

CHAPTER 69. METHODS OF AWARDING CONTRACTS

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Authority

The provisions of this Chapter 69 issued under sections 507, 2401.1, 2403 and 2409 of The Administrative Code of 1929 (71 P. S. §§ 187, 631.1, 633 and 639), unless otherwise noted.

Source

The provisions of this Chapter 69 adopted December 12, 1980, effective December 13, 1980, 10 Pa.B. 4663, unless otherwise noted.

§ 69.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Bureau—The Bureau of Purchases of the Department of General Services.

Committee—A group of Commonwealth employes, with technical, managerial or other appropriate expertise and experience in negotiation and costing, which evaluates proposals and assigns point values thereto.

Contract—A contract for the purchase of goods and supplies.

Department—The Department of General Services of the Commonwealth.

Goods and supplies—Equipment, furniture and furnishings, stationery, materials, or supplies that may be needed by a department, board or commission.

Installment purchase—The acquisition of goods or supplies through a series of payments over a fixed period of time whereby title is obtained by the buyer upon receipt of the good or supply and the seller may retain a security interest until final payment is made.

Invitation to bid—Documents, whether attached or incorporated by reference, used for soliciting bids.

Lease purchase—A lease of goods or supplies with purchase option or equity credit accrual, or both. Title remains with the lessor until the purchase option is exercised or the purchase is made.

Life cycle cost—Total cost of the good or supply in terms of purchase cost, installation cost, maintenance cost, energy cost, supply cost and other costs.

Proposal—The technical description of the good or supply which is being offered in response to a request for proposals and the price of the good or supply.

Purchase—The acquisition of goods and supplies. The term includes acquisition by lease purchase or installment purchase.

Request for proposals—Documents, whether attached or incorporated by reference, used for soliciting proposals.

Responsible bidder—A person who has the capability to perform the contract requirements, and the integrity and reliability which will assure good faith performance.

Responsive bid—A bid which conforms in all material aspects with the invitation to bid.

Secretary—The Secretary of the Department of General Services or a designee, or both.

Specifications—The words used in an invitation to bid to describe the goods and supplies to be purchased.

§ 69.2. Purpose.

This chapter establishes procedures, defines responsibilities and provides specific guidance for awarding Commonwealth contracts for the purchase of goods and supplies.

§ 69.3. Methods of awarding contracts.

Unless otherwise authorized by statute, Commonwealth contracts shall be awarded by competitive sealed bidding, under § 69.4 (relating to competitive sealed bidding) except as provided in:

- (1) Section 69.5 (relating to multiple awards).
- (2) Section 69.6 (relating to competitive sealed proposals).
- (3) Section 69.7 (relating to sole source procurement).
- (4) Section 69.8 (relating to emergency procurement).
- (5) Section 69.9 (relating to small purchases).

Cross References

This section cited in 4 Pa. Code § 69.4 (relating to competitive sealed bidding).

§ 69.4. Competitive sealed bidding.

(a) *Conditions for use.* Contracts shall be awarded by competitive sealed bidding except as otherwise provided in § 69.3 (relating to methods of awarding contracts).

(b) *Invitation to bid.* Invitations to bid shall be issued and shall include specifications and contractual terms and conditions applicable to the procurement.

(c) *Public notice.* Adequate public notice of the invitation to bid shall be given a reasonable time prior to the date set for the opening of bids. For contracts

covering the requirements of the Commonwealth over a period of time, the notice will include publication in newspapers of general circulation at least 6 weeks prior to bid opening. For other contracts, the notice shall be given at least 10 days prior to bid opening, by sending invitations to bid to all persons or firms who have notified the Bureau that they want to be given an opportunity to bid on contracts for items for which they have indicated an interest.

(d) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses on the date fixed for the opening of bids at the hour designated in the invitation to bid. After the bids are opened, they shall be tabulated and will be subject to examination by bidders.

(e) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter or by the terms and conditions contained in the invitation to bid. Bids shall be evaluated based on the requirements set forth in the invitation to bid, which may include means to determine whether the bid is responsive to the specifications such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as life cycle costs. No criteria may be used in bid evaluation that are not set forth in the invitation to bid.

(f) *Modification or withdrawal of bids; cancellation of awards.* Modification or withdrawal of bids; cancellation of awards shall include the following:

(1) Bids may be modified or withdrawn by written or telegraphic notice received at the Department Bid Opening Room prior to the exact hour and date specified in the invitation to bid. Telegrams shall be confirmed by letter within 72 hours after receipt. A bid may also be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact hour and date set for the opening of bids. Modifications of offers received after the exact hour and date specified for the opening of bids shall not be considered.

(2) Withdrawal of erroneous bids after bid opening but before award or cancellation of contracts based on bid mistakes shall be permitted only in the following instances:

(i) When the Department knows or has reason to know that a mistake had been made, that is, an obvious error.

(ii) When the bidder requests relief and presents credible evidence that the reason for the lower bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid. When the contract has been awarded, the bidder shall request relief within a reasonable time period after he receives notice of the award.

(g) *Award.* The contract shall be awarded within a reasonable time by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The Secretary has the right to reject any or all bids.

Cross References

This section cited in 4 Pa. Code § 69.3 (relating to methods of awarding contracts); 4 Pa. Code § 69.5 (relating to multiple awards); and 4 Pa. Code § 69.6 (relating to competitive sealed proposals).

§ 69.5. Multiple awards.

(a) *Conditions for use.* The Secretary may, within his discretion, procure goods and supplies on a multiple award basis if one or more of the following criteria is applicable:

(1) Whenever it is administratively or economically impractical to develop or modify specifications for myriad related goods and supplies because of rapid technological changes.

(2) Whenever the subjective nature in the use of certain goods and supplies and the fact that recognizing this need creates a more efficient use of the item.

(3) Whenever it is administratively or economically impractical to develop or modify specifications because of the heterogeneous nature of the product lines.

(4) Whenever there is a need for compatibility with existing systems.

(b) *Invitation to bid.* Invitations to bid shall be issued for the goods and supplies to be purchased.

(c) *Public notice.* Public notice of the invitation to bid shall be given in the same manner as provided in § 69.4(c) (relating to competitive sealed bidding).

(d) *Bid opening.* Bids shall be opened in the same manner as provided in § 69.4(d).

(e) *Acceptance and award.* Bids shall be accepted and awards made to the lowest responsible bidder for goods and supplies of each designated manufacturer. If only one bid is solicited for goods and supplies of a particular manufacturer, the bid shall be submitted to the Board of Commissioners of Public Grounds and Buildings for approval or disapproval. The contract shall cover the periodic requirements of the Commonwealth for goods and supplies of each particular manufacturer. The number of goods and supplies purchased from a particular bidder shall be determined by the actual requirements of the Commonwealth as defined by the functional needs and space limitations of the individual agency and a comparison with prices of corresponding goods and supplies offered by other bidders.

(f) *Issuance of purchase order.* When an agency has a need for a particular good or supply which is the subject of a bid, it will issue a purchase order to the vendor offering the particular good or supply which the agency desires.

Cross References

This section cited in 4 Pa. Code § 69.3 (relating to methods of awarding contracts).

§ 69.6. Competitive sealed proposals.

(a) *Conditions for use.* The request for proposal procedure may be used if one or more of the following conditions exist:

(1) The contract is for goods or supplies for which no sufficient description or specifications can be developed which are sufficiently precise to enable all prospective suppliers to have an identical understanding of the requirement.

(2) The purchases are for highly perishable materials; for goods or supplies when the prices are established by law; for technical items or equipment or parts requiring standardization and interchangeability of parts with existing equipment or for experimental, developmental, or research work.

(3) Negotiation is otherwise authorized by applicable law or regulations.

(b) *Request for proposals.* Proposals shall be solicited through a request for proposals.

(c) *Public notice.* Public notice of the request for proposals shall be given in the same manner as provided in § 69.4(c) (relating to competitive sealed bidding).

(d) *Receipt of proposals.* Offerors shall submit their proposal in two separate packages. One package shall contain a technical description of the good or supply which is being offered in response to the request for proposals. The other package which shall be sealed shall contain the price.

(e) *Evaluation factors.* Relative importance of technical and price evaluation factors shall be fixed prior to opening the packages.

(f) *Award.* After the date and time fixed for submission of a proposal, the Committee shall proceed to open all packages containing the technical submittal of the good or supply which is being offered in response to the request for proposal. The Committee shall then review the description and assign a point value to it using the evaluation factors developed prior to opening the packages. The Committee shall then open packages containing the price and assign to it a point value. The Commonwealth will then enter into a contract with the responsible offeror whose proposal is determined to be the most advantageous to the Commonwealth based on the total point value obtained from the technical and price evaluation factors. No other factors or criteria may be used in the evaluation.

Cross References

This section cited in 4 Pa. Code § 69.3 (relating to methods of awarding contracts).

§ 69.7. Sole source procurement.

A contract may be awarded without competition when the Secretary determines that there is only one source for the required good or supply. Whenever only one

bid is invited, however, the bid and requisition shall be submitted to the Board of Commissioners of Public Grounds and Buildings for approval or disapproval.

Cross References

This section cited in 4 Pa. Code § 69.3 (relating to methods of awarding contracts).

§ 69.8. Emergency procurement.

Notwithstanding any other provision of this chapter, the Secretary may make or authorize other agencies to make emergency procurements when there exists an imminent threat to the public health, welfare or safety, or the urgency of the need does not permit the delay involved in utilizing more formal competitive methods. However, whenever practical at least two bids shall be solicited.

Cross References

This section cited in 4 Pa. Code § 69.3 (relating to methods of awarding contracts).

§ 69.9. Small purchases.

Provided the good or supply is not the subject of a requirements contract between the Department and a contractor, the Department may authorize in writing a department, board or commission to make purchases in the field, not exceeding the amount established in the Field Purchasing Manual of the Department, but records of the purchases shall be transmitted to the Department. These purchases shall be made from the lowest responsible bidder of at least two bidders.

Cross References

This section cited in 4 Pa. Code § 69.3 (relating to methods of awarding contracts).

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