



DATE: July 29, 2005

**INFORMATIONAL BULLETIN
ADMIN 05-12**

TO: State Agency Heads

FROM: Dana B. Badgerow
Commissioner

SUBJECT: Consideration of price in awarding and negotiating professional/technical contracts

Background:

Professional/technical contracts entered into by state agencies under the authority of Minnesota Statutes, section 15.061 are awarded subject to the state's "best value" statute (section 16C.06, subd. 6), which provides:

"Awards must be based on best value, which includes an evaluation of price, and may include other considerations including, but not limited to, environmental considerations, quality, and vendor performance. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors."

Based on these legal requirements, standard solicitation documents list agencies' intended evaluation criteria, with an indication to prospective contractors as to their relative importance. Historically, price has often been a subordinate factor, with agencies placing significantly more emphasis on a contractor's qualifications, experience, and proposed work plan.

Professional/technical services are acquired using a request for proposal ("RFP") process as opposed to requesting bids. A significant feature distinguishing these two processes is the ability to negotiate proposals received in response to an RFP. It is such an important distinction that it is embedded in the definition under Minnesota law (section 16C.02, subd. 12) which reads:

"...RFP means a solicitation in which it is not advantageous to set forth all the actual, detailed requirements at the time of solicitation *and responses are subject to negotiation.*" (Emphasis added).

The Drive to Excellence recommendations identified professional/technical contracting as a significant area for reform, and one that has the potential to yield significant savings for the state if we refocus our efforts. In early April of this year, Governor Pawlenty confirmed these opportunities and issued Executive Order 05-07 which reads in part:

“All vendor selection evaluations conducted under Minnesota’s ‘best value’ statutes must consider price to be of significant importance, as prescribed by the Commissioner, unless otherwise provided by law.”

Policy:

It is the policy of the State of Minnesota to evaluate cost as a significant factor in “best value” determinations and assertively to negotiate pricing with its selected vendors. The cross-agency Drive to Excellence Sourcing Steering Committee has reviewed our policies and practices in this regard and recommends this new approach as reflected in this policy.

Based on Governor Pawlenty’s directive and the new state policy, the following changes to state procurement practices are established effective August 1, 2005:

1. When conducting an evaluation process where all responsive responders are scored based on their technical response and pricing, and all responsive responders will be eligible for contract award, price must comprise a minimum of 30 percent of the total available points. Agencies will be diligent in creating pass/fail minimum requirements in order to ensure that qualified contractors are selected.
2. When conducting a multi-tiered evaluation process (one where, after an initial evaluation of the technical proposals is complete, a short-list of the most qualified responders is identified and only that selected group of responders is eligible for award), price must comprise a minimum of 40 percent of the total available points.
3. In the event that an agency determines that a given procurement requires an exception to this minimum weighting of price as an evaluation factor, it will submit a written request for an exception, including its rationale, along with its contract certification form to the Department of Administration’s contract review staff. If federal laws or regulations require a procurement process that is inconsistent with these requirements, a blanket waiver applicable to those transactions will be approved.
4. State statutes allow the use of reverse auctions to obtain professional/technical services from computer consultants. In the event that a reverse auction is utilized as the only sourcing tool to establish price, these requirements do not apply. However, if the agency is conducting a complete paper process followed by a reverse auction (and reserving the right to award based on either method), these requirements do apply.
5. The Department of Administration will embark on a campaign through its normal communication channels and training events to reemphasize the expectation that price will be ambitiously negotiated as a routine step in the RFP and award process. Agencies will be expected to demonstrate these efforts and report successes upon request. Agencies are encouraged to assure that those in their agencies responsible for entering into professional/technical contracts are adequately trained in negotiation tactics and skills.

If you have questions regarding this policy or its implementation, please contact Kent Allin (Materials Management Director/Chief Procurement Officer) at 651.296.1442 or Betsy Hayes (Materials Management Staff Attorney) at 651.296.5942.