

Anatomy of a Negotiated Procurement

The Negotiated Procurement process is based upon the concept of "Best Value" and enables agencies to consider many factors in the evaluation of bid responses beyond cost, including vendor qualifications, past performance, methodology, among others.

Please Note: With this additional flexibility comes additional responsibility in terms of documenting actions taken throughout the bid process, the task of evaluating technical and proposals, and in preparing a written justification for actions taken and award recommendations.

The following is provided as information for preparation of an RFP.

When necessary, agency submits specifications for review by KITO, and receives an approval to proceed.

Agency submits a letter to the Director of Purchases with a **request to establish a Procurement Negotiating Committee**; per K.S.A. 75-37,102, the PNC consists of:

- Director of Purchases, or designee
 - The Director of Purchases representative will shepherd the project through the process.
- Secretary of Administration, or designee
- Agency Head, or designee

Others may be involved in bid evaluation, negotiations, program planning, but the three designated members are ultimately responsible for the final decision.

Other types of Negotiated Procurements:

Telecommunications Services (KSA 75-4713 – see attached)
Financial Services (KSA 75-3799 – see attached)

Agency submits electronic copy of specifications (KITO approved, if applicable) and a Purchase Requisition to the Division of Purchases. Names and addresses for all known potential vendors should also be submitted.

A Request for Proposal (RFP) is prepared by a Division of Purchases Procurement Officer

RFP information is advertised in the Kansas Register, per statutory requirement; this requirement affects the **Bid Closing Date** for the RFP: while the statutory requirement is modest (10 days after posting in Kansas Register), time must be allotted for pre-bid conferences, pre-bid questions and answers, and for vendor proposal preparation.

RFP is posted to the Internet; notice of RFP is mailed to interested / interesting vendors

- The RFP document reminds bidders to monitor the Purchases website for periodic posting of new information related to the bid document;

RFP will typically involve a **Pre-Bid Conference**, or a **Pre-Bid Question & Answer Period**

- Allows potential vendors to request clarification of RFP information
- Q&A released to all known interested vendors via addendum, posted to the Internet

Bid Closing Date (Proposal Submission Deadline)

- Vendors are instructed to submit their technical proposals in separate sealed envelopes, separate from the cost proposals.
- At bid opening, only names of bidders are announced

Review of Proposals begins when *Technical Proposals only* are forwarded to PNC Members and other agency participants / evaluators

- Cost Proposals are retained by the Division of Purchases
- Why? Technical Evaluation should be conducted without the prejudice of price

Senate Ways and Means

Date: 02-20-2012

Attachment: 2

Agency provides to the Division of Purchases a complete and detailed **Technical Evaluation** of each Proposal submitted, with an attempt to address items including (but not limited to):

- Response format as required by the RFP;
- Adequacy and completeness of proposal;
- Vendor's understanding of the project;
- Compliance with the specifications, terms and conditions of the RFP;
- Experience in providing like services;
- Qualified staff;
- Methodology to accomplish tasks;
- Pros / Cons;
- Strengths / Weaknesses

Upon receipt of a complete Technical Evaluation (of appropriate quality and substance), the **Cost Proposals** are released to the Agency and PNC for review

The Agency **reviews the Cost Proposals in concert with the Technical Evaluations, and recommends to the PNC one or more vendors to invite to negotiations**

- The Agency is encouraged to examine the bids according to cost, starting with the lowest bid.
 - Why? Per 75-37,102, "*...in the event that the negotiating committee selects a bid which is not the lowest bid on a given contract, the directors report shall contain a rationale explaining why the lowest bidder was not awarded the contract...*"

Upon concurrence of the PNC, a list of Vendors to Invite to Negotiations is developed.

Negotiation Session(s) are scheduled

- Preparations for Negotiations may include the development of Q&A / Discussion Points for negotiations, to allow the vendor to be better prepared for the meeting
- At the end of negotiations, the PNC may request a Revised Offer.
 - Especially important if clarification of the vendor's expectations / understanding of the project results in a change of cost;

Once Revised Offers have been submitted, the Agency **again reviews cost and technical proposals**, to arrive at a recommendation for award.

The Agency submits a **formal written recommendation for award to PNC, providing full documentation of the recommendation.**

- Deadline for documentation of reasons for not awarding to vendors lower in cost

Upon concurrence of the Agency's recommendation, Contract Documents are prepared and are routed for signatures.

Once all required signatures have been acquired, **work on the project may begin.**

The Division of Purchases, based upon their experience with the transaction, remains available for **follow-up**, including answering contract questions, assisting with vendor performance issues, and, standing ready to assist with termination, should the situation warrant this action.

Basic Negotiated Procurement

Statutory Authorization

75-37,102

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 37.--DEPARTMENT OF ADMINISTRATION

75-37,102. Procurement negotiating committees, services or technical products; composition; powers; notice and procedures; bidding and open meeting exemptions; reports to legislative coordinating council and committees. (a) Upon request of the chief administrative officer of a state agency and subject to the approval of the secretary of administration, the director of purchases may convene a procurement negotiating committee to obtain services or technical products for the state agency.

(b) Each procurement negotiating committee shall be composed of: (1) The director of purchases, or a person designated by the director; (2) the chief administrative officer of the state agency desiring to make the procurement, or a person designated by the officer; and (3) the secretary of administration, or a person designated by the secretary.

(c) The negotiating committee is authorized to negotiate for the procuring state agency contracts with qualified parties to provide services or technical products needed by the state agency.

(d) Prior to negotiating for the procurement, a notice to bidders first shall be published in the Kansas register. Upon receipt of bids or proposals, the committee may negotiate with one or more of the firms submitting bids or proposals and select from among those submitting such bids or proposals the party to contract with to provide the services or technical products.

(e) Contracts entered into pursuant to this section shall not be subject to the provisions of K.S.A. 75-3738 through 75-3740a and amendments thereto. Meetings to conduct negotiations pursuant to this section shall not be subject to the provisions of K.S.A. 75-4317 through 75-4320a and amendments thereto. The director of purchases shall submit a report at least once in each calendar quarter to the legislative coordinating council and the chairpersons of the senate committee on ways and means and the house of representatives committee on appropriations of all contracts entered into pursuant to this section. In the event that the negotiating committee selects a bid which is not the lowest bid on a given contract, the directors report shall contain a rationale explaining why the lowest bidder was not awarded the contract.

(f) Nothing in this section shall be construed as requiring either negotiations pursuant to this section or bids pursuant to K.S.A. 75-3739 and amendments thereto for the procurement of professional services or services for which, in the judgment of the director of purchases, meaningful specifications cannot be determined.

Financial Services Negotiated Procurement

Statutory Authorization

75-3799

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 37.--DEPARTMENT OF ADMINISTRATION

75-3799. Financial services for state agencies; procedures for acquisition; negotiating committee. (a) Upon request of the chief administrative officer of a state agency and subject to the approval of the secretary of administration, the director of purchases may convene a financial services negotiating committee to obtain financial services for the state agency under this section.

(b) Each financial services negotiating committee shall be composed of (1) the director of purchases, or a person designated by the director of purchases, (2) the chief administrative officer of the state agency needing financial services, or a person designated by the officer, and (3) the director of accounts and reports, or a person designated by the director of accounts and reports.

(c) The financial services negotiating committee is authorized to negotiate contracts with qualified parties to provide financial services, including services relating to installment purchase, lease, or lease-purchase of equipment or to other financial related services needed by the state agency.

(d) Prior to negotiating for financial services, the committee shall advertise for proposals, negotiate with one or more of the firms submitting proposals and select from among those submitting such proposals the party to contract with for the purpose of providing financial services.

(e) Contracts entered into pursuant to this section for financial services shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive, and any amendments thereto.

History: L. 1984, ch. 308, § 1; May 17.

Telecommunications Services Negotiated Procurement

Statutory Authorization

75-4713

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 47.--INFORMATION SYSTEMS AND COMMUNICATIONS

75-4713. Acquisition of telecommunications services; negotiating committee; procedures.

(a) The telecommunications negotiating committee is a three-person committee composed of (1) the secretary of administration, or a person designated by the secretary of administration, (2) the director of purchases, or a person designated by the director of purchases, and (3) the director of the division of information systems and communications, or a person appointed by the director of information systems and communications. The telecommunications negotiating committee may negotiate contracts for telecommunications services to be entered into by the secretary of administration for state agencies and other entities as provided in K.S.A. 75-4709 and amendments thereto.

(b) Prior to negotiating for telecommunications services, the committee shall advertise for sealed proposals. The committee then may negotiate with one or more firms submitting proposals and select from among those submitting such proposals the party to contract with for the purpose of providing telecommunications services.

(c) Contracts entered into pursuant to this section for telecommunications services shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive, and amendments thereto.

History: L. 1985, ch. 285, § 1; March 7.