



Rules of
Department of Transportation
Division 10—Missouri Highways and Transportation
Commission
Chapter 11—Procurement of Supplies

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**Title 7—DEPARTMENT OF
TRANSPORTATION
Division 10—Missouri Highways and
Transportation Commission
Chapter 11—Procurement of Supplies**

7 CSR 10-11.010 Definition of Terms

PURPOSE: This rule defines terms used in this chapter.

- (1) Award—An action taken by the director or his/her designee on behalf of the commission on successful bids/proposals.
- (2) Bid/Proposal—An offer to perform a contract for work and labor or to supply materials, goods, or services at a specified price; also may include detailed information about services to be furnished.
- (3) Bidder/Offeree—A person or entity submitting a solicitation document to department.
- (4) Bond—A guaranty agreement that contains the promise of a third party to fulfill the bidder's/offeree's responsibilities in the event that the bidder/offeree is unable or unwilling to fulfill those responsibilities. The commission may require the following:
(A) Bid/Proposal bond—A financial guarantee that the bidder/offeree, if selected, will accept the contract as bid/proposed. Protects the commission against loss due to bidder's/offeree's refusal to enter into a contract with the commission;
(B) Payment bond—A financial guarantee that the contractor will pay his/her/its workers, suppliers, and subcontractors on a commission project. Assures the commission that persons supplying labor or material in connection with a project will be paid; and/or
(C) Performance bond—A financial guarantee that the contractor will complete performance of the project. Protects the commission against loss due to the inability or refusal of a contractor to perform his/her/its contract.
- (5) Buyer—A department employee who buys or contracts to buy supplies for the department.
- (6) Certification—The process in which the bidder/offeree swears that the information he/she/it has provided is correct.
- (7) Commission—The Missouri Highways and Transportation Commission.
- (8) Contract—An offer to perform a contract for work and labor or to supply materials, goods, or services at a specified price; also may include detailed information about services to be furnished.
- (9) Contractor—A successful bidder/offeree to whom a contract has been awarded by the commission.
- (10) Debarment—An exclusion from contracting with the commission for an indefinite period of time.
- (11) Department—The Missouri Department of Transportation.
- (12) Director—The director of the General Services Division of the department or a designated representative of the director.
- (13) Division—The Division of General Services within the Missouri Department of Transportation.
- (14) Domicile—The state in which a business is incorporated.
- (15) Emergency—A situation which creates a serious and obvious threat to the public health, welfare, or safety, or creates a serious and obvious threat to the operation of the department in executing its legal responsibilities to the public or for the persons or property in its legal care, custody, or control, or a combination of these.
- (16) Invitation for bid (IFB)—A formal request for sealed bids which are solicited based upon specifications for which bids must be submitted.
- (17) Missouri firm—A corporation which is incorporated in Missouri, or in the case of a partnership, joint venture, or sole proprietorship, a business which has its principal place of business in Missouri.
- (18) Multiple award—A purchase order or contract awarded to two (2) or more bidders/offerees required to meet the needs of the department.
- (19) Nonresponsive bid/proposal—A bid or proposal which does not fulfill all terms, conditions, and specifications outlined in the solicitation document.
- (20) Notice to proceed—A document sent by the department that gives notice to the bidder/offeree to begin performance on its contract.
- (21) Purchase—Includes rental or leasing of any equipment, articles, or supplies.
- (22) Purchase order—A document issued by department, authorizing bidder/offeree to deliver goods.
- (23) Responsible bid/proposal—Bid/proposal which complies with all terms, conditions, and specifications outlined in the solicitation document.
- (24) Request for bid (RFB)—A formal request for sealed bids which is solicited and based upon specifications for which bids must be submitted. Bids must be submitted by a specific date and time.
- (25) Request for proposal (RFP)—A formal request for sealed proposals which is solicited and based on scope of work requirements. Proposals must be submitted by a specific date and time.
- (26) Request for quotation (RFQ)—An informal request for either bids or proposals based upon either a specification or a scope of work requirement. Establishes a target date and time by which quotations must be submitted.
- (27) Solicitation—A process of notifying prospective bidders/offerees that the department wishes to receive bids or proposals to provide goods, services, or a combination of goods and services. The term includes RFQ, RFP, IFB, and any other procurement method which may be used.
- (28) State—The state of Missouri.
- (29) Substitution—A shipment of an item that materially conforms to the specifications but is technically different from the item bid.
- (30) Supplies—Materials, equipment, contractual services, and all articles or things.
- (31) Suspension—An exclusion from contracting with the commission for a temporary period of time.
- (32) Vendor—Any individual, partnership, company, corporation, or joint venturer providing supplies to the commission.

AUTHORITY: sections 226.020, 226.130, 227.030, and 227.210, RSMo 2000. Original rule filed April 5, 1993, effective Oct. 10, 1993. Amended: Filed June 5, 2009, effective Jan. 30, 2010.*

**Original authority: 226.020, RSMo 1939; 226.130, RSMo 1939, amended 1993, 1995; 227.030, RSMo 1939; and 227.210, RSMo 1939.*



7 CSR 10-11.020 Procedures for Solicitation, Receipt of Bids, and Award and Administration of Contracts

PURPOSE: This rule prescribes procedures for soliciting and receiving bids and for awarding contracts.

(1) When the procurement is estimated to be less than twenty-five thousand dollars (\$25,000), an informal method of solicitation may be utilized. Informal methods of procurement may include request for quotation (RFQ), telephone quotes, etc.

(A) The division will establish a target date and time for submission of quotations.

(B) The division may proceed with the evaluation and award anytime after the expiration of the target date and time. Quotations received after the target date and time, but before the award of a contract, may be included in the evaluation at the discretion of the division.

(2) When the procurement is estimated to be twenty-five thousand dollars (\$25,000) or more, a formal method of solicitation must be utilized. Formal competitive bidding shall be accomplished by utilizing an invitation for bid (IFB) or request for bid (RFB), etc.

(A) Formal bids must be received in the division or a secured electronic database in a sealed format by the time set for the opening of bids.

(B) Formal bids received after the time set for the opening of bids shall be considered late and will not be opened.

(C) Bids received in response to an IFB/RFB shall be available for public review after the bid opening during regular working hours.

(D) When the division decides in its discretion that all bids are unacceptable and circumstances do not permit a rebid, negotiations may be conducted by the division with only those bidders who submitted bids in response to the IFB/RFB. No additional bidders shall be solicited. Upon determination that negotiations will be conducted, the bids and related documents will be closed to public viewing in accordance with section 610.021, RSMo.

(3) When the procurement requires the utilization of competitive negotiation, the formal request for proposal (RFP) solicitation method shall be utilized.

(A) Formal proposals must be received in the division or a secured electronic database in a sealed format by the time set for the opening of the proposals.

(B) Formal proposals received after the

time set for the opening of bids/proposals shall be considered late and will not be opened.

(C) Proposals received in response to an RFP shall not be available for public review until after a contract is executed or all proposals are rejected.

(D) Offerors who obtain information concerning a competitor's proposal may be disqualified for consideration for a contract award.

(4) The division may waive the requirement of competitive bids or proposals for supplies when the division has determined in writing that there is only a single feasible source for the supplies. Immediately upon discovering that other feasible sources exist, the division shall rescind the waiver and proceed to procure the supplies through the competitive processes as described in this rule.

(A) A single feasible source exists when:

1. Supplies are proprietary and only available from the manufacturer or a single distributor; or

2. Based on past procurement experience, it is determined that only one (1) distributor services the region in which the supplies are needed; or

3. Supplies are available at a discount from a single distributor for a limited period of time.

(B) When the Single Feasible Source procurement method is utilized, the division shall use the following guidelines to support the Single Feasible Source determination:

1. The following guidelines may be utilized to determine if supplies can be purchased as a single feasible source due to being proprietary:

A. The parts are required to maintain validity of a warranty;

B. Additions to a system must be compatible with original equipment;

C. Only one (1) type of computer software exists for a specific application;

D. Factory authorized maintenance must be utilized to maintain validity of a warranty;

E. The materials are copyrighted and are only available from the publisher or a single distributor; or

F. The services of a particular provider are unique, e.g., entertainers, authors, etc.;

2. The following guidelines may be utilized if past procurement activity indicates that only one (1) bid has been submitted in a particular region. In these situations the division shall monitor the market for developing competition; and

3. The following guidelines may be uti-

lized to determine if supplies may be purchased as a single feasible source due to being available at a discount for a limited period of time:

A. The discounted price must be compared to a price established through a reasonable market analysis; and

B. The discounted price should normally be at least ten percent (10%) less than the current contract or other comparable price. A discount of less than ten percent (10%) may be acceptable under appropriate market conditions. The discount should be compared to a price which, where feasible, should be no more than twelve (12) months old.

(C) On any single feasible source purchase where the estimated expenditure shall be five thousand dollars (\$5,000) or over, the division shall post notice of the proposed purchase. Where the estimated expenditure is twenty-five thousand dollars (\$25,000) or over, the division shall also advertise its intent to make such purchase in such places as are most likely to reach prospective bidders or offerors and may provide such information through an electronic medium available to the general public at least five (5) days before the contract is to be let. Other methods of advertisement, however, may be adopted by the division when such other methods are deemed more advantageous for the supplies to be purchased. The requirement for advertising may be waived, if not feasible, due to the supplies being available at a discount for only a limited period of time.

(5) When conditions meet the criteria of an emergency situation as defined in 7 CSR 10-11.010, emergency procurement procedures may be utilized. The requirement for formal competitive bids or proposals may be waived. However, the emergency procurement should be made with as much informal bidding as practicable. Emergency procedures shall only be utilized to purchase those supplies which are necessary to alleviate the emergency.

(6) When circumstances dictate that it would be most advantageous, the division may purchase supplies from or in cooperation with another governmental entity.

(A) Supplies purchased from another governmental entity should be limited to those supplies which are provided directly by such entity.

(B) Supplies purchased in cooperation with another governmental entity may be purchased based on contracts established in accordance with that entity's laws and regulations.



(7) Regardless of the solicitation method utilized, the following procedures apply:

(A) The division shall develop standardized terms and conditions to be included with the solicitation documents;

(B) The division may request bids/proposals for new equipment employing the trade-in of used equipment. The solicitation document may request pricing with a trade-in and without a trade-in;

(C) The division may require bid/proposal, payment, and/or performance bond.

1. The acceptable form and amount of the bid/proposal bond shall be stipulated in the solicitation document.

2. The bid/proposal bond of unsuccessful vendors may be returned after the finalization of the award. If the successful vendor fails to accept the contract, the amount of the bid/proposal bond may be forfeited to the commission.

3. If a payment and/or performance bond is required, the bid/proposal bond of the successful vendor may be returned after the receipt of the payment and/or performance bond. The acceptable form and amount of the payment and/or performance bond shall be stipulated in the solicitation document. If the contractor fails to submit the payment and/or performance bond as required, the bid/proposal bond may be forfeited to the commission and the contract shall be void;

(D) In the event that the division receives a container which is not identifiable as a specific bid/proposal, an authorized person within the division may open the container to determine the contents. If the contents are determined to be a bid/proposal, the container will be resealed and the solicitation number, opening date, and time will be noted on the outside. The container will then be filed until the official time for opening;

(E) After the bid/proposal opening, a vendor may be permitted to withdraw a bid/proposal prior to award at the sole discretion of the division if there is a verifiable error in the bid/proposal and enforcement of the bid would impose an unconscionable hardship on the vendor. This withdrawal will be considered only after receipt of a written request and supporting documentation from the vendor. Withdrawal shall be the vendor's sole remedy for an error other than an obvious clerical error. Withdrawal of a bid/proposal may result in forfeiture of the bid/proposal bond;

(F) For bids/proposals with a value of twenty-five thousand dollars (\$25,000) or more, bidders/offers who can certify that goods or commodities to be provided in accordance with the contract are manufactured or produced in the United States or

imported in accordance with a qualifying treaty, law, agreement, or regulation shall be entitled to a ten percent (10%) preference over bidders whose products do not qualify. Failure to provide a certification may result in forfeiture of any preference. The provisions in this subsection (7)(F) shall not apply to bids/proposals for goods or commodities funded by federal funds;

(G) In addition to cost, subjective judgment may be utilized in the evaluation of bids/proposals provided that the method is published in the solicitation document;

(H) The division may request samples for evaluation purposes. Any samples requested must be provided free of charge. Samples which are not destroyed by testing will be returned at the vendor's expense if return of the samples is stipulated in the vendor's bid/proposal. Samples submitted by a vendor who receives the award may be kept for the duration of the contract for comparison with shipments received;

(I) During the course of a solicitation, vendors may be required to demonstrate proposed products. Such demonstration shall be coordinated by the division;

(J) When bids are equal in all respects, any preferences shall be applied in accordance with applicable statute. If all such bidders or none qualify for the statutory preference, the contract shall be awarded by a formal drawing of lot. Whenever practical, the drawing will be held in the presence of the vendors who are considered equal. If this is not practical, the drawing will be witnessed by a disinterested person;

(K) The division may make multiple awards from a single solicitation document when such awards are in the best interest of the commission as determined in the sole discretion of the division;

(L) After an award is made, the solicitation file or facsimile thereof shall be made available to the public for inspection at any time during regular working hours; and

(M) Unless otherwise specified in the contract, substitution of items, personnel, or services shall require the approval of the division prior to shipment or performance.

(8) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs). Programs/procedures designed to accomplish these objectives may include: inclusion of MBE/WBE subcontractor requirements in solicitation documents, close review of bond requirements, targeted notice of procurement opportunities, utilization of minority and

women personnel on evaluation committees, etc.

(9) A bid or proposal award protest must be submitted in writing and must be received by the division within ten (10) calendar days after the date of award. If the tenth day falls on a Saturday, Sunday, or state holiday, the period shall extend to the next state business day. A protest submitted after the ten (10)-calendar-day period shall not be considered. The written protest should include the following information:

(A) Name, address, and phone number of the protester;

(B) Signature of the protester or the protester's representative;

(C) Solicitation number;

(D) Detailed statement describing the grounds for the protest; and

(E) Supporting exhibits, evidence, or documents to substantiate claim.

(10) Award. The award of a contract or purchase order shall be based on the terms and conditions set forth in the solicitation document. The director's discretion may be utilized in the evaluation of bids/proposals provided that the evaluation categories and the relative percentage of impact are published in the solicitation document.

(A) Any bid/proposal failing to agree to, and comply with, all terms, conditions, and specifications stated in the solicitation document shall be considered as nonresponsive to the solicitation and shall not be considered for the award of a contract or purchase order.

(B) The commission may reject all bids/proposals and may waive any minor informality or irregularity in a bid/proposal. The commission also may make multiple awards from a single solicitation document when permitted by the solicitation document.

(11) Corrections to Bid/Proposal Documents. When preparing a bid/proposal, a bidder/offers may correct an error by marking it out or erasing it. The change should be initialed by the person signing the bid/proposal. No bid/proposal shall be altered or amended after the time and date specified for the opening of bids/proposals. In the case of errors in the extension of price, the unit price will govern.

(12) Cancellation of Solicitation. The division may cancel a solicitation document at any time without cause.

(13) New Supplies. All supplies and equipment offered and furnished must be new and of current production unless the solicitation



document specifically permits the offer of used items. Remanufactured or reconstructed items shall not be considered new.

(14) Rejection of Supplies. Products, equipment, or items delivered that do not meet the specifications of the contract may be rejected. When rejected, the vendor must make immediate replacement in accordance with the specifications of the contract.

(15) Inspection. All materials, equipment, and supplies shall be subject to inspection and tests by the department. Items that do not meet the specifications of a contract may be rejected. The failure to reject upon receipt or after part or all of the items have been consumed shall not relieve the contractor of any liability under the contract.

(16) Services. Services which have not been performed in accordance with specifications or the scope of work of a contract may be rejected. The failure to reject upon receipt or after part or all of those services have been performed shall not relieve the vendor of any liability under the contract.

(17) Assignment. Permission from the commission to a contractor to assign a contract or order must be requested by the contractor in writing. A contractor shall not assign its interest in a contract or order to another party without receiving written permission from the division acting on behalf of the commission.

(18) Arbitration. The commission, unless specifically agreed upon by the parties in writing, shall not be bound by a compulsory arbitration or other compulsory dispute resolution provision which is present in any of vendor's forms or boilerplate.

AUTHORITY: sections 226.020, 226.130, 227.030, and 227.210, RSMo 2000. Original rule filed April 5, 1993, effective Oct. 10, 1993. Rescinded and readopted: Filed June 5, 2009, effective Jan. 30, 2010.*

**Original authority: 226.020, RSMo 1939; 226.130, RSMo 1939, amended 1993, 1995; 227.030, RSMo 1939; and 227.210, RSMo 1939.*

7 CSR 10-11.030 Vendor Registration, Notification of Competitive Bidding Opportunities, Suspension, and Debarment

PURPOSE: This rule describes procedures for vendor registration, vendor notification of bidding opportunities, and procedures for suspension and debarment of vendors.

(1) Any individual, business, or organization may complete a commission vendor registration in order to be added to the commission's vendor database. It is the vendor's sole responsibility to update their vendor registration information with the commission.

(2) A person, business, or corporation contracting with the commission shall be considered as an independent contractor and shall not be considered nor represent him/herself as an employee or agency of the commission or department. A corporation must be authorized to do business in Missouri by registering with the Office of the Secretary of State before proceeding with work under a contract unless specifically exempt pursuant to section 351.572, RSMo.

(3) The director, or designee, may suspend a vendor for cause. The vendor shall be mailed a formal notice of suspension outlining the reasons for, the specific conditions of, and the effective period of the suspension. Upon completion of the suspension period it shall be the responsibility of the vendor to request reinstatement if desired. A request for reinstatement should be made in writing.

(A) Any bids/proposals submitted by a suspended vendor shall not be considered.

(B) The suspension of a vendor may be for a period of up to one hundred eighty (180) days for a first violation, and for not more than a year for subsequent violation(s).

(C) The vendor may appeal suspension by submitting a written request to the director or designee within fourteen (14) calendar days after receipt of the formal notice. The vendor must provide specific evidence and reasons why suspension is not warranted. On the basis of this information, the suspension may be modified, rescinded, or affirmed. The director's decision on the vendor's appeal shall be final and mailed to all parties.

(4) The director may debar a vendor whenever, in the director's sole discretion, it is in the best interest of the commission to do so. A vendor may be debarred for a single incident of serious misconduct or after multiple less serious incidents. The director shall notify the vendor of the reason for debarment and any action the vendor must take in order to be found eligible to contract again.

(A) Any bids/proposals submitted by a debarred vendor shall not be considered.

(B) The vendor may appeal the debarment by requesting that the determination be reviewed by the director or designee. Any request for review must be in writing and filed within fourteen (14) calendar days after the date of receipt of the notice of debarment.

The request must set forth specific evidence and reasons why debarment should be reversed. The director's determination on the vendor's appeal shall be final and mailed to all parties.

(5) The following shall be sufficient cause for suspension or debarment. The list is not meant to be all inclusive but shall serve as a guideline for vendor discipline and business ethics.

(A) Failure to perform in accordance with the terms and conditions and requirements of any contract/purchase order;

(B) Violating any federal, state, or local law, ordinance, or regulation in the performance of any contract/purchase order;

(C) Providing false or misleading information on an application, in a bid/proposal, or in correspondence to the department or a state agency;

(D) Failing to honor a bid/proposal for the length of time specified;

(E) Colluding with others to restrain competition;

(F) Obtaining information, by whatever means, related to a proposal submitted by a competitor in response to a request for proposal (RFP) in order to obtain an unfair advantage during the negotiation process; or

(G) Contacting proposal/bid evaluators or any other person who may have influence over the award, without authorization from the division, for the purpose of influencing the award of a contract.

AUTHORITY: sections 226.020, 226.130, 227.030, and 227.210, RSMo 2000. Original rule filed April 5, 1993, effective Oct. 10, 1993. Rescinded and readopted: Filed June 5, 2009, effective Jan. 30, 2010.*

**Original authority: 226.020, RSMo 1939; 226.130, RSMo 1939, amended 1993, 1995; 227.030, RSMo 1939; and 227.210, RSMo 1939.*