

HB 1260

State RFP Process For Professional Services Contracts

Presented to Public Works Committee

By

City Attorney Jason Green

HB 1260

- Added 8 sections to SDCL Chapter 5-18.
 - Competitive bidding and exemptions chapter.
- Defined “Professional Services” for purposes of the 8 new sections of Chapter 5-18:
 - “arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor or skill and the labor or skill is predominantly mental or intellectual, rather than physical or manual.”

Applies to Certain State Contracts

- Applies only to contracts of state agencies;
- Applies only to contracts for professional services over \$50,000.00;
- For professional services contracts over \$50,000.00, requires agency to publish a Request For Proposals (RFP) on the Bureau of Administration's electronic procurement system.

Evaluation Criteria

- The RFP must include the relative importance of the evaluation criteria and must include the following criteria:
 - (1) Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
 - (2) Resources available to perform the work, including any specialized services, within the specified time limits for the project;
 - (3) Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;

Evaluation Criteria

- Evaluation Criteria
 - (4) Availability to the project locale;
 - (5) Familiarity with the project locale;
 - (6) Proposed project management techniques; and
 - (7) Ability and proven history in handling special project constraints.

Selection Process

- Requires the agency and highest ranked contractor to mutually:
 - Discuss and refine the scope of services for the project;
 - Negotiate terms, including compensation and performance schedule.

Selection Process

- Compensation level shall be “reasonable and fair to the agency, as determined by the agency.”
- If agency is unable to negotiate a contract at a compensation level that is “reasonable and fair”, the agency terminates negotiations and begins negotiating with next highest ranked contractor.

Record Keeping

- Requires a register of proposals to be prepared & maintained by any agency issuing an RFP.
- Register must include names of all persons whose qualifications were considered and the name of person to whom contract was awarded.
- Contract & documentation of the basis for the contract are public (except for proprietary information).
- Information about unsuccessful proposers is confidential.

Exceptions

- No RFP Required When:
 - Sole source (uniqueness of service or sole availability at the location);
 - Emergency services necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk;
 - Services subject to federal law, regulation or policy or state statute;

Exceptions

- No RFP Required When:
 - Services for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;
 - Services involving state or federal financial assistance passed through by a state agency to a political subdivision;
 - Medical services & home & community-based services;

Exceptions

- No RFP Required When:
 - Services by or for another state agency;
 - Contracts with a local government agency for providing services to the public;
 - Services to be provided by entertainers for the state fair and other events.

Other Provision

- Provides a time extension for an agency required to make certain decisions if the agency is required to use the new RFP process.

Summary

- Generally requires RFP process for professional service contracts over \$50,000.00 by state agencies;
- Does not apply to municipalities;
- Price and cost data of prior projects as well as cost control ability are considered as a portion of one of seven mandatory evaluation criteria;
- Weight to be given to each criteria is set by agency in RFP;

Summary

- Actual cost and the scope of services are negotiated after proposers are ranked;
- Agencies are required to keep register of proposals;
- Laundry list of exceptions to this process.

Questions?