shall state the name of the procuring agency, indicate with reasonable accuracy the character, quantity and location of the work or the character and quantity of materiel, the time and place for the opening of bids and where the specifications or descriptions may be obtained. The advertisement shall also state that the agency may extend the time and place for opening of bids from that described in the advertisement, on not less than 2 calendar days' notice, ~~by certified delivery, facsimile machine or other electronic means to those bidders who obtained copies of the specifications or descriptions.~~ unless special circumstances apply as determined by the Section director.

(d) *Vendor eligibility.* —

(4) Firms desiring to be included on the prospective vendors list shall notify the agency. Upon notification, the agency shall ~~mail or otherwise~~ provide the firm with a ~~vendor registration form.~~ means to register its interest in competing for future formal procurement opportunities. The firm shall complete the vendor registration form and return it to the agency. A vendor registration list shall not be used as a means to restrict competition.

(6) ~~Firms that fail to respond to solicitations for 2 consecutive procurement contracts for a particular item may be removed from the applicable vendors list. The agency shall send notice of such a removal by mail or facsimile to the firm. Firms may be reinstated upon request.~~

(g) *Amendments to invitations to bid.* — (1) An amendment to an invitation to bid shall be issued to:

- a. Make changes in the invitation to bids;
- b. Correct defects or ambiguities in the invitation to bid; and/or
- c. Change the date, place or time of the bid opening.

(2) Amendments to invitations to bid shall be ~~so identified and shall be sent to all firms to whom the agency distributed an invitation to bid.~~ made publicly available.

(3) ~~The agency shall obtain verification of bidder receipt of all amendments issued.~~

(j) *Receipt, opening and recording of bids.* — (1) Except as provided in paragraph (j)(2) of this section, each bid shall be time stamped upon receipt and stored by the agency unopened in a secure place until the time and date set for bid opening. Bids received electronically shall remain unopened by the agency until the time and date set for the bid opening.

(m) *Cancellation of invitation to bid.* — An invitation to bid or other solicitation may be canceled or any or all bids may be rejected in whole or in part ~~prior to the opening of bids as may be specified in the solicitation~~ if it is in the best interest of the State. The reasons for the cancellation or rejection shall be made part of the procurement file.

(1) If an invitation to bid or other solicitation is canceled prior to the opening of bids, a notice of cancellation shall be sent publicly posted and made available to all bidders.

(2) Any bids that have been received shall be returned unopened to the bidders.

(3) Any electronic bids received shall be deleted by the agency and notice of the cancellation sent to those bidders.

(n) *Rejection of individual bids.* — A bid may be rejected if:

(1) The bidder is determined to be nonresponsive pursuant to subsection (o) of this section; or

(2) The bid is nonresponsive or ~~nonresponsible~~ not responsible in accordance with subsection (k) of this section; or

(3) It is otherwise not advantageous to the State.

Bidders whose bids are rejected under this section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file.

(o) *Responsiveness of bidders.* — An agency shall determine that a bidder is responsive before awarding a contract to that bidder. Factors to be considered in determining if a bidder is responsible include:

- (1) The bidder's financial, physical, personnel or other resources, including subcontracts;
- (2) The bidder's record of performance and integrity;
- (3) Whether the bidder is qualified legally to contract with the State; and
- (4) Whether the bidder supplied all necessary information concerning its responsiveness.

The agency may establish specific responsibility criteria for a particular procurement. Specific responsibility criteria shall be set forth in the solicitation. If an agency determines that a bidder is nonresponsive and/or ~~nonresponsible~~, not responsible the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the affected bidder. The final determination shall be made part of the procurement file.

(p) *Electronic bid submission.* —

(3) The ~~Office's~~ Section's or the agency's representative and a witness shall open the e-mail account immediately after the closing date and time; record the vendors that submitted bids, the date and time submitted, the bids, and associated prices; and prepare a bid tabulation of all responsive vendors for review.

(q) *Reverse auction.* —

(1) When the ~~Office~~ Section determines that a reverse auction is advantageous, the ~~Office~~ Section may use the reverse auction bidding method to obtain bids for the purchase of goods and nonprofessional services.

(2) The solicitation must designate both an opening date and time and a closing date and time. The closing date and time need not be a fixed point in ~~time~~, time but may remain dependent on a variable or variables specified in the solicitation. At the opening date and time, the ~~Office~~ Section must begin accepting real-time, on-line bids. The solicitation must remain open until the closing date and time, as may be determined by a variable or variables specified in the solicitation.

(3) The ~~Office~~ Section may require bidders to register before the opening date and time and, as part of that registration, to agree to any terms, conditions or other requirements of the solicitation.

(4) a. Following receipt of the first bid after the opening date and time, all bid prices must be posted electronically to the Internet and updated on a real-time basis. At any time before the closing date and time, a bidder may lower the price of its bid, as long as its bid price is less than the then-current bid. A bidder's lowest bid price ~~supersedes~~ supersedes the bidder's prior higher bid price. Bid prices may not be increased any time after the opening date and time. All bids are binding and may not be withdrawn unless the bid price entered by the bidder is entered incorrectly. If a price entered by the bidder is in error, the bidder must correct the bid within the time period and manner specified in the solicitation.

b. After the ~~Office~~ Section closes the bid, the bidder may request, in writing via an electronic mail message to the ~~Office~~ Section as specified in the solicitation, that its respective bid be withdrawn. Such a request may be allowed only upon the approval of the ~~Office~~. Section. If withdrawal of a bid after the ~~Office~~ Section closes the bid is permitted or denied, the ~~Office~~ Section shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

c. If the lowest responsive bid is withdrawn after the closing date and time, the ~~Office~~ Section may cancel the solicitation or reopen on-line real time bidding to all preexisting bidders by giving notice to all preexisting bidders of both the new opening date and time and the new closing date and time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

(5) Receipt and safeguarding of bids. Other than price, any information provided to the ~~Office~~ Section by a bidder must be safeguarded as required by § 6923(j)(4) of this title.

Section 6. Amend § 6924, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6924. Competitive sealed proposal; request for proposal procedure.

(b) *Advertising requirements.* —

(6) The award shall be made in writing to the responsible offeror or offerors whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in the request for proposals. No other

factors or criteria may be used in the evaluation. (The award of a contract for goods and/or services may be made upon criteria which do not include price. The contract file shall contain the basis on which the award is made.)

(h) *Best and final offers.* — ~~If negotiations are conducted pursuant to subsection (g) of this section,~~ The agency shall reserve the right to seek best and final offers and if choosing to do so the agency shall issue a written request for best and final offers. The request shall set forth the date, time, and place for the submission of best and final offers. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer. Best and final offers shall be requested only once, unless the agency makes a written determination that it is advantageous to the State to conduct further negotiations or change the State's requirements.

(k) *Cancellation of requests for proposals.* —

(1) A request for proposals or other solicitation may be canceled in whole or in part prior to the opening of proposals as may be specified in the solicitation if it is in the best interest of the State. The reasons for the cancellation shall be made part of the procurement file.

(2) If a solicitation is canceled prior to the opening of proposals, a notice of cancellation shall be sent publicly posted and available to all offerors, and any proposals that have been received shall be returned unopened to the offerors.

(3) If proposals have been received electronically, the files must be deleted by the agency and notice sent to those offerors.

(l) *Rejection of individual proposals.* — A proposal or quotation may be rejected for 1 or more of the following reasons:

(1) The person responding to the solicitation is determined to be nonresponsive or ~~nonresponsible~~ not responsible pursuant to subsection (m) of this section;

(m) *Responsibility of offerors.* — An agency shall determine that an offeror is responsible before awarding a contract to that offeror. Factors to be considered in determining if an offeror is responsible include:

- (1) The offeror's financial, physical, personnel or other resources, including subcontracts;
- (2) The offeror's record of performance and integrity;
- (3) Whether the offeror is qualified legally to contract with the State;
- (4) Whether the offeror supplied all necessary information concerning its responsibility; and
- (5) Any other specific criteria for a particular procurement which an agency may establish; provided, that the criteria shall be set forth in the solicitation and is otherwise in conformity with state and/or federal law.

If an agency determines that an offeror is nonresponsive ~~and/or nonresponsible,~~ or not responsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the affected offeror. The final determination shall be made part of the procurement file.

(n) On-line bidding method – If an agency determines that an on-line bidding method is beneficial, the agency may use an on-line bidding method to obtain and evaluate proposals for the purchase of goods and nonprofessional services.

Section 7. Amend § 6931, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6931. ~~Procurement of information and telecommunications systems.~~

~~All information regarding the procurement of information and telecommunication technology, as prescribed by the Executive Director of the Office of Information Systems, shall be submitted to the Office of Information Systems no later than 90 days from the receipt of such materiel. The acquisition of computer information systems shall be governed by Chapter 63 of this title.~~

Section 8. Amend § 6933, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6933. Authorization for cooperative purchasing.

(a) The Section may, with written approval of the ~~Director,~~ Section director or the Section director's designee, participate in, sponsor, conduct or administer a cooperative or joint purchasing agreement for the procurement of materiel or nonprofessional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.

(b) The Section may grant temporary approval to another agency to participate in, sponsor, conduct or administer a cooperative or joint purchasing agreement for the procurement of materiel or nonprofessional services with the written approval of the ~~Director~~, Section director or the Section director's designee.

Section 9. Amend 6933, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6933. Authorization for cooperative purchasing.

(a) The Section may, with written approval of the ~~Director~~, Section director or the Section director's designee, participate in, sponsor, conduct or administer a cooperative or joint purchasing agreement for the procurement of materiel or nonprofessional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.

(b) The Section may grant temporary approval to another agency to participate in, sponsor, conduct or administer a cooperative or joint purchasing agreement for the procurement of materiel or nonprofessional services with the written approval of the ~~Director~~, Section director or Section director's designee.

Section 10. Amend § 6935, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6935. Purchases using federal contracts.

The ~~Director may~~ Section may, with written approval of the Section director or the Section director's designee, enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase materiel at prices approved by the General Services Administration of the United States government or its successor.

Section 11. Amend § 6962, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6962. Large public works contract procedures [For application of this section, see 82 Del. Laws, c. 36, § 3].

(b) *Advertising requirements.* — Each agency shall publicly ~~announce, not less than once a week~~ announce, for 2 consecutive ~~weeks in a newspaper published or circulated in each county of the State, weeks,~~ each public works contract, contract unless a shorter advertisement period has been approved by the Section director. Public advertising shall require electronic publication accessible to the public in a manner prescribed pursuant to § 6902(11) of this title for 2 consecutive ~~weeks.~~ weeks unless a shorter advertisement period has been approved by the Section director. An agency may also maintain a register of prospective bidders which may be used to provide direct notification of contracts to be bid. This register shall not be used in a manner which will limit the competitiveness of the bidding process described in this subchapter. No agency shall be subject to a cause of action or be otherwise liable for any errors or omissions in administering a bid registry. The public announcement shall also state the nature of the contract under the following conditions:

(2) If the agency does not require bidder registration or prequalification for the proposed contract, the announcement shall state with reasonable accuracy the character, quantity and location of the work as well as bid and performance bond requirements. The public announcement shall also state that the agency may extend the time and place for the opening of bids from that described in the announcement. Such extension shall not take place unless at least 2 calendar days' notice, unless special circumstances apply as determined by the Section director, by certified delivery, facsimile transmission or by other verifiable electronic means, is sent to those bidders who obtained copies of the plans and specifications or contract descriptions.

(d) *Bid specifications and plans requirements.* —

(10) *Public buildings; special requirements.* —

a. *Pre-bid meeting requirement.* — In the case of any public works contract for the construction, reconstruction, alteration or repair of any public building (not a road, street or highway) the agency shall call a meeting of all prospective bidders upon ~~reasonable notice and at a place and time stated in the notice.~~ notice in compliance with Chapter 100 of this title. The meeting shall be at least 15 days before the date for the submission of bids.

1. At the meeting, all the participants, including the agency, shall attempt to agree upon a listing of all subcontractor categories to be included in the bids for performing the work as required by paragraph (d)(10)b. of this section and any such agreed listing shall be final and binding upon all bidders and upon the agency. If all of the participants do not agree on such a listing at the meeting, then the agency itself, at least 10 days before the due date

for the submission of bids, shall determine the subcontractor categories to be included in the listing. The listing, whether agreed to by all of the participants at the meeting or determined by the agency itself in the absence of the unanimous agreement of the participants at the meeting, shall be published by the agency at least 10 days before the due date for the submission of bids by mailing and listing to all of the participants at the meeting. The listing, as so published, shall be final and binding upon all bidders and the agency and it shall be filled out completely, in full, without any abbreviations. If the agency required prequalification of subcontractors pursuant to this section in its invitation to bid, no contractor shall list a subcontractor in its subcontractor listing required by this subsection who has not already been prequalified by the agency.

2. If a pre-bid meeting is held but the bidding process does not proceed, a new bidding process for the same project without any changes to the scope of the project does not require a new pre-bid meeting if the agency head determines that in the best interest of the State one is not needed.

(13) *Bid evaluation, contract award and execution procedure.* —

a. The contracting agency shall award any public works contract within 30 days of the bid opening to the lowest responsive and responsible bidder, unless the agency elects to award on the basis of best value, in which case the election to award on the basis of best value shall be stated in the invitation to bid. Any public school district and its board shall award public works contracts in accordance with this section's requirements except it shall award the contract within 60 days of the bid opening. A contracting agency shall extend the 30-day bid evaluation period by a total of 5 working days and a school district shall extend the 60-day bid evaluation period by a total of 5 working days if a bid is nonresponsive or a bidder is judged to be not responsible, and the bidder cannot be notified in writing a minimum of 5 days prior to the end of the 30-day bid evaluation period in the case of an agency, or the 60-day bid evaluation period in the case of a school district. Written notification to the bidder or bidders whose bid is non-responsive or who have been determined to be not responsible shall be received at least 5 working days prior to the end of the original or the extended evaluation period and shall specify the reason or reasons why the bid is nonresponsive or the bidder determined to be not responsible. If the bid evaluation period is extended by 5 working days, the contracting agency or school district shall notify each bidder in writing prior to the end of the 30-day bid evaluation period in the case of an agency, or the 60-day bid evaluation period in the case of a school district, that the bid evaluation period is being extended by 5 working days. The written notification to all bidders shall include the calendar date by which the agency or school district shall award a contract or reject all bids.

3. If an agency determines that a bidder is nonresponsive ~~and/or nonresponsible~~, or not responsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be sent to the affected bidder within 5 working days of said determination. The final determination shall be made part of the procurement file.

Section 8. Amend § 6980, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6980. Small professional services procurement process.

(a) Applicability. Any state contract for which an agency is a party with probable fees, including reimbursable expenses and amendments, less than the threshold amount or amounts established by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for the completed job shall be excluded from all other portions of this subchapter. Agencies may, alternately, at their discretion, procure services which include materiel other than professional services in accordance with § 6924 of this title.

(b) Procedure. The Director, with the approval of the Contracting and Purchasing Advisory Council, shall provide for a simplified administrative process for obtaining competitive procurement for small professional services purchases. If applicable, the procedure shall incorporate the procedures identified as lifecycle costing analysis as specified in §§ 6902 and 6909A(b) of this title. This procedure shall be in writing and distributed to all agencies.

Section 12. Amend § 6981, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6981. Large professional service procurement process.

(a) Authority. Any state contract for which an agency is a party with probable fees, including reimbursable expenses and amendments, greater than the threshold amount or amounts established by the Contracting and Purchasing Advisory Council

pursuant to § 6913 of this title for the completed job will be subject to the provisions of this subchapter. Agencies may, alternately, at their discretion, procure services which include materiel other than professional services in accordance with § 6924 of this title.

(b) Each ~~contracting~~ agency shall publicly announce, not less than once a week for 2 consecutive ~~weeks in a newspaper published or circulated in each county of the State,~~ weeks, when professional services are required except:

(c) Subject to the exceptions of subsection (b) of this ~~section,~~ section:

(1) ~~each~~ Each agency shall publicly announce each professional services contract subject to subsection (a) of this section by electronic publication accessible to the public in a manner prescribed pursuant to § 6902(11) of this title for 2 consecutive ~~weeks,~~ weeks unless a shorter advertisement period has been approved by the Section director.

(2) The advertisement for proposals shall state the name of the procuring agency, indicate with reasonable accuracy the character, quantity, and location of the work or the character and quantity of materiel, the time and place for the opening of proposals and where the specifications or descriptions may be obtained. The advertisement shall also state that the agency may extend the time and place for opening proposals from that described in the advertisement, on not less than 2 calendar days' notice, unless special circumstances exist, as determined by the Section director.

(d) Such announcement shall include:

- (1) The project identification;
- (2) General description and scope of the project;
- (3) Location;
- (4) Deadline for submission of brief letters of interest;
- (5) Criteria for selection of professionals including any special criteria required for any particular project;
- (6) Indication of how interested professionals can apply for consideration;
- (7) The agency's intention to award to more than 1 firm, if applicable; and
- (8) A description of the selection process to be used, as defined in § 6982 of this title.

(e) Additional advertising shall be at the discretion of the agency.

(f) ~~Each agency shall establish written administrative procedures for the evaluation of applicants. These administrative procedures shall be adopted and made available to the public by each agency before publicly announcing an occasion when professional services are required. One or more of the following criteria may be utilized in ranking the applicants under consideration:~~

- (1) Experience and reputation;
- (2) Expertise (for the particular project under consideration);
- (3) Capacity to meet requirements (size, financial condition, etc.);
- (4) Location (geographical);
- (5) Demonstrated ability;
- (6) Familiarity with public work and its requirements; or
- (7) Distribution of work to individuals and firms or economic considerations.

(g) ~~In addition to the above, other criteria necessary for a quality, cost-effective project may be utilized.~~

(h) ~~Each project shall be given individual attention, and a weighted average may be applied to criteria according to its importance to each project.~~

(i) ~~For the selection process described in § 6982(b) of this title, price may be a criteria used to rank applicants under consideration.~~

(j) ~~If the Office or an agency determines that an electronic submission is beneficial, the Office or the agency may use this method to obtain proposals for professional services contracts.~~

(1) ~~The solicitation must designate that the procurement method will be an electronic submission, a schedule of bid activities, and an electronic mail account to which the responses must be sent.~~

(2) ~~The Office's or the agency's representative and a witness shall open the electronic mail account immediately after the closing date and time; record the names of the vendors that responded and the date and time submitted; and prepare a tabulation of all responsive vendors for review.~~

(d) Proposal openings.

(1) At the discretion of the agency, it may elect to have a public proposal opening or not to have a public proposal opening. The agency shall identify the type of proposal opening, public or non-public, in the initial solicitation posting. Proposals opened publicly shall have the time and place designated in the solicitation. The main purpose of the proposal opening is to reveal the names of the proposing firms, not to serve as a forum for determining any other factors.

(2) Proposals shall be evaluated based on the requirements set forth in the solicitation. No criteria may be used in proposal evaluations that are not set forth in the solicitation.

(3) Neither the proposals, proposal summaries, nor any other aspect of the proposal evaluations shall be open for public inspection until after receipt of a signed contract.

(e) Vendor eligibility.

(1) A firm may be required to have a valid State of Delaware business license prior to the execution of an agency contract.

(2) Vendors are responsible for reviewing all public advertisements which announce the solicitation and request for proposals for an agency contract.

(3) To supplement the contract public notice, the agency may compile and maintain a prospective vendors list. Inclusion of the name of a person on a prospective vendors list shall not indicate whether the firm is responsible concerning a particular procurement or otherwise capable of successfully performing a contract.

(4) Firms desiring to be included on the prospective vendors list shall notify the agency. Upon notification, the agency shall provide the firm with a means to register its interest in competing for future formal procurement opportunities. A vendor registration list shall not be used as a means to restrict competition.

(5) No cause of action shall accrue from any good faith effort to contact, distribute, or announce solicitations, solicit amendments to requests for proposal, or any correspondence utilizing the agency's vendor eligibility list.

(f) Solicitation.

(1) The agency shall make available solicitations at least 14 days before the time and date of the proposal opening, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the agency.

(2) The solicitation shall include all of the following:

a. Instructions and information concerning the proposal submission requirements, including the time, date, and place set for proposal opening and any other special information;

b. The agency's intention to award to more than 1 firm, if applicable;

c. The description, specifications, evaluation criteria as defined in § 6982, delivery or performance schedule and inspection and acceptance requirements for the resulting contract; and

d. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) If the solicitation incorporates documents by reference, the solicitation shall specify where such documents may be obtained or reviewed.

(4) A solicitation may require the submission of proposal samples, descriptive literature and technical data and may require inspection or testing of a product before award.

(5) A copy of the solicitation shall be made available for public inspection at the agency.

(6) Additional advertising shall be at the discretion of the agency.

(g) Pre-proposal conferences. — An agency may conduct a pre-proposal conference within a reasonable time but not less than 7 days before a proposal opening to explain the requirements of a solicitation. An agency may require mandatory attendance by potential proposing firms at such pre-proposal conferences to qualify as a responsible and responsive proposing firm. Statements made at the pre-proposal conference shall not be considered amendments to the solicitation unless a written amendment is issued pursuant to subsection (h) of this section.

(h) Amendments to solicitations.

(1) An amendment to a solicitation shall be issued to:

a. Make changes in the solicitation;

b. Correct defects or ambiguities in the solicitation; and/or

c. Change the date, place or time of the proposal opening.

(2) Amendments to solicitations shall be so identified and shall be advertised along with the original solicitation.

(3) The agency may obtain vendor acknowledgement of all amendments issued.

(i) Withdrawal of proposals.

(1) A vendor may withdraw its proposal at any time before proposal opening if the withdrawal is received in writing before the proposal opening at the location designated in the invitation for proposals for receipt of proposals. A vendor or its authorized representative may withdraw its proposal in person if, before the proposal opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the proposal. If a proposal has been received electronically, the agency shall delete the file in the agency system records.

(2) All documents concerning a withdrawal of a proposal shall be retained in the appropriate procurement file.

(3) After a proposal opening, a firm may request in writing that its proposal be withdrawn. Such a request may be allowed only upon the approval of the agency. The agency shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

(j) Late proposals and late modifications.

(1) A proposal or withdrawal of a proposal is late if it is received at the location designated in the solicitation for receipt of proposals after the time and date set for proposal opening.

(2) Proposing firms submitting proposals or withdrawals of proposals that are late shall be notified as soon as practicable and the proposal shall be returned unopened.

(3) Documentation concerning a late proposal or late withdrawal of a proposal shall be retained in the appropriate procurement file.

(k) Receipt, opening, and recording of proposals.

(1) Except as provided in paragraph (j)(2) of this section, each proposal shall be time stamped upon receipt and stored by the agency unopened in a secure place until the time and date set for proposal opening.

(2) An envelope that is not marked as a proposal or does not identify the proposing firm or solicitation may be opened solely for the purpose of identification. A record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the proposal responded, and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.

(3) If the agency has elected to open proposals publicly, then the opening shall be in the presence of 1 or more witnesses at the time, date, and location designated in the solicitation. Proposal information shall be disclosed at the public opening pursuant to paragraph (d)(1) of this section. The proposal information made available at the public opening shall be recorded on a proposal abstract. The name of the required witness shall also be recorded. The proposal abstract shall be available for public inspection.

(4) Proposals shall not be available for public inspection before receipt of a signed contract pursuant to paragraph (d)(3) of this section. After contract award, the proposals shall be available for public inspection, except to the extent any information is exempt pursuant to Chapter 100 of this title. If the proposing firm designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions. The proposing firm shall include with this designation a statement that explains and supports the proposing firm's claim that the proposal items identified as confidential contain trade secrets or other proprietary data.

(l) Cancellation of solicitation. — A solicitation may be canceled or any or all proposals may be rejected in whole or in part if it is in the best interest of the State. The reasons for the cancellation or rejection shall be made part of the procurement file.

(1) If a solicitation is canceled prior to the opening of proposals, a notice of cancellation shall be posted with the public record of the solicitation, and

(2) Any proposals that have been received shall be returned unopened to the vendors. Electronic proposals received shall be deleted from the agency system and notice of deletion provided to the vendor.

(3) If a solicitation is canceled after the proposal opening, a notice of cancellation shall be posted with the public record of the solicitation, and

(4) Any proposals shall be returned to the vendors. Electronic proposals shall be deleted from the agency system and notice of deletion provided to the vendor.

(m) Rejection of individual proposals. — A proposal may be rejected if:

(1) The vendor is determined to be nonresponsive pursuant to subsection (n)(1) of this section; or

(2) The proposal is nonresponsive or not responsible in accordance with subsection (n)(2) of this section; or

(3) It is otherwise not advantageous to the State.

If an agency rejects a vendor, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the proposing firm. The final determination shall also be made part of the procurement file. Vendors whose proposals are rejected under this section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file.

(n) Responsiveness and Responsibility of proposing firms. —

(1) An agency shall determine that a proposing firm is responsive to all requirements of the solicitation and request for proposals before selecting a firm for negotiation.

(2) Factors to be considered in determining if a proposing firm is responsible include:

a. The proposing firm's financial, physical, personnel, or other resources, including subcontracts;

b. The proposing firm's record of performance and integrity;

c. Whether the proposing firm is qualified legally to contract with the State; and

d. Whether the proposing firm supplied all necessary information concerning its responsiveness.

e. Any additional specific responsibility criteria for a particular procurement that the agency includes in the solicitation.

f. Evaluation Criteria - Each agency shall establish written administrative procedures for the evaluation of applicants. One or more of the following criteria may be utilized in ranking the applicants under consideration:

1. Experience and reputation;

2. Expertise (for the particular project under consideration);

3. Capacity to meet requirements (size, financial condition, etc.);

4. Location (geographical);

5. Demonstrated ability;

6. Familiarity with public work and its requirements; or

7. Distribution of work to individuals and firms or economic considerations.

8. Any other criteria deemed necessary for a quality, cost-effective project.

(o) Each project shall be given individual attention, and a weighted average may be applied to criteria according to its importance to each project.

(p) For the selection process described in § 6982(b) of this title, price may be a criterion used to rank applicants under consideration.

(q) If the agency determines that an electronic submission is beneficial, the agency may use this method to receive proposals from proposing firms under this subchapter.

(1) The solicitation must designate that the procurement method will be an electronic submission, a schedule of proposing activities, and an electronic mail account to which the proposals must be sent.

(2) The agency's representative and a witness shall open the electronic mail account immediately after the closing date and time; record the names of the proposing firms that responded, and the date and time submitted; and prepare a tabulation of all responsive proposing firms for review.

Section 13. Amend § 6982, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6982. Selection.

(c) Contract award. — Once the agency has successfully negotiated with the selected proposing firm:

(1) The agency shall award a contract to the selected proposing firm whose proposal is determined in writing to be most advantageous to the State, based on the factors set forth in the solicitation. The determination shall explain the basis of award.

(2) The agency shall notify each unsuccessful offeror in writing of the award.

(3) After receipt of a signed contract, the proposals shall be open for public inspection in accordance with § 6981(k)(4) of this title.

Section 14. Amend § 6987, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6987. Cooperative procurement.

The Section may, with written approval by the ~~Director~~, Section director or the Section director's designee, allow an agency to participate in, sponsor, conduct or administer a cooperative agreement for the procurement of professional services with 1 or more public procurement units either within this State, with or within another state, or with a consortium of other states in accordance with an agreement entered into between the participants. Such agreement may include material and/or nonprofessional services with professional services. The other provisions of this subchapter shall not apply when an agency participates in an existing cooperative agreement for the procurement of professional services with a contractor holding a current contract as part of such cooperative agreement.

Section 15. Amend § 6988, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6988. Purchases using federal contracts.

The ~~Director may~~ Section may, with written approval by the Section director or the Section director's designee, enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase professional services at prices approved by the General Services Administration of the United States government or its successor.

Section 16. Amend Subchapter VI, Chapter 69, Title 29 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6989. Performance Bond

(a) Simultaneous with the execution of the formal contract, the agency may require the successful proposing firm to execute a good and sufficient bond to the State for the benefit of the agency. Such performance bonds shall:

(1) Be with a corporate surety authorized to do business in this State;

(2) Be in a sum equal to 100% of the contract award, except as otherwise provided in this subsection; and

(3) Be in the standard form issued by the Office of Management and Budget for this purpose and shall be included in the solicitation.

(b) Contents of performance bonds. — The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal, plans, and specifications thereof. Each term and condition shall be met at the time and in the manner prescribed by the contract and the specifications, including the payment in full to every person furnishing materiel or performing labor in the performance of the contract, of all sums of money due the person for such labor and materiel. The bond shall also contain the successful proposing firm's guarantee to indemnify and save harmless the State and the agency from all costs, damages and expenses growing out of or by reason of the successful proposing vendor's failure to comply and perform the work and complete the contract in accordance with the contract.

(c) Invoking a performance bond. — The agency may, when it considers that the interests of the State so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be deposited with the Secretary of Finance for the credit of the agency. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. Every person furnishing materiel or performing labor under the contract for which the successful proposing firm is liable may maintain an action on the bond for the person's own use in the name of the State in any court of competent jurisdiction for the recovery of such sum or sums as may be due such person from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful proposing vendor ceased work on the contract, otherwise suits may be commenced at any time within 3 years following the date the last work was done on the contract. No person or surety, in any action brought under this section or on the bond required in this section shall assert as a defense to such action the claim that the bond given pursuant to this section contained a limitation or restriction not provided for by this section.

(d) Other security for contracts under threshold amount. — Contracts valued less than the threshold amount set by the Contracting and Purchasing Advisory Council may contain a waiver of the bond requirement provided that the successful proposing firm posts with the State an irrevocable letter of credit or other suitable or readily collectible financial security for the project. Such letter of credit or other security shall be issued for a term commencing simultaneously with the execution of the formal contract and terminating no earlier than 3 years subsequent to the date of final acceptance by the agency or to the extent of the warranty period, whichever is later. In no event shall such security expire without the express written approval of the State. Such waiver as described in this paragraph shall be stated in the solicitation.

(e) Waivers from performance bonds. The State may, at its discretion, reduce or waive the bond or other form of security. Such waiver shall be stated in the solicitation.

§6989A. Failure to comply with contract.

If any firm entering into a contract under the authority of this chapter neglects or refuses to perform or fails to comply with the terms thereof, the agency may terminate the contract and proceed to award a new contract in accordance with this subchapter or the agency may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond. Nothing herein shall preclude the agency from pursuing additional remedies as otherwise provided by law.

§6989B. Right to audit records.

An agency shall have the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract.

§ 6989C. Maximum practicable competition.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the agency's needs and shall not be unduly restrictive.

Approved October 9, 2024