

Chapter Adm 10

CONTRACTUAL SERVICES

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Adm 10.01 Authority. Section 16.705, Stats., requires the department to adopt rules for the procurement of contractual services.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.02 Purpose. The purposes of this chapter are as follows:

(1) To ensure that contracts for contractual services are entered into only in the best interests of the state.

(2) To ensure that the state will procure at the lowest possible price, without sacrifice in quality, the contractual services required for the optimum performance of state government functions.

(3) To establish policies and procedures for the procurement of contractual services.

(4) To create standards and procedures for conducting a cost-benefit analysis before contracting out for any service procurement involving an estimated expenditure of more than \$25,000.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; CR 06-090: cr. (4) Register December 2006 No. 612, eff. 1-1-07.

Adm 10.03 Definitions. (1) "Bidder" means a person or firm who submits a competitive bid in response to an invitation for bids and a set of specifications.

(2) "Contracting agency" means the state agency that executes a purchase order for contractual services.

(3) "Contractual services" means those services as defined in s. 16.70 (3), Stats.

(4) "Department" means the department of administration.

(5) "Materials" as used in the definition of "contractual services" in s. 16.70 (3), Stats., and sub. (3) means reports which are incidental to the required performance under the contract but are not a specific end product.

(6) "Procurement commodity bulletin" means the document issued by the department in response to a request for purchasing authority that establishes the procedures to be used in making the procurement.

Note: A procurement commodity bulletin form AD-P-105 may be obtained from the Department of Administration, Bureau of Procurement, P.O. Box 7867, Madison, Wisconsin 53707.

(7) "Procuring agency" means the state agency which conducts the purchasing transaction.

(8) "Proposer" means a person or firm who submits a competitive proposal in response to a request for proposals (RFP).

(9) "Purchase order" means a state purchase order form used to offer to contract with a vendor.

Note: A purchase order form AD-P-10 may be obtained from the Department of Administration, Bureau of Procurement, P.O. Box 7867, Madison, Wisconsin 53707.

(10) "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(11) "Request for purchasing authority" or "RPA" means the form and all attached materials that are submitted by a state

agency to the department to initiate any procurement of contractual services.

Note: A request for purchasing authority (RPA) Form AD-P-112 may be obtained from the Department of Administration, Bureau of Procurement, P.O. Box 7867, Madison, Wisconsin 53707.

(12) "Secretary" means the secretary of the department.

(13) "State agency" or "agency" means any department, board, commission, independent agency, or any other separate entity established by statute or by constitution in the state government, including the legislature.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; corrections in (3) and (5) made under s. 13.93 (2m) (b) 7., Stats., Register January 2004 No. 577.

Adm 10.035 Cost-benefit analysis. (1) ANALYSIS. A uniform cost-benefit analysis shall be completed by a contracting agency or its designated agents of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000 annually. Each cost-benefit analysis shall include the information set forth in subs. (2) to (6);

(2) SERVICE OVERVIEW. A cost-benefit analysis shall provide the following:

(a) A justification for the request written in clear, non-technical language that can be understood by persons who may not be directly involved in or familiar with the proposed service, with all acronyms fully defined.

(b) A list and description of any federal mandates, state statutes or administrative rules that dictate how the proposed service must be performed.

(3) TOTAL COST. Each proposed contractual service procurement shall include a total cost component. For each proposed contractual service procurement involving an estimated expenditure of more than \$25,000 annually, an agency shall provide a detailed cost-benefit analysis showing that the proposed service can be performed more economically or efficiently by contract rather than by current state employees or by hiring permanent, project or limited term employees. The consideration of relevant costs shall include, but not be limited to, wage and salary costs, fringe benefits costs, administrative overhead costs, other operating costs, material costs, insurance costs, facility costs, contract price, contract monitoring, and one-time conversion costs. The agency shall use and submit the State of Wisconsin Cost Analysis Methodology as set forth in the State Procurement Manual.

Note: To request the State of Wisconsin Cost Analysis Methodology set forth in the State Procurement Manual, please contact the State Bureau of Procurement, P.O. Box 7867, Madison, Wisconsin 53707-7867 or (608) 266-2605.

(4) QUALITY. A description of the proposed service to be performed, a list of items to be delivered, any specific conditions to be required of the contractor, and how the agency will ensure that the contractor will provide services and quality as promised without financial losses to the State.

(5) TECHNICAL EXPERTISE. (a) *Capacity*. A description whether agency employees have the capacity to perform the proposed service.

(b) *Expertise*. A description whether the agency employees have the expertise to perform the proposed service.

(6) **TIMELINESS**. (a) *Timeliness*. A complete schedule and timetable for the proposed service.

(b) *Project term*. A statement indicating whether the proposed service is a short-term project or is a long-term need for the agency.

History: Emerg. cr. eff. 7-1-06; CR 06-090: cr. Register December 2006 No. 612, eff. 1-1-07.

Adm 10.037 Continued appropriateness of contracting. The department or its designated agents shall review periodically, and before any renewal, the continued appropriateness of contracting under each contractual service agreement involving an estimated annual expenditure of more than \$25,000.

History: Emerg. cr. eff. 7-1-06; CR 06-090: cr. Register December 2006 No. 612, eff. 1-1-07.

Adm 10.038 Submittal of cost-benefit analysis. The department or its designated agents shall submit the original cost-benefit analysis in s. Adm 10.035 and continued appropriateness of contracting periodic reviews in s. Adm 10.037 to the department of administration, bureau of procurement.

History: Emerg. cr. eff. 7-1-06; CR 06-090: cr. Register December 2006 No. 612, eff. 1-1-07.

Adm 10.039 Effective date. The requirements of this rule apply to all contracts for which solicitation of interest date is after June 30, 2006.

History: CR 06-090: cr. Register December 2006 No. 612, eff. 1-1-07.

Adm 10.04 Prior approval. (1) **APPLICATION.** Prior to taking any contractual services procurement action, an agency shall file an RPA with the department, that includes the information specified in s. Adm 10.05 (1), the proposed method of procurement, the proposed evaluation procedure and the method of selecting the membership of any evaluation committee.

(2) **CONSOLIDATION OF TRANSACTIONS.** An agency may consolidate repetitive and similar transactions into a general request for prior approval. Such general prior approval may be issued by the department for a specific period of time, not to exceed one calendar year.

(3) **PROCUREMENT COMMODITY BULLETIN.** The department shall issue a procurement commodity bulletin if it approves the RPA.

(4) **PROHIBITION.** No contract for contractual services shall be entered into and no payment to any contractor shall be made unless the department has issued a procurement commodity bulletin for that contract.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.05 Justification. (1) **CONTENTS OF JUSTIFICATION.** Each RPA shall include the following:

(a) A reference to the federal law or regulation or state law which requires or authorizes the procurement of the contractual services;

(b) A description of the services to be performed, a list of any items to be delivered, complete schedules and timetables, and any other specific conditions to be required of the contractor;

(c) A statement showing why the services can be performed more economically or efficiently by contract rather than by current state employees or by hiring permanent, project, or limited term employees. The consideration of costs shall include, but not be limited to, the costs of salaries, fringe benefits, training and unemployment compensation payments;

(d) A statement showing why the proposed procurement is in compliance with the applicable state collective bargaining agreements and that the labor organization or organizations representing the appropriate certified collective bargaining unit or units have been notified of the proposed procurement;

(e) A statement showing why it is not possible to have the services performed by another state agency; and

(f) A statement indicating that competitive bidding will be used or why competitive bidding cannot be used and the justification for using the proposed alternative.

(2) **OFFICE OF STATE EMPLOYMENT RELATIONS.** If the department is not satisfied with the justification required by sub. (1) (c), (d) and (e), the department shall submit the RPA to the director of the office of state employment relations for review and shall notify the labor organization or organizations representing the appropriate certified collective bargaining unit or units. The RPA may not be approved unless the director of the office of state employment relations or his or her designee determines that the RPA complies with the provisions of s. 16.705 (3), Stats.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; corrections made under s. 13.93 (2m) (b) 6., Stats., Register January 2004 No. 577.

Adm 10.06 Competitive bidding. Competitive bidding is the preferred method for procuring contractual services, and shall be used in every case that permits the preparation of specifications or standards, or both, that can be used as the basis for award.

Note: For information on competitive bidding, see *State Procurement Manual*, section PRO-C, "The Bidding Process".

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.07 Waivers. (1) **WAIVER REQUIREMENT.** Any procurement of contractual services that is not made by competitive bidding requires a waiver of bidding. The request for a waiver shall contain a complete explanation of why competitive bidding cannot be used and the proposed alternative procedure. Procurements estimated to exceed \$10,000 require waivers by the governor. Procurements estimated to total \$10,000 or less may be waived by the secretary or his or her designee.

(2) **GENERAL WAIVER.** Agencies may consolidate repetitive and similar transactions into a general waiver request. General waivers are issued for a specific period of time not to exceed one calendar year.

Note: For information on waivers, see *State Procurement Manual*, sections PRO-C-9, "Waiver of Bidding Process", PRO-C-10, "Bid Waiver Transmittal Letter", and PRO-C-11, "General Waiver".

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.08 Competitive negotiation. (1) **REQUEST FOR PROPOSALS (RFP).** The preparation of an RFP is mandatory. The RFP shall be written in clear, concise and measurable terms. The RFP shall:

(a) State the name and address of the contracting agency or the procuring agency, or both, and the names, addresses, titles and telephone numbers of persons to whom questions concerning the proposals should be directed;

(b) State how sealed proposals are to be delivered, the date and time by which they must be received and the name and address of the person who is to receive them;

(c) Contain the date and time of the pre-proposal conference, if any, and the period of the contract or contracts;

(d) Clearly describe the scope of the services requested and shall provide prospective contractors with performance criteria, including quantity of each service required and delivery schedules for those services;

(e) State the factors to be considered in evaluating proposals and the relative importance of each factor. Factors that may be considered when evaluating proposals include:

1. Responsiveness of the proposals. The proposal should clearly state the proposer's understanding of the work to be performed.

2. Technical experience and resources of the firm or individual submitting the proposal.

3. Experience and professional activities of the firm or individual submitting the proposal.

4. Size and structure of the firm or individual practice of the proposer.

5. Cost;

(f) State that the procuring agency reserves the right to reject for cause any and all proposals submitted and to request additional information for purposes of clarification only from proposers; and

(g) State that any award made shall be made to the firm which, based on the evaluation by the procuring agency, is best qualified.

(2) LEGAL NOTICE. When the estimated cost exceeds \$10,000, a Class 2 notice under ch. 985, Stats., inviting competitive sealed proposals shall be published. The advertisement shall describe the services to be purchased, the intent to solicit proposals rather than bids, any requirement for surety and date the proposals will be opened.

(3) PROPOSAL EVALUATION. Proposals shall be evaluated using a predetermined method to determine which proposer best meets the needs of the procuring agency. A description of the process of evaluation should be included with the RFP. The RFP should state, whenever possible, whether oral presentations by proposers will be part of the evaluation process.

(4) EVALUATION COMMITTEE. Before an RFP is distributed to prospective contractors, the procuring agency shall establish an evaluation committee. Each committee shall consist of 3 or a larger number of members, depending on the complexity and scope of services being procured. At least one member or a person advising the committee, shall be trained in procuring contractual services. An evaluation committee shall:

(a) Review all proposals submitted in response to an RFP, using as a basis the evaluation criteria included in the RFP;

(b) Conduct all formal, scheduled oral conferences and presentations with proposers that affect the evaluation process;

(c) Keep accurate records of all meetings, conferences, oral presentations, evaluations and decisions;

(d) Not disclose to any proposer any information obtained from any other proposer;

(e) Give all proposers an equal opportunity to make a presentation, if presentations are permitted; and

(f) Issue a final report and recommendation.

(5) DISCUSSIONS WITH PROPOSERS. Fair and equal discussions may be conducted with all proposers for the purpose of clarification, and with proposers whose proposals are reasonably apt to be awarded the contract for the purpose of negotiating the best offer.

(6) NOTICE OF INTENT. When the competitive negotiation process is used to procure services over \$10,000, a letter of intent to contract shall be sent by the contracting agency to the selected proposer. Copies of the letter of intent shall be sent to all other proposers in the evaluation process. All letters of intent shall be sent at least 5 days before the intended date of award.

(7) CONTRACT AWARD. Award shall be based on the evaluation committee recommendation unless, after review by the department of the award or of a protest by a bidder or proposer, a change in an award is approved because:

(a) Mathematical errors were made in scoring proposals;

(b) The award was recommended to a proposer who should have been disqualified as not responsive to all mandatory requirements of the RFP;

(c) Evidence of collusion or fraud involving either the proposer or an evaluation committee member is found;

(d) The evaluation committee failed to follow the evaluation criteria as set forth in the RFP; or

(e) Violations of this chapter or the statutes have occurred.

(8) CONFLICT OF INTEREST. No person shall serve on an evaluation committee where the action of that committee might benefit that person, or a member of that person's immediate family as defined in s. 19.42 (7), Stats., or any organization or business with which that person is associated as defined in s. 19.42 (2), Stats.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. (3) and (4) (intro.), Register, December, 1985, No. 360, eff. 1-1-86.

Adm 10.09 Noncompetitive negotiation. In cases where the contractual service can only be obtained from one source, the agency shall provide information in the RPA to show that only one source exists, that the price is reasonable either on a fair market value or on a cost basis, and that the procurement is in the best interests of the state.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.10 Disclosure. (1) Any bidder or proposer other than a political subdivision of the state shall include with a bid or proposal a written statement that discloses and provides relevant information on any of the following conditions that exist:

(a) An officer or an employee of the contracting or procuring agency, or his or her immediate family, as defined in s. 19.42 (7), Stats., owns or controls, directly or indirectly, any equity, or is associated, as defined in s. 19.42 (2), Stats., with the bidder or proposer;

(b) The bidder or proposer currently employs, or has offered or agreed to employ, any person who is or has been an officer or employee of the contracting or procuring agency within the 12 month period preceding the bid or proposal; or

(c) The bidder or proposer has a contract for contractual services with the contracting or procuring agency or provides services to, or anticipates providing services during the term of the contract to, a person or organization that is regulated by, or receives state funds from, the contracting or procuring agency.

(2) If none of the above conditions exist, the bidder or proposer shall include, with any bid or proposal, a written statement to that effect.

(3) The contracting or procuring agency shall review the statement and prepare a written determination on whether or not the information disclosed under sub. (1) interferes with fair competition and whether or not, in spite of the information disclosed, the awarding of the contract to the bidder or proposer will be in the best interests of the state.

(4) The department shall review the determination by the contracting or procuring agency. If the department does not concur in that determination, the department shall not approve the contract.

(5) All contracts shall provide that if the bidder or proposer has failed to disclose any conditions described in sub. (1), the contract may be declared to be void by the department and any amounts paid under the contract may be recovered as provided in s. 16.77 (2), Stats.

(6) No disclosure under sub. (1) (c) is required if a state or federal law prohibits the disclosure, or b) the relationship does not create a conflict of interest and loss of independence, or the disclosure is improper under standards of professional conduct adopted by, or administrative rules of, the state agency or agency of the judicial branch that is responsible for regulating or licensing the occupational group of which the bidder or proposer is a member.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.11 Purchase orders. An official state purchase order shall be issued by the contracting agency for each contractual services procurement. All standard terms and conditions of the official state purchase order shall apply to all contracts except as deleted or amended in the text of an attached contract.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.12 Contract administration. Every contract for services shall have a specific person designated as the contract administrator. Responsibilities of the contract administrator are as follows:

(1) COMPLIANCE. To determine whether the contractor is in compliance with the terms and conditions of the contract before any scheduled payment is made;

(2) ACTION. To take action in the event of any nondelivery or other breach of contract; and

(3) EVALUATION. To file with the department, within 60 days of fulfillment of the contract, an evaluation of the contractor's performance.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.13 Delegation of authority. (1) DEGREE OF DELEGATION. The degree of authority delegated to designated agents pursuant to s. 16.71, Stats., shall be at the discretion of the department. The delegation shall be in writing.

(2) DELEGATION REVIEW. Delegation of its purchasing power under s. 16.71, Stats., does not absolve the department from its responsibilities under subch. IV of ch. 16, Stats. The department shall periodically review the exercise of delegated authority by agencies and may withdraw delegation at any time for cause.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Adm 10.14 Performance of contractors. The department shall review evaluations of contractor performance submitted by agencies pursuant to s. 16.705 (6), Stats. The department shall investigate each negative report and develop a list of contractors determined to have performed in an unsatisfactory manner. A contractor placed on this list shall be excluded from participating in state contracts for a period specified by the department not to exceed 2 years. A contractor who is placed on this list may request a hearing under s. 227.42, Stats.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1993, No. 447.

Adm 10.15 Appeals. (1) RIGHT TO PROTEST. Any bidder or proposer or labor organization or organizations representing the appropriate certified state collective bargaining unit or units who is aggrieved in connection with a solicitation or a notice of intent to award a contract may protest to the procuring agency. The protestor shall file a notice of intent to protest in writing with the head of the procuring agency, or designee, within 5 working days after issuance of the solicitation, or after issuance of the letter

of intent to award a contract, and shall serve the protest in writing on the head of the procuring agency, or designee, within 10 working days after issuance of the solicitation, or after issuance of the letter of intent to award a contract.

(2) AUTHORITY TO RESOLVE PROTESTS. The head of the procuring agency, or designee, shall have the authority to settle and resolve a protest of an aggrieved bidder or proposer concerning the solicitation or intent to award a contract.

(3) DECISION. If the protest is not resolved by mutual agreement, the head of the procuring agency, or designee, shall promptly issue a decision in writing.

(4) NOTICE OF DECISION. A copy of the decision shall be mailed or otherwise furnished to the protestor.

(5) APPEAL. The protestor may appeal the decision of the procuring agency, provided the protestor alleges a violation of a statute or a provision of this chapter, to the secretary within 5 working days of issuance of the decision. The secretary, or designee, shall take necessary action to settle and resolve the protest and shall promptly issue a decision in writing which shall be mailed or otherwise furnished to the protestor.

(6) STATE OF PROCUREMENTS DURING PROTESTS. In the event of the filing of a timely notice of intent to protest, protest or appeal under sub. (1), the state shall not proceed further with the solicitation or with the award of the contract until a decision is rendered in response to the protest or appeal, or unless the secretary, after consultation with the head of the contracting agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. (1), (5) and (6), Register, December, 1985, No. 360, eff. 1-1-86.

Adm 10.16 Exceptions. This chapter does not apply to procurements of services of other items that are not contractual services or to any contracts under s. 16.75 (2) (b), 16.87 or 84.01 (13) or ch. 35, Stats.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.