

## **ADVERTISING**

### **WHAT ARE THE ADVERTISING REQUIREMENTS FOR PROCUREMENTS?**

Department of General Services policy requires the advertisement of all Commonwealth agency procurements over \$10,000 on the DGS website. In addition, the procurement can be:

- 1) Advertised as provided for in 45 Pa.C.S. §306 (relating to use of trade publications).
- 2) Published in a newspaper of general circulation.
- 3) Published in the PA Bulletin.

Other acceptable methods include:

- 1) Issuance to suppliers on the solicitation mailing list of the purchasing Agency.
- 2) Where pre-qualification is a requirement of submitting a bid, notification to all contractors who have been pre-qualified by the purchasing Agency.

## **AWARDS**

### **IS THERE A TIME LIMIT ON AWARDING AN IFB?**

By law, a contract must be awarded within 60 days of the bid opening. The 60 day time limit may be extended by mutual written consent of the contracting officer and the lowest responsible and responsive bidder. Refer to Procurement Handbook, Section I, Chapter 6 – Methods of Awarding Contracts, Subsection 6 – Award

### **CAN A CONTRACT BE AWARDED IF ONLY ONE BID IS RECEIVED?**

Yes, provided the applicable solicitation procedures were properly followed.

### **IF A SUPPLIER SUBMITS A BID AND NEVER RECEIVES NOTIFICATION OF AWARD, HOW DOES IT FIND OUT WHOM THE CONTRACT WAS AWARDED TO?**

All DGS contract awards are posted on the DGS website.

## **BEST VALUE**

### **WHAT DOES "BEST VALUE" MEAN AND HOW IS AN AWARD ON AN IFB MADE ON THAT BASIS?**

An IFB can be used to solicit bids for a multiple award contract. Award is made to multiple responsible and responsive bidders. Best value is the criteria which agencies use in selecting a contractor from a multiple award contract.

## **BID PROTESTS**

## **WHAT CAN AN AGENCY DO TO REMAIN OPERATIONAL WHEN A PROCUREMENT IS HELD UP BY A BID PROTEST?**

If a timely protest has been filed (consult with agency legal counsel), the Agency cannot proceed further with the solicitation of bids or the award of the contract and must suspend performance under any awarded contract unless the Agency makes a written determination that either:

- a) The protest is clearly without merit or
- b) Award of the contract without delay is necessary to protect the substantial interests of the Commonwealth.

In addition, all protest decisions must be made within 60 days in order to not delay the procurement. Subsequently, if the current contract expires, and the urgency of need is great, an Emergency Procurement Request should be requested to maintain required services.

## **CANCELLATION OF CONTRACTS**

### **WHAT IS THE PROCESS TO CANCEL A CONTRACT AFTER IT HAS BEEN BID AND AWARDED? AND HOW CAN A SUPPLIER GO ABOUT GETTING COMPENSATED FOR ANY WORK THEY MAY HAVE DONE PRIOR TO THE CANCELLATION OF THE CONTRACT?**

All contracts should have a termination clause that gives the Commonwealth the right to terminate a contract for a variety of reasons, i.e., default, lack of funds, convenience, etc. Unless the termination is for default, the contractor would be entitled to be compensated for all work that was satisfactorily performed up to the date of termination. Purchasers should consult with Agency counsel prior to taking any action to terminate a contract.

## **CONTRACTOR RESPONSIBILITY**

### **IS AN AGENCY REQUIRED TO ACCESS THE COMMONWEALTH CONTRACTOR RESPONSIBILITY FILE TO ASCERTAIN A CONTRACTOR'S STATUS PRIOR TO ISSUING A PURCHASE ORDER AGAINST A DEPARTMENT OF GENERAL SERVICES STATEWIDE CONTRACT?**

No, the Agency is not required to access the Commonwealth Contractor Responsibility File prior to issuing the purchase order. The Department of General Services accessed the Commonwealth Contractor Responsibility File prior to award of the statewide contract to the contractor.

Agencies are required, however, by Paragraph 9.b.(2)(B) of Management Directive 215.9 Amended to check the Commonwealth Contractor Responsibility File prior to processing any invoice (or other document for payment) in excess of \$10,000.00 to determine whether the contractor owes a state tax or other liability to the Commonwealth. (Invoices processed in the Commonwealth's SRM system are checked automatically.) If the check discloses a state tax or other liability, the Agency should notify the contractor that the Commonwealth will offset any amounts owed pursuant to the offset provision in the contract.

**WHEN AN AGENCY EXPERIENCES PERFORMANCE PROBLEMS WITH A CONTRACTOR UNDER A DEPARTMENT OF GENERAL SERVICES' STATEWIDE CONTRACT OR DEPARTMENT OF GENERAL SERVICES' PURCHASE ORDER, SHOULD THE AGENCY OR THE DEPARTMENT OF GENERAL SERVICES MAKE AN ENTRY INTO THE CONTRACTOR RESPONSIBILITY PROGRAM FILE ?**

All entries in regard to deficient performance under Department of General Services' statewide contracts and Department of General Services' purchase orders should be made by the Department of General Services and not the using Agency since it is a Department of General Services' contract or purchase order for which the Department has acted as the Agency's purchasing agent.

The Agency should contact the Department of General Services' Commodity Specialist for the contract or purchase order when a significant performance problem arises. Other agencies may be having similar problems with the contractor either on the same contract or on a different contract or purchase order. The Department of General Services may want to pursue enforcement of the contract or purchase order(s), terminate for default or consider debarment action because of the contractor's deficient performance.

**MAY AN AGENCY BUY FROM A CONTRACTOR WHO HAS A POOR PERFORMANCE ENTRY IN THE CONTRACTOR RESPONSIBILITY PROGRAM?**

Unless a contractor has been suspended or debarred, an entry in the CRP file does not, in and of itself, prohibit buying from the contractor. When an Agency discovers a poor performance entry in the Contractor Responsibility Program file, it is obligated to gather all the facts and make a determination as to whether the contractor is "responsible" for each procurement. A contractor's bid or proposal may be rejected if the Agency determines that the contractor is not responsible for that procurement.

**HOW CAN A CONTRACTOR BECOME AWARE OF, VIEW, OR CONTEST ANY ENTRIES MADE BY AGENCIES FOR THE CONTRACTOR ON THE CONTRACTOR RESPONSIBILITY PROGRAM FILE ?**

Agencies are not required to advise contractors when an entry is made in the Contractor Responsibility Program file. The information in the Contractor Responsibility Program file is just that, information only. However, when an agency rejects a bidder or offeror as non-responsible, terminates a contract for default, or suspends or debar a contractor, the contractor is entitled to request a copy of the information in the CRP file concerning the contractor.

**DELEGATION**

**TO WHOM DO I ADDRESS REQUESTS FOR DELEGATION TO HANDLE THE PROCUREMENT OF SERVICES OR SUPPLIES THAT EXCEED THE ESTABLISHED THRESHOLDS FOR AGENCY PROCUREMENTS?**

The Agency must submit a written request to the Chief Procurement Officer (or designee) within the Department of General Services, Bureau of Procurement.

## **EMERGENCY PROCUREMENTS**

### **HOW LONG ARE DGS APPROVED EMERGENCY PURCHASES OF SERVICES VALID?**

Unless otherwise identified in the approval, emergency purchases are valid for 90 days.

### **HOW WILL EMERGENCY PROCUREMENTS BE HANDLED?**

Emergency procurements of materials, services, and construction over \$10,000 require pre-approval by DGS. If the nature or time of the emergency would not permit prior contact with DGS or proper DGS officials are not available, the Agency may proceed with the procurement but must contact DGS as soon as practicable. Whenever practical, at least two bid shall be solicited for emergency purchases of supplies. All emergency procurements should be preceded by a review of the Contractor Responsibility System, where practical. A written determination of the basis for the emergency and for the selection of the particular contractor shall be sent to DGS and included in the contract file. A form for the Agency to use in preparation of the written determination is provided on the DGS Website.

## **LEASING**

### **IF AN AGENCY LEASES EQUIPMENT CAN THEY BUY THAT EQUIPMENT AT THE END OF THAT LEASE?**

If there is buy out language in the lease agreement, the Agency can exercise the purchase option. If not, the Agency will have to return the equipment to the contractor and seek competitive bids for the equipment or justify a sole source purchase for that particular equipment. Fixed asset funding may be required for this procurement.

## **LENGTH OF CONTRACT TERMS**

### **IS THE COMMONWEALTH ALLOWED TO ENTER INTO MULTI-YEAR CONTRACTS?**

Yes. A contract for materials, construction, or services may be entered into for a period of time deemed to be in the best interest of the Commonwealth. However, any term exceeding five years requires approval by the Department of General Services Bureau of Procurement, Chief Procurement Officer (or designee).

## **MATERIAL OR SERVICE**

### **IS SOFTWARE TO BE PURCHASED AS A SERVICE OR MATERIAL?**

In accordance with Act 57, software is considered a material. It should be purchasing using the procedures for procurement of materials set forth in the Procurement Handbook. The purchase of software installation, maintenance or training may be done as part of the software purchase. A software license agreement is a material purchase.

### **WHAT IS THE PROCEDURE FOR PROCESSING A PURCHASE THAT INCLUDES A MATERIAL AND SERVICES?**

In order to answer this question, agencies must ascertain the primary purpose or goal of the procurement. A contract for the repair of equipment is a service contract. A contract for the equipment itself with a maintenance plan would be a material purchase. The separate purchase of a particular part or equipment needed for agency-performed maintenance is also a material purchase.

Examples:

- 1) Snow plowing and salting @ \$25.00/hour plus salt @\$5.00/bag - process as a "service purchase";
- 2) Washing machine @ \$350.00 plus maintenance and repair service @ \$30.00/hour - process as a "material" purchase.

### **IF AN AGENCY LEASES EQUIPMENT, FURNITURE OR MACHINERY, IS IT CONSIDERED A MATERIAL OR A SERVICE?**

The form of acquisition (purchase, lease, installment purchase, lease with purchase option, etc) does not change the identity of the item to be procured (material, service or construction). If the Commonwealth is acquiring possession and control of tangible personal property, such as equipment, furniture, machinery, or materials, it remains a "material" for purposes of the Commonwealth Procurement Code and Commonwealth Agency procurement.

## **MULTIPLE AWARDS**

### **WHEN CAN MULTIPLE AWARD CONTRACTS BE USED?**

Multiple award contracts may be entered into when the head of the purchasing Agency determines that one or more of the following criteria has been met:

- 1) It is administratively or economically impractical to develop or modify specifications for a myriad of related materials because of rapid technological changes.
- 2) The subjective nature in the use of certain materials and the fact that recognizing this need creates a more efficient use of the item.
- 3) It is administratively or economically impractical to develop or modify specifications because of the heterogeneous nature of the product lines.
- 4) There is a need for compatibility with existing systems.
- 5) The Agency should select the contractor to furnish the material, service or construction based upon best value or return on investment.

## **PREVAILING WAGES**

### **DOES THE PENNSYLVANIA PREVAILING WAGE ACT REQUIRE CONTRACTORS TO PAY PREVAILING WAGES FOR WORK PERFORMED IN A COMMONWEALTH-OWNED BUILDING?**

To the extent the contracted services are considered "public work", the Prevailing Wage Act applies. In determining whether the work will be subject to the Prevailing Wage Act, these are the key questions:

- 1) Will the work or items installed become part of the real property?
- 2) Can the work or items be removed without injuring or destroying the item or the real property?

If it becomes a part of the real property and/or if it cannot be removed without injuring or destroying the item or the real property then the Prevailing Wage Act would apply.

**THE PROCUREMENT HANDBOOK HAS CONTRADICTIONARY LANGUAGE REGARDING WHOSE RESPONSIBILITY IT IS TO OBTAIN THE PREVAILING WAGE RATES FROM THE DEPARTMENT OF LABOR AND INDUSTRY. WHOSE RESPONSIBILITY IS IT?**

The Purchasing Agency (which is the agency that will issue the solicitation) is required to obtain the prevailing wage rates from the Department of Labor and Industry and to include them with the solicitation. For Agency construction projects where DGS acts as the Purchasing Agency, DGS is responsible for obtaining the PWR.

## **RENEWALS AND EXTENSIONS**

**CAN I PROCESS AN AMENDMENT TO EXTEND A CONTRACT WITH NO FURTHER RENEWALS?**

The only way to extend a contract which has no further renewal options or extensions is through an amendment. However, such an amendment would have to be processed as a sole source procurement. These types of amendments (to significantly extend the contract term) are strongly discouraged.

**IF AN AGENCY WANTS TO RENEW AN AGENCY CONTRACT, THAT CONTAINS RENEWAL LANGUAGE, DOES IT REQUIRE DGS-BUREAU OF PROCUREMENT APPROVAL?**

No. It is not necessary to obtain the approval of the Department of General Services.

## **REPORTING**

**DO I HAVE TO REPORT ALL OF MY PROCUREMENTS TO DGS?**

Agencies are required to report all procurements to DGS as requested by DGS. However, Agencies are required to maintain records of all procurements for a minimum of three (3) years. If an agency uses SRM, there are no separate reporting or contract maintenance requirements.

## **REQUEST FOR PROPOSALS**

**MAY AN AGENCY PROVIDE INFORMATION TO A SINGLE OFFEROR WITHOUT PROVIDING THE SAME INFORMATION TO ALL OFFERORS?**

No. After the RFP is issued, the Commonwealth cannot supply information in response to a question solely to the offeror who asked the question even if the offeror is requesting

certain information to develop a response for a creative solution to the RFP. The information must be provided to all offerors. If an offeror wants to offer a creative in its solution, but is not sure that such a solution would be acceptable to the Commonwealth, the offeror can offer alternative solutions in its proposal if allowed by the RFP.

**AFTER DELEGATION, DOES DGS BUREAU OF PROCUREMENT NEED TO SEE A DRAFT COPY OF THE RFP THAT AN AGENCY WANTS TO ISSUE?**

No. However, agencies are required to use the RFP template, posted on the DGS website, unless using Document Builder through SRM. Agencies should comply with any other conditions contained in the delegation.

## **REQUEST FOR QUOTATION**

**MUST THE QUOTES SUBMITTED IN RESPONSE TO A REQUEST FOR QUOTE (RFQ) PROCESS UNDER AN ITQ/MULTIPLE AWARD STATE CONTRACT BE SEALED OR CAN THE QUOTES BE SUBMITTED ELECTRONICALLY OR BY FAX EQUIPMENT?**

It is not a statutory requirement that quotes submitted in response to an RFQ be sealed. The contract should provide specific procedures on the manner through which quotes are to be submitted to ensure the integrity of the process.

**MUST BID OPENING FOR RFQS (UNDER AN ITQ/MULTIPLE AWARD) BE PUBLIC? WHAT ARE THE REQUIREMENTS FOR POSTING RESULTS?**

It is not a "bid opening." The Agency is requesting quotes, not bids. It is a best value selection process and not a contract award process. There is no statutory requirement for a public opening or a posting of the quotes received. However, agencies should follow the procedures established for the contract for the handling and evaluation of the quotes to ensure the integrity of the process.

## **ROLES AND RESPONSIBILITIES**

**WHAT ARE DGS'S RESPONSIBILITIES UNDER THE COMMONWEALTH PROCUREMENT CODE?**

DGS is responsible for the formulation of procurement policy governing the procurement, management, control and disposal of materials, services and construction for executive and independent Agencies (see the Procurement Handbook for exceptions). DGS has the power and duty to procure or supervise the procurement of all materials, services and construction requisitioned by executive agencies and those independent agencies for which the Department acts as the purchasing agency. DGS is also responsible for approving any trade-in of equipment toward agencies' purchases of new equipment.

**WHAT IS THE ROLE OF THE COMPTROLLER?**

The Comptroller reviews and approves all purchase orders and contracts for services and purchase orders for supplies over \$10,000 for fiscal responsibility, budgetary appropriateness, and availability of funds. The Comptroller review occurs for executive Agencies and for those independent agencies and state-affiliated entities for which the

Office of the Budget acts as Comptroller. The Comptroller's review focuses on whether the Agency has sufficient funds and whether the agency is utilizing the correct funding source. In addition, the Comptroller may serve as a voting or non-voting member on Request for Proposal (RFP) evaluation committees. The Comptroller does not establish procurement policy. However, the Budget Office will assist with enforcing procurement policy established by DGS.

#### **WHO SHOULD I CALL WHEN I HAVE A QUESTION ABOUT PROCUREMENT?**

All questions dealing with procurement should be directed to the DGS Bureau of Procurement. Questions dealing with fiscal responsibility, budgetary appropriateness and the availability of funds should be directed to the Office of the Budget, Comptroller Operations.

#### **WHAT IS THE ROLE OF THE DGS BUREAU OF SMALL BUSINESS OPPORTUNITIES (BSBO)?**

Pursuant to Executive Order 2004-6, the Bureau of Small Business Opportunities is empowered to assist minority and women-owned businesses and other disadvantaged businesses. In sum, BSBO's mission is:

1. To develop and implement policy initiatives to substantially increase contracting and subcontracting opportunities for minority and women-owned businesses and other disadvantaged businesses in the Commonwealth's procurement of materials, services, and construction;
2. To centrally manage Commonwealth information, policies and procedures pertaining to minority and women-owned business and other disadvantaged business;
3. To expand the pool of certified minority and women-owned businesses;
4. To enforce compliance with the minority and women-owned business program by both businesses and Commonwealth agencies;
5. To make investigations and reports relating to the administration of the minority and women-owned business program; and
6. To request all such information or assistance as may be necessary, for carrying on the duties and responsibilities provided in the above-referenced Executive Order from any, Federal, State, or Local Government Agency or unit thereof.

#### **WHAT IS AN "EXECUTIVE AGENCY"?**

An executive agency is the Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any independent agency or State-affiliated entity.

#### **WHAT IS AN "INDEPENDENT AGENCY"?**

An independent agency is a board, commission, or other agency or officer of the Commonwealth which is not subject to the policy supervision and control of the Governor. The term does not include any State-affiliated entity, any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any local, regional or metropolitan transportation authority.

#### **WHAT IS A "STATE-AFFILIATED ENTITY"?**

The Commonwealth Procurement Code created a new category of Commonwealth Agency - "state-affiliated entity". State-affiliated entities may formulate their own procurement policy and may act as their own purchasing agency. A state-affiliated entity is a Commonwealth authority or a Commonwealth entity. The term includes:

- 1) the Pennsylvania Turnpike Commission;
- 2) the Pennsylvania Housing Finance Agency (PHFA);
- 3) the Pennsylvania Municipal Retirement System (PMRS);
- 4) the Pennsylvania Infrastructure Investment Authority (PennVEST);
- 5) the State Public School Building Authority (SPSBA);
- 6) the Pennsylvania Higher Educational Facilities Authority (PHEFA); and
- 7) the State System of Higher Education (SSHE). The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any local, regional or metropolitan transportation authority.

## SECURITY

### **IS THERE A TIME LIMIT FOR RETURNING BID SECURITY?**

Yes. If an Agency requires bid security, the contracting officer shall, within 30 days of the bid opening, return the bid security to all but the lowest and next-to-lowest bidders under consideration for award.

## SMALL PROCUREMENTS

### **IS IT TRUE THAT AGENCIES DO NOT HAVE TO USE DGS STATEWIDE CONTRACTS FOR PURCHASES THAT COST LESS THAN \$5,000, EVEN THOUGH THE ITEM IS COVERED BY A DGS STATEWIDE CONTRACT?**

It depends on the minimum order amount for the specific contract. Therefore, it is necessary for agencies to check each contract to identify the minimum order amount. For an amount below the contract minimum order amount, agencies do not need to use the contract and the supplier is not obligated to honor contract pricing.

### **IS A PURCHASE ORDER NEEDED FOR PURCHASES UP TO \$5,000?**

Purchase orders are not required for purchases below \$5,000. However, if the item is covered by a contract, then the contract's ordering procedures must be followed.

### **WHEN PROCURING MATERIALS OR SERVICES EXCEEDING \$5,000 BUT NOT EXCEEDING \$10,000, HOW MANY BIDS AM I REQUIRED TO SOLICIT?**

At least three (either by e-mail, fax, or phone, etc.), including one from a minority business enterprise or women business enterprise, if available.

### **WHEN PURCHASING SERVICES OR MATERIALS EXCEEDING \$10,000 BUT NOT EXCEEDING \$250,000, HOW MANY BIDS AM I REQUIRED TO SOLICIT?**

There is no set number of bids. However, the bid opportunity must be advertised. You also may send a bid to all who request a copy, to small and disadvantaged businesses on the

solicitation mailing lists for the needed services, and to any other contractors identified by the Agency.

**FOR SMALL PROCUREMENTS WITH A TOTAL AMOUNT EXCEEDING \$5,000 BUT NOT EXCEEDING \$10,000, DOES A SEARCH OF SUPPLIERS' PRICING ON THE INTERNET OR IN MAGAZINES MEET THE DEPARTMENT OF GENERAL SERVICES' REQUIREMENTS FOR THE SOLICITATION OF QUOTES?**

Absolutely not. Researching prices in magazines and web sites and then making a copy of the pages does not constitute solicitation of quotes. Three suppliers must be contacted directly and provide actual quotes.

**IS THE \$5,000 DOLLAR THRESHOLD FOR SMALL, NO- BID PROCUREMENT ALSO THE ANNUAL LIMIT ON THE TOTAL DOLLAR AMOUNT OF NO- BID PROCUREMENTS FROM THE SAME SUPPLIER?**

No, there is no established yearly dollar limitation for small, no-bid procurements from the same supplier. Small procurements should not, however, reflect a pattern of repeated procurements from the same contractor. "If DGS finds a pattern of repeated use of the same contractor(s) without adequate justification, DGS may revoke delegations to the particular Agency." See Paragraph D.8. Of Chapter 6 of Part I of the Procurement Handbook. Decisions should be based on the then, known needs of the Agency.

## **SOLE SOURCE PROCUREMENTS**

**WHOSE APPROVAL IS REQUIRED FOR SOLE SOURCE PROCUREMENTS?**

Sole source procurement of materials over \$5,000 requires the approval of the DGS Chief Procurement Officer (or designee) and the Board of Commissioners of Public Grounds and Buildings. For services over \$5,000, only DGS approval is required.

**IS AN AGENCY REQUIRED TO SEEK SOLE SOURCE APPROVAL, INCLUDING THE COMPLETION OF THE SOLE SOURCE JUSTIFICATION FORM , BEFORE IT EXERCISES AN OPTION TO RENEW A CONTRACT WHICH WAS ORIGINALLY APPROVED AS A SOLE SOURCE?**

No, sole source approval of a contract includes all options to renew which were a part of the original request. There is no requirement for sole source approval of each renewal option as it is exercised.

## **STANDARD TERMS AND CONDITIONS**

**IF A CONTRACTOR REFUSES TO ACCEPT THE STANDARD, PRE -APPROVED CONTRACT TERMS AND CONDITIONS AS CIRCULATED BY THE DEPARTMENT OF GENERAL SERVICES CAN I NEGOTIATE REVISIONS AND ADDITIONS TO THOSE TERMS AND CONDITIONS IN ORDER TO PROCURE THE ITEM FROM THE CONTRACTOR?**

Yes, but only for sole source procurements, emergency procurements, and Requests for Proposals. If changes to the standard terms are made, the non-standard terms and

conditions box on the contract or purchase order must be checked and Agency counsel must determine that the revisions/additions are legally acceptable. By revising or adding to the standard terms and conditions, however, the contract or purchase order loses its status as a pre-approved form; therefore, the proposed contract or purchase order, which includes the revisions and additions to the standard terms and conditions, must be approved by the Office of General Counsel and the Office of Attorney General. In addition, if the revisions involve a change to The Americans with Disabilities Clause, Contractor Integrity Provisions, Non-Discrimination/Sexual Harassment Clause, Contractor Responsibility Provisions, or Offset Provision, a specific written waiver from the Office of General Counsel is required (and is unlikely to be granted).