

**Procedures Under the Department of Budget and Management (DBM)  
Authority to Competitively Obtain Services Over \$50,000\* in Anticipated or  
Actual Value to the Vendor\*\***

**\*(Or higher dollar value threshold level for agencies that have received more than \$50,000 in delegation from DBM.)**

**\*\* (Some procedures may change after 10/1/2018 when DGS assumes authority over procurements currently handled by DBM and DoIT.)**

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Over \$50,000 Submission Procedure

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**A. Definitions**

**Value to the Vendor** means expenditures by the State, revenue paid to the State, or when the vendor receives value from some source other than the State due to having a contract with the State.

**Anticipated** means the expected value of the resulting contract at the time of the solicitation, including the projected value of all available renewal options. After bids or proposals have been opened, the required approval will be based on the actual contract amount and the projected value of all available renewal options.

**B. Approval & Selection Processes (Three Processes):**

For any competitive services procurement that is anticipated to be over \$50,000 in value to the vendor, there are actually two distinct approval processes and an intermediate selection process.

1.) Approval Processes (Two Processes):

- a. Approval of the specifications to procure the service
- b. Approval of the contract for the specific vendor(s) selected for award

2.) Selection Process:

Sandwiched between the two approval processes is a third process that includes the core activities that result in the determination (selection) of the successful vendor (s).

Each of these three (3) processes is described hereafter.

**C. Approval Scenarios**

**Solicitations**

- 1.) If a solicitation is anticipated to result in a contract with a value that exceeds an agency's delegation level, the specifications need to be sent to DBM for review and approval before the solicitation can be issued.
- 2.) If a solicitation is not anticipated to result in a contract with a value that exceeds an agency's delegation level, the specifications do not need to be sent to DBM for review

and approval.

## Contracts

- 1.) If the value of a contract that results from a solicitation that did not obtain DBM approval does not exceed the agency's delegation level, the contract does not need to be sent to DBM for review or approval.
- 2.) If a solicitation was sent to and approved by DBM because the value of the resulting contract was anticipated to exceed an agency's delegation level, but then the actual contract value does not exceed that level, this contract does not have to be submitted to DBM, despite the fact that the solicitation had been.
- 3.) If the resulting contract value exceeds an agency's delegation level, it needs to be sent to DBM for review and approval, even if the solicitation was not originally submitted to, or approved by, DBM.

### **D. Approval of Specifications**

#### Determine Procurement Method

The first step in gaining approval of the specifications for a solicitation to obtain a service is to decide which of three methods of competitive source selection to employ. These three methods are: 1) Competitive Sealed Bidding (CSB), 2) Multi-Step Sealed Bidding (MSSB), and 3) Competitive Sealed Proposals (CSP).

For the purposes of this instructional document, the selection of the procurement method to be used for a given procurement will impact both the projected time frame (see Section G of this document) to conduct the procurement and certain "boilerplate" content of the solicitation. The primary distinctions among the three methods of competitive source selection are described in Attachment A to this procedure.

### **E. DBM Delegation Authority**

Whereas DBM has the overall control agency authority to approve most procurements for services, DBM has the authority to delegate the approval of solicitations and contracts that are not anticipated to exceed \$100,000 in value to the vendor when the procurements are conducted under either the CSB (which includes MSSB) or CSP procurement methods, and more than one

bid or offer is received.

### \$50,000 Delegation Level

Total approval authority has been delegated to agencies for procurements that are not anticipated to exceed \$50,000 in value to the vendor.

### Over \$50,000 Delegation Level

A number of State agencies have received more than \$50,000 in delegation from DBM, either agency-wide, or for selected programs or activities. Agencies that have been delegated more than \$50,000 in procurement approval authority by DBM are identified on the DBM web site under Procurement, and in the document “Procurement Agency Activity Report Submission Guidelines”.

## **F. Solicitation Approval Submission Requirements**

### **Submission Procedures**

Once the decision of the procurement method has been made, for any solicitation whose final award value is expected to exceed the procuring agency’s level of delegation from DBM, a complete solicitation document must be submitted to DBM for approval. This submission is comprised of 2 components:

1. An electronic submission (e-mail or disk) of the actual final proposed solicitation document, including all attachments. Any portion of the solicitation document that is not available electronically must be submitted in hard copy.
2. Submission of a requisition in ADPICS with appropriate completion of required information on the 2100 and 2120 screens, and in the Notepad. The submission of an item in ADPICS constitutes a formal request from the agency for an approval of the associated solicitation. It also constitutes formal certification of the availability of funds for that proposed procurement.

Each State agency is assigned a specific Procurement Analyst from the DBM Procurement Unit.

The list of agency Analyst assignments as of the publication date of this procedure is included in the “Procurement Agency Activity Report Submission Guidelines” document. A current version of these assignments is also available on the DBM Web site under the heading of Procurement.

**G. Submission Timeframes**

### Minimum Timeframe

For any procurement anticipated to exceed an agency's delegation level, for any of the 3 types of competitive procurement methods described in Attachment A, a complete solicitation document must be submitted to DBM for review and approval. As per COMAR 21.02.03.02.C.6, this submission to DBM must occur no less than 14 days before the agency wishes to issue the solicitation. However, this minimum 14 days submission timeframe does not commence until both the ADPICS transmission and the electronic (except for any attachments that are only available by hard copy) submission of the full solicitation package have been received.

### Typical Timeframe

The 14 days advanced submission timeframe is intended to be a constraint on the submitting agency, not on DBM. It is not a guarantee that a solicitation will be reviewed by DBM within 14 days and it does not give an agency leeway to release a solicitation after the 14<sup>th</sup> day if there has not been an approval by DBM to do so, or a rejection. In fact, the typical advance submission timeframe for an agency should be between 21 and 28 days prior to an anticipated release date. Moreover, even after reviewing a solicitation an Analyst may not approve it for issuance. Instead the Analyst may require solicitation deficiencies to be corrected before granting an issuance approval. The approval timeframe for such corrections is totally dependant upon how quickly an agency makes the required corrections and resubmits the solicitation for the Analyst's approval. Consequently, to allow for possible corrections that may be required by an Analyst, it might be prudent for an agency to submit a solicitation more than 28 days before the desired release date of a particular solicitation.

## **H. Approval Standards and Procedures**

Once a solicitation is received by an agency's respective Procurement Analyst, it will be reviewed and evaluated against the standards of a well-prepared solicitation. After the initial review of a solicitation, the involved Analyst will give it a *passing* or *failing designation*.

### Failing Designation

A failing designation will be accomplished by a rejection of the ADPICS submission. The completed solicitation evaluation will also contain remarks of deficiencies that must be corrected before an approval can occur. In addition, there will likely be an actual "marked-up"



copy of the solicitation that provides more details of the required corrections/changes. Frequently this marked up copy will be scanned and provided in a PDF version or comments will be provided via electronic comments embedded in the electronic document.

If an agency doesn't understand the comments or rating of the Analyst or wishes to discuss one of these aspects, it is encouraged to contact the Analyst for clarification or explanations. An agency may even request a meeting with the Analyst to discuss the required revisions, or the Analyst may suggest holding such a meeting. The key concern of both DBM and the involved agency is for the agency to understand what needs to be changed in the solicitation package and to facilitate making those changes as quickly as feasible.

Once an agency has completed the required corrections it must resubmit the solicitation for approval in the same manner as the original submission; i.e., both with an ADPICS submission and with the electronic or, as appropriate, hardcopy submission of the complete solicitation document package. As previously stated, an agency may not release a solicitation until it has been approved by its assigned Procurement Analyst. Further, if an agency amends (revises) a solicitation after it has been approved by the Procurement Analyst, a copy of the amendment should be sent to the Analyst, primarily for informational purposes. However, if the Analyst believes that the content of the amendment is in any way improper, this concern will be communicated to the agency along with possible directions for an additional amendment, changing the one that was determined to be improper.

### Passing Designation

Even if an Analyst has approved the issuance of a solicitation, the approval might be conditional. In other words, there might be some relatively minor aspects that the agency should change before it issues the solicitation. Nevertheless, the Analyst authorizes the agency to issue the solicitation as soon as the corrections are made, without having to re-submit the document to the Analyst for approval. In this instance, for record purposes, the Analyst will typically ask that a copy of the revised solicitation document be submitted to the Analyst after it has been issued.

## **I. Bidding/Selection Process**

### **Outreach Objective**

Once approval of the specifications has been obtained, either at the agency level or from DBM,

the competitive selection process occurs (the core procurement activities). The objective is to obtain at least two (2) valid bids or offers with appropriate representation from Minority Business Enterprises (MBE's), in-state (resident) businesses, or possibly small businesses.

### **Notification**

To this end, all procurements expected to result in a value to the vendor of over \$50,000, must be advertised on e-Maryland Marketplace. Bid board notices, newspaper or periodical listings, Web sites, etc. can and should also be used, but in addition to, not in lieu of, the e-Maryland Marketplace notice.

Moreover, for every procurement anticipated to have a value to the vendor in excess \$50,000, either the actual *written* specifications or a *written* Notice of Availability of the specifications should be directly sent to prospective bidders or offerors. Agencies should not expect that advertising solely on eMaryland Marketplace will produce viable competition.

### **Response Timeframes**

For a procurement expected to have a value to the vendor over \$50,000, at least twenty (20) calendar days have to *expire* between the date of publication of a notice in e-Maryland Marketplace and the date the proposals or bids are due. Since the date of publication on e-Maryland Marketplace is not counted, the minimum due date is actually 21 days from the day the notice appears on e-Maryland Marketplace.

Frequently, however, vendors are given more time than this, especially if complex proposals are requested.

### **J. Award Determination**

For a CSB procurement, all bids are publicly opened on the date and time specified. Thus, the apparent successful bidder will be known immediately.

For a MSSB procurement there is a delayed public bid opening. The offers are received just like under the CSP method and the identity of bidders is confidential until a final determination is made of the acceptability of the bid. This process frequently takes 2-4 weeks. However, after the pass/fail determination has been made for each submission, a public opening has to

occur for the bids.

For CSP procurements there is no public opening. Instead the evaluation committee must receive, read, and discuss all proposals. For CSP procurements it often takes more than 6 weeks to review the proposals, hold discussions, and possibly to invite multiple rounds of best and final offers so that offerors may revise their technical and/or financial proposals.

Consequently, the total elapsed time for the procurement process itself (award determination) can take 3-6 months for a CSP procurement which includes 4-6 weeks for proposal responses and 6-12 weeks for the complete evaluation stage.

## **K. Approval of the Contract**

### **Timeframe for Contract Approval**

For services contracts resulting from the small procurement method (contract dollar value to the vendor that does not exceed \$50,000), the authority for approval of the contract remains at the agency level. For contracts valued over \$50,000, except for the agencies with higher delegation levels, but less than \$200,000, DBM approval of the contract is needed. Such approval typically takes 2-3 weeks.

For contracts valued over \$200,000, or for all situations over \$50,000 when only one bid/proposal was received, the resulting contract must be approved by the Board of Public Works. BPW approval typically takes 4-6 weeks, depending upon the exact meeting schedule of the Board and whether all required items are submitted to DBM by the 30 days advance submission cutoff date for any particular BPW meeting date.

## **L. Contract Submission Requirements**

Contract approval submissions to DBM must be initiated in ADPICS using a blanket purchase order. ADPICS screens 2342, 2348, 2353, & 2354 must always be completed, along with Notepad entries as per the ADPICS procurement transmittal instructions. In addition, any contract with an MBE goal must also have an entry in the 2345 screen.

Besides the ADPICS submission, a copy of the contract, signed by the vendor (but not the

agency) must be submitted. There must further be an indication that the contract has been approved for form and legal sufficiency by an Assistant Attorney General (AAG), either via a signature on the contract, or by a statement from the AAG that there has been a blanket approval of the standard form contract that was used.

Additionally, one copy of the bid sheet (for CSB or MSSB procurements) or the complete financial proposal or totals summary page (for CSP procurements) of each non-selected vendor should be submitted. For CSP procurements there should be a written description of why the offeror recommended for award was so designated. Furthermore, for any CSB procurement when the lowest priced vendor is eliminated as being non-responsible or if its bid is deemed non-responsive, the written determination of these findings should be submitted.

**M. Total Timeframe for All 3 Processes**

In combining all three (3) steps of the procurement process (solicitation approval, procurement process, and contract approval), the customary timeframes for the respective procurement methods are:

All procurements between \$50,000 and \$200,000 needing DBM approval: 3-4 months  
(For CSP/MSSP method, add 1 month for evaluation phase): 4-5 months

All procurements greater than \$200,000, or over \$50,000 when only one bid or proposal was received (BPW approval required): 4-5 months

(For MSSP method, add 2 weeks or more for evaluation phase): 4-5 months  
(For CSP add 4-6 weeks for evaluations, discussions and BAFOs): 5-6 months

It should be noted that these timeframes are rough guidelines, not guarantees. Any particular procurement may take more, or sometimes less, than these timelines. Moreover, these timeframes are in addition to the time needed for an agency to draft the solicitation document in the first place. The drafting phase might be several months or more by itself.

**ATTACHMENT A**

**Methods of Competitive Source Selection**

**1.) Competitive Sealed Bidding (CSB)**

This method is typically used when the exact duties/requirements that the successful bidder will have to perform can be extensively detailed. Because of the detailed nature of the specifications usually there is no permitted substantive variation in how and when prospective vendors will provide the service. Since there is no variation in what bidders are to do, price is the only criteria for determining the winning bidder. Hence, in a competitive sealed bid procurement, the contract award is made to the lowest bidder. The only notable exception to the lowest bidder winning is the circumstance when a preponderance of available evidence leads the procurement officer to conclude that the lowest bidder is not capable of performing the service in question (is not responsible) or has failed to comply with a major bid directive, such as submitting the bid late (the bid is not responsive). In such a circumstance the incapable/ non-complying bidder is eliminated and the award is made to the lowest complying bidder the procurement officer judges to be capable of performing the needed service.

**2.) Multi-Step Sealed Bidding (MSSB)**

Multi-step is a variation of competitive sealed bidding. As with regular competitive sealed bidding, the lowest acceptable (capable) bidder must be given the award. However, the determination of which bidders are acceptable (capable) is based upon a committee evaluating bidders' written technical offers, which are submitted separately from a sealed price bid. While the price bid remains sealed, the evaluation committee reviews each bidder's technical offer to make a simple pass/fail determination. (Alternately, the submission of price bids might not be required at the same time as the technical offers and will only be solicited from vendors that subsequently pass the technical review.)

The evaluation committee's pass/fail decision is based upon the contents of each bidder's technical offer, possibly after receiving clarifying information about a technical offer. Moreover, it is also possible that a bidder can revise or augment its technical offer in an effort to have that offer be determined to be acceptable. With the concurrence of the procurement officer, any bidder deemed by the evaluation committee to be unacceptable on the basis of its technical offer, has its price bid returned unopened. The price bids are then publicly opened for all bidders which are judged acceptable, and the lowest bidder (if its bid is determined to be

responsive) is declared the winner. A MSSB procurement is more complicated and more time consuming than a CSB procurement because of the need for the bidders to prepare offers and for a committee to evaluate these offers.

### **Competitive Sealed Proposals (CSP)**

Competitive Sealed Proposals (CSP) is the most complex, most time-consuming procurement method. CSP is used when it is either impossible or impractical to completely detail what a contractor will ultimately be performing. The broad objectives of the procurement will be known and identified in the solicitation document (a Request for Proposals - RFP) but offerors will generally have wide latitude concerning how they will achieve the overall objective. Moreover, there will frequently be differences in how much offerors propose to do and when they will complete the task(s); i.e., generally offerors can propose different levels of effort, different approaches to achieving the overall goals of the procurement, and may do so within different time frames.

The CSP method again involves an evaluation committee and typically requires discussions/negotiations to take place between the committee and offerors. Thus, if an offeror's initial proposal is deemed to be deficient in certain areas but not totally deficient, the offeror should typically be advised of this and permitted to revise its technical proposal. The price proposal may also be adjusted if there is a financial impact of a technical proposal change. Nonetheless, changes to technical or financial proposals may only be made in response clarification or cure requests or an invitation to submit Best and Final Offers (BAFOs). BAFOs are described below.

The CSP method allows Best and Final Offers (BAFOs) to be requested. In the most frequent BAFO circumstance, a BAFO is essentially a request to all acceptable (qualified) offerors to lower their prices, even if there is no corresponding change in their technical offers. However, if discussions with offerors demonstrate that it would be beneficial to the State to permit offerors to revise their technical proposals, this can only be done in conjunction with a BAFO request. In other instances, the requests for clarifications or cures might result in technical proposal changes, since financial proposals may not have been opened yet.

Finally, the CSP method requires the contract award to be made to the most advantageous offeror. The most advantageous offeror (best value) may be the lowest priced offer, but doesn't have to be. This method permits an offeror's technical proposal to have equal (and sometimes greater) weight in the overall award determination with the corresponding price. Accordingly, the evaluation committee (with the concurrence of the procurement officer and the agency head or designee) may determine that despite a higher price, a particular offeror is proposing to provide a level of performance that exceeds its price differential, hence is offering the best deal

for the State.

Due to the inherent flexibility of CSP as summarized below, it is the preferred method of awarding contracts to perform human services activities for clients, and is frequently used for complex services procurements.



Advantages of using Competitive Sealed Proposals

- Discussions/negotiations can be held to:
  - Gain a better understanding of what a vendor is offering or to ensure vendors understand what an agency is seeking
  - Hone vendor's proposals to the needs of the agency
- Clarifications, Cures and/or Best and Final Offers can be requested in the hope of obtaining better technical proposals or lower financial offer prices.
- The most advantageous offeror can be recommended for award, not just the lowest priced offeror.
- The concept of responsiveness of proposals doesn't apply so, except for required MBE forms submissions, vendors don't have to be eliminated from consideration because they didn't initially submit some required item in their proposal or took an exception to standard terms and conditions.