

DELAWARE
Responsible Contractor

DELAWARE CODE ANNOTATED

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TITLE 29. STATE GOVERNMENT
PART VI. BUDGET, FISCAL, PROCUREMENT AND CONTRACTING
REGULATIONS
CHAPTER 69. STATE PROCUREMENT
SUBCHAPTER III. MATERIEL AND NONPROFESSIONAL SERVICES

29 Del. C. @ 6924 (2004)

@ 6924. Competitive sealed proposal; request for proposal procedure

(a) Applicability. -- When the agency head makes a determination that the use of competitive sealed bidding is either not practical or not in the best interest of the State, a contract may be entered into through competitive sealed proposals. The determination to use competitive sealed proposals may be made if it is necessary to:

- (1) Use a contract other than a fixed-price type;
- (2) Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;
- (3) Afford offerors an opportunity to revise their proposals;
- (4) Compare the different price, quality and contractual factors of the proposals submitted;
- (5) Award a contract in which price is not the determining factor; or
- (6) The agency is unable to draft specifications in sufficient detail to be applicable to competitive sealed bidding.

(b) Advertising requirements.

(1) Proposals shall be solicited through a request for proposal which shall be issued and shall include the location where proposals are to be received and the date and time the proposals are to be opened.

(2) Adequate public notice of the request for proposals shall be given in the same manner as provided in @ 6923(b) of this title.

(3) Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror and such other relevant information as is specified in the request for proposals shall be read publicly and recorded in accordance with the request for proposal promulgated by the agency. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation.

(4) The request for proposals shall state the relative importance of price and other evaluation factors.

(5) Offerors intending to submit proposals may be afforded an opportunity for discussion for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and amending proposals, and such amendments may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(6) The award shall be made in writing to the responsible offeror 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.)

(c) Request for proposals.

(1) A request for proposals shall set forth those factors listed in @ 6923(e) of this title that are applicable and shall also state:

a. The type of materiel or services required and a description of the work involved;

b. The type of contract to be used;

c. That offerors may designate as trade secrets or proprietary data portions of the proposals;

d. That discussions may be conducted with offerors who submit proposals determined to be likely to be selected for award;

- e. The minimum information that the proposal must contain; and
- f. The closing date and time for receipt of proposals.

(2) A request for proposals shall be issued at least 14 calendar days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the agency.

(3) Notice of the request for proposals shall be issued in accordance with @ 6923(b) of this title.

(4) Vendor lists compiled and maintained in accordance with @ 6923(d) of this title may serve as a method for soliciting competitive sealed proposals.

(5) Amendments to requests for proposals shall be made in accordance with @ 6923(g) of this title.

(d) Pre-proposal conferences. -- Pre-proposal conferences may be convened in accordance with @ 6923(f) of this title.

(e) Late proposals or late withdrawals.

(1) A proposal received after the closing date and time for receipt of proposals is late and shall not be considered. A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered.

(2) No offeror shall be permitted to make a modification to its original proposal after the date and time for the receipt of proposals and before negotiations start pursuant to subsection (g) of this section.

(3) A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered by the agency.

(f) Evaluation of proposals.

(1) Each agency shall establish written administrative procedures for the evaluation of the proposals.

(2) For the purpose of conducting negotiations, the agency shall determine, in accordance with subsection (g) of this section, that proposals are either likely to be selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the agency determines that an offeror's proposal is unacceptable, the agency shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.

(g) Negotiations with individual offerors. -- All agencies shall have a right to negotiate with individual offerors after their proposals are opened. The agency shall establish a committee, procedures and schedules for conducting negotiations. Disclosure of 1 offeror's price to another and any information derived from competing proposals is prohibited.

(h) Best and final offers. -- If negotiations are conducted pursuant to subsection (g) of this section, 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.

(i) Mistakes in proposals. -- Prior to the time and date set for receipt of best and final offers, any offeror with whom negotiations have been held may withdraw the offer or correct any mistake by modifying the offer.

(j) Contract award.

(1) The contract shall be awarded within 90 days of the closing date and time advertised in the request for proposals. The agency shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the State, based on the factors set forth in the request for proposals. 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 fully executed contract, the proposals shall be open for public inspection in accordance with @ 6923(j)(4) of this title.

(4) A formal contract shall be executed with the successful firm within 20 days after the award of the contract.

(k) Cancellation of requests for proposals. -- 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.

If a solicitation is canceled prior to the opening of proposals, a notice of cancellation shall be sent to all offerors, and any proposals that have been received shall be returned unopened to the 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 pursuant to subsection (m) of this section;

(2) It is unacceptable;

(3) The proposed price is unreasonable; or

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

Offerors 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. The reasons for the rejection shall be stated in the determination.

(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 unresponsive and/or nonresponsible, 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.