

Part I Chapter 06

Methods of Awarding Contracts

A. Competitive Sealed Bidding.

1. Conditions for Use.

- a. Contracts must, as a general practice, be awarded through the competitive sealed bidding method of award.
- b. Competitive sealed bidding is the traditional and usual method of contractor selection. It is normally used when the supply, service, or construction can be satisfactorily described and price is the only factor to be considered in the award, after bidder responsibility is determined.
- c. There is limited discretion in the award process. Discretion is limited to:
 - (1) Discretion in determining bidder responsibility.
 - (2) Discretion in determining whether the bid is responsive.
 - (3) Discretion to reject all bids.

2. Invitations for Bids (IFBs).

- a. The document, either paper or electronic, which is issued for the solicitation of bid, is an IFB.
- b. The IFB must include:
 - (1) A procurement description.
 - (2) Criteria to determine acceptability, including instructions and information for bidders.
 - (3) Evaluation criteria.
 - (4) All contractual terms (whenever practical) and conditions applicable to the procurement; i.e., delivery or performance schedules, warranty, bonding, and security requirements.
 - (5) Signature page, unless the bid received via the Commonwealth's electronic procurement system.
- c. The procurement description is the words used in the solicitation to describe the supplies, services, or construction to be procured. The term includes the specifications. (The specifications must be attached to or made a part of the solicitation.)
- d. The criteria to determine acceptability may include: inspection, testing,

quality, workmanship, delivery, and suitability for a particular purpose.

- e. Evaluation criteria that will affect the price and be considered in the evaluation for the award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.
 - (1) No criteria may be used in the bid evaluation that is not set forth in the IFB.
 - (2) Life cycle cost is the total cost of the supply in terms of purchase price, installation costs, maintenance costs, energy costs, material cost, and other costs.
 - (3) Bidding preferences, such as the Reciprocal Limitations Act preference and the preference for products with recycled post consumer material are evaluation criteria.
- f. There are obvious disadvantages if all the contract terms and conditions are *not* included in the IFB including:
 - (1) Lengthier contract process.
 - (2) No meeting of the minds.
 - (3) Common standard is possibly changed.
- g. The IFB establishes the common standard upon which all bidders must submit their bids.

3. Public Notice.

- a. Adequate public notice must be given a reasonable time prior to the bid opening date.
 - (1) "Adequacy" of public notice is within the policy-making power and discretion of the purchasing agency.
 - (a) The acceptable methods of public notice include any of the following:
 - i. Electronic publication which is accessible to the general public.
 - ii. Advertisement as provided for in 45 Pa. C.S. 306 (relating to the use of trade publications).
 - iii. Issuance of IFBs to bidders on the solicitation mailing list of the purchasing agency.
 - iv. Publication in a newspaper of general circulation.
 - v. Where prequalification is a requirement of submitting a bid, notification to all contractors

directly serving the procurement activity.

- b.** Bids must be unconditionally accepted without alteration or modification except as authorized by law or in the IFB.
- c.** Bids must be evaluated based upon the requirements set forth in the IFB.
 - (1)** The purchasing agency must determine whether a bid is acceptable based upon the acceptability criteria in the IFB.
 - (2)** It is important to note that the acceptability evaluation is not documented for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the IFB.
 - (3)** The purchasing agency must also evaluate the bids in accordance with the evaluation criteria which may affect bid prices and the order of award (i.e., lifecycle cost).
- d.** In order to be acceptable, a bid must be responsive, that is, it must conform in all material respects to the requirements in the IFB.
 - (1)** A slight or immaterial variance from the terms and conditions or the specifications contained in the IFB does not destroy the competitive character of the bid so as to require rejection. Those errors which superficially deviate from normal practice do not taint an otherwise acceptable award if the discrepancy does not transgress the actual terms of the bid instructions.
 - (2)** The IFB should reserve the right for the purchasing agency to waive technical defects or informalities. Therefore, waiving a defect is not an automatic violation of competitive bidding. Instead, it must be determined whether the waiver of any defects will cause the competitive bidding process to be noncompetitive.
 - (3)** If the variance in bid gives the bidder an advantage or benefit not enjoyed by other bidders, competitive bidding is destroyed. Mandatory, competitive bidding requirements must be followed.
 - (4)** Post-bid negotiations are prohibited.
- e.** A bidder cannot modify its bid by removing exceptions to the bid instructions or by supplying missing documentation required by the bid instructions. Once a bid is opened, it cannot be modified.
- f.** Once a bid is determined to be nonresponsive, it may not be made responsive after bid opening notwithstanding the reason for the failure to conform. Responsiveness of a bid is determined as of bid opening time and must be determined from the bid itself not evidence outside of the bid documents.

6. Resolving Tie Bids.

- a.** In procurements where two or more responsive and responsible bidders have bid the exact same amount (as may be defined in the solicitation) for a line item (if the award is being made by line item) or for the entire bid (if the award is being made for all line items), the issuing officer must break the tie. Unless the solicitation provides for a special process to break a tie bid, the issuing officer shall notify the affected bidders of the tie and request a voluntary discount from them to be due at a specified date and time. If this does not resolve the tie or is not practical, the issuing officer may consider any or a combination of the following factors in order to break the tie:
 - (1)** One of the bidders is a Department of General Services Certified Small Business;
 - (2)** One of the bidders is a Pennsylvania bidder or a Pennsylvania manufacturer;
 - (3)** One of the bidders is offering a more advantageous delivery date;
 - (4)** One of the bidders' products has a greater recycled content;
 - (5)** The bidders' past performance with the Commonwealth;
 - (6)** Awarding to one of the bidders would equalize the awards resulting from the bid; and
 - (7)** Awarding to one of the bidders' offers an administrative advantage as the bidder will also be awarded other line items.
- b.** If none of the above options are practical or do not result in breaking the tie, the issuing officer may utilize a coin flip to resolve the tie. If this method is to be used, the issuing officer must notify the affected bidders no less than 48 hours prior to the coin flip to allow for the bidders or their designees to be present, if they so choose, to witness the coin flip. In addition, any coin flip will be open to the public.
- c.** The issuing officer shall document all steps taken in resolving the tie and include them in the contract file.

7. Award.

- a.** Award must be made within 60 days after bid opening. Extensions of the date for the award may be made by mutual written consent of the contracting officer and the lowest responsible and responsive bidder.
- b.** Award must be made to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids unless all bids are rejected or the lowest responsible and responsive bidder is allowed to withdraw his or her bid.

- (1) A "responsible bidder or offeror" is a person who has submitted a responsive bid or proposal and possesses the capability to perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.
 - (2) A "responsive bidder or offeror" is a person who has submitted a bid or proposal which conforms in all material respects to the IFB or RFP.
 - (3) "Lowest" is generally determined by price but can be defined by the evaluation criteria set forth in the IFB.
- c. The contracting officer may solicit a voluntary discount from the "lowest" responsible bidder **only** in an effort to obtain a lower price. If the bidder refuses to give a voluntary discount, this does not provide the contracting officer with grounds to reject the bid or to contact any other bidders and seek a voluntary discount.
 - d. Within 30 days of the bid opening, bid security, if required, must be returned to all but the lowest and next to lowest bidders then under consideration for contract award.
 - e. Once contracting officer has determined the lowest responsible and responsive bidder, a purchase order or contract shall be prepared. The contracting officer shall also issue a [Notice of Award](#) through eMarketplace when the contract or purchase order has been released into the electronic approval process.
- 8. Special Circumstances.** Where the Commonwealth terminates a contract and the termination is within a reasonable time of the receipt of bids and the next lowest responsible bidder is willing to enter into a contract at the bid price the next lowest responsible bidder originally submitted, no rebidding is necessary. Prior to awarding the contract, the purchasing agency should determine that the contractor and subcontractors required to be disclosed or approved by the Commonwealth continue to be responsible in accordance with [Management Directive 215.9, Contractor Responsibility Program, Amended](#).
- 9. Multi-Step Sealed Bidding.**
- a. This variation of the competitive, sealed bidding method of award may be used when it is considered impractical to prepare initially a procurement description to support an award based upon price.
 - b. The process requires the issuance of an IFB requesting the submission of unpriced offers.
 - c. Under the second phase of this process, a second IFB is issued but only to those whose offers have been qualified under the criteria set forth in the first solicitation.

B. Competitive Sealed Proposals.

1. Conditions for Use.

- a. An agency may use the competitive sealed proposal method, generally referred to as the Request For Proposals (RFP) process:
- b. When the contracting officer determines that the use of competitive sealed bidding is either not practicable or advantageous to the Commonwealth.
 - (1) "Practicable" denotes what may be accomplished or put into practical application. It is not practicable to use competitive sealed bidding when the purchasing agency:
 - (a) Is seeking a contractor's solution to a purchasing agency need;
 - (b) Wants to give the offerors flexibility in the contents of their proposals in terms of the materials, services, or construction offered; or
 - (c) Has difficulty preparing a detailed procurement description.
 - (2) "Advantageous" connotes a judgmental assessment of what is in the purchasing agency's best interest. Key elements in determining advantageousness are the desire to consider criteria other than price in the award process and, in particular, criteria that are subjective in nature.
- c. The agency must complete [Form BOP-124, Determination to Use Competitive Sealed Proposals \(RFP\) Method of Procurement](#), to document the justification for use of this procurement method. The completed form must be submitted to DGS along with the Notice of Forthcoming Procurements. The requesting Agency should retain a copy of the BOP-124 as part of the contract file.
 - (1) The Issuing Office must post the completed Form BOP-124, Determination to Use Competitive Sealed Proposals (RFP) Method of Procurement, with the solicitation when issued.

2. Issuing Office Responsibilities.

The Issuing Office:

- a. Drafts the RFP.
- b. Establishes a checklist identifying mandatory requirements.
- c. Fixes the qualitative evaluation criteria and weights for evaluating proposals, and prepares scoring sheets for the evaluation committee's use prior to the opening of proposals.
- d. Selects the members of the evaluation committee.

- e. Acts as the sole point of contact for questions about the RFP.
- f. Conducts a preproposal conference, if desired.
- g. Screens all proposals received to ensure that they meet mandatory requirements and are responsive.
- h. Ensures that all evaluation committee members have signed an [RFP Evaluation Committee Certification of Confidentiality and No Conflict of Interest form](#). *Note: legal counsel to the evaluation committee is not required to sign the form.* Reviews signed forms and directs any question/exception/unchecked box/disclosure to the DGS Office of Chief Counsel Legal Purchasing Unit for advice.
- i. After receipt of the signed RFP Evaluation Committee Certification of Confidentiality and No Conflict of Interest form from each member of the evaluation committee, distributes copies of the technical submittals to evaluation committee members.
- j. Forwards copies of the Small Diverse Business participation (SDB) submittals to the Department of General Services Bureau of Small Business Opportunities (BSBO) for scoring.
- k. Performs a Contractor Responsibility Program (CRP) system check of each offeror and respective subcontractors required to be disclosed or approved by the Commonwealth; attempts to resolve any obligations or liabilities in accordance with Management Directive 215.9 Amended.
- l. Reviews and scores the cost submittals received.
- m. Requests clarification of proposals from offerors as determined necessary to ensure responsiveness to the solicitation and thorough understanding of the proposals.
- n. Collects all SDB and Technical scores; calculates total scores (including cost scores) for each proposal, and ranks proposals accordingly.
- o. Makes a determination of offerors' responsibility in accordance with Management Directive 215.9 Amended and Part I Chapter 14 of this handbook.
- p. Decides whether to solicit Best and Final Offers and, if desired, requests Best and Final Offers from offerors, consistent with the terms of the RFP.
- q. Conducts pre-selection negotiations, if desired, consistent with the terms of the RFP.
- r. Prepares and submits the recommendation for contractor selection to the contracting officer.
- s. Upon selection, conducts contract negotiations.

- t. Issues notices to offerors, including notices of selection for contract negotiations and notices of award.
- u. Schedules and conducts any requested debriefing conferences.

3. Evaluation Committee.

- a. The evaluation committee should be composed of a minimum of three (five or seven is recommended) Commonwealth employees who possess technical and managerial expertise in the appropriate field. Normally the evaluation committee should be chaired by the Issuing Officer, who should be a non-voting member of the committee. An agency should highly consider including individuals from other agencies who possess expertise in a product or service being procured to serve on the evaluation committee as a voting or non-voting member. An agency is required to invite its comptroller to participate as a non-voting committee member. Once appointed to the committee, no committee member, whether voting or non-voting, may meet or discuss the RFP or related matters with offerors or other committee members except in formal, scheduled meetings of the committee or as the issuing office may direct and arrange. *Note: Commonwealth attorneys who serve as voting members on evaluation committees may lose the right to invoke the attorney-client privilege.*

b. Evaluation Committee Responsibilities. The Evaluation Committee:

- (1) Evaluates the technical merit of responsive proposals using the scoring sheets provided by the issuing office.
- (2) If clarification of a proposal is needed, communicates the need for clarification to the issuing office and assists the issuing office in communicating with those offerors whose proposals need clarification.
- (3) Reports to the issuing office, through the evaluation committee chairperson, the results of the evaluation committee's technical evaluation.
- (4) Keeps the proposals confidential, disclosing or discussing the information with no one (including other Commonwealth employees) except agency counsel or agency comptroller and in meetings of the evaluation committee.

4. Solicitation Document.

- a. Competitive sealed proposals are solicited through a Request for Proposals (RFP). Document Builder should be used to create the RFP. If Document Builder is not used, the agency must use the RFP template. The RFP template can be found on the DGS web site, Procurement, Forms Section.

- b. The RFP establishes the common standard that ensures fair and just competition among qualified offerors. RFPs should provide offerors with all information needed to prepare proposals that meet the using agency's needs. The agency should not disclose the amount of money available for the contract unless DGS has previously provided a written determination to allow the disclosure.
- c. The RFP consists of all documents, including those either attached or incorporated by reference, used to solicit proposals. An RFP, including all drafts, is confidential until public notice has been given.
- d. RFP format and content:

RFPs should be presented in the following five parts:

- (1) **Part I, General Information for the Offeror.** This part is used to inform offerors of the general conditions under which the RFP is issued. It should include a general description of the needed material, service or construction; the date of any preproposal conferences; the proposal response date; and information on the Commonwealth's commitment to small diverse businesses.
- (2) **Part II, Information Required from Offerors.** This part provides instructions on the format and nature of the information that offerors must provide in the proposal, including information on small diverse business participation and the requirement for separation of cost information from the technical submittal.
- (3) **Part III, Criteria for Selection.** This part states the factors, including technical, cost, and small diverse business participation, used to evaluate proposals. It establishes the relative importance of the selection criteria. A fair competition requires that all offerors understand the basis upon which the Commonwealth will make its selection. Only those factors or criteria stated in this Part shall be used to evaluate proposals. *Note: The weighting of the criteria must be fixed prior to opening the proposals.*
- (4) **Part IV, Work Statement.** This part is the most important portion of the RFP. Generally, the more precise and complete this part of the RFP is, the greater the probability of receiving proposals that meet the needs of the issuing office. Part IV should provide a detailed description of the needed materials, services, or construction. The Work Statement may include the objectives to be achieved; parameters of measurement; reporting requirements; and segmentation of the work into specific tasks.
- (5) **Part V, Contract Terms and Conditions.** When SAP Document Builder is used to create the RFP then the contract terms and conditions are automatically generated in Part V.

When the RFP template is used then the standard contract terms and conditions appropriate for the type of RFP being issued should be included in the RFP.

5. **Public Notice.** The purchasing agency shall give public notice of RFPs in the same manner used for the competitive sealed bidding method. The Issuing Office must provide potential offerors with sufficient time to prepare their proposals. Normally, no fewer than 30 calendar days should be allowed for submission of proposals.
6. **Issuance.** The RFP will be available for download from the DGS website in standard electronic format.
7. **Questions.** An offeror must submit questions regarding an RFP in accordance with the requirements noted in Part I of the applicable RFP document. Questions are due no later than the date indicated on the Calendar of Events and must be submitted in the appropriate format and using the proper method of submittal.
 - a. An offeror who submits a question after the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the commonwealth may not be able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal.
 - b. When submitted after the deadline date for receipt of questions on the Calendar of Events, the Issuing Officer may respond to questions of an administrative nature by directing the questioning Offeror to specific provisions within the RFP.
 - c. To the extent that the Issuing Officer decides to respond to a non-administrative question after the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all Offerors through an addendum to the RFP.
 - d. The issuing office must prepare and publish (by posting on the DGS website), no later than five business days prior to the proposal receipt date, written responses to all questions received before, during and after the preproposal conference. These answers constitute a formal amendment to the RFP.
8. **Preproposal Conference.**
 - a. If the agency desires a preproposal conference, the issuing office uses the opportunity to:
 - (1) Explain the background of the RFP to offerors who intend to submit a proposal;
 - (2) Emphasize portions of the RFP considered especially important;

- (1) Give the technical submittals to the evaluation committee chairperson for distribution to evaluation committee members;
 - (2) Retain the cost submittals;
 - (3) Forward the small diverse business participation submittals to BSBO; and
 - (4) Review and score the domestic workforce utilization certifications.
- f. The issuing office must perform a CRP check of each offeror and respective subcontractors required to be disclosed or approved by the Commonwealth. The date of confirmation should be recorded for future reference. The issuing office should attempt to resolve any obligations or liabilities in accordance with Management Directive 215.9 Amended. If an offeror is determined not to be responsible, then the offeror's proposal shall be rejected. If there is no contract award within three months of this confirmation, the agency should repeat the CRP check at the time of Commonwealth contract execution.
- g. Upon BSBO's request, the issuing office will brief BSBO on technical aspects of the RFP. The BSBO will supply the Small Diverse Business participation scores to the issuing office upon completion of BSBO's review and evaluation of the Small Diverse Business participation submittals. The entire proposal shall be made available to BSBO upon request.
- h. If the issuing office receives only one proposal, goes forward with an evaluation, and makes a determination to award the contract to the offeror who submitted the proposal, the purchasing agency must first request and receive cost or pricing data certification from the offeror. A sole source request is not necessary in this instance.

10. Evaluation.

The proposal evaluation procedure consists of six major steps.

a. Step 1—Proposal responsiveness.

- (1) In this step agency legal counsel and one other non-voting member of the evaluation committee (normally the Issuing Officer) determine whether the proposal meets the RFP requirements. No value judgment is made at this step in the evaluation.
- (2) If a proposal does not meet one or more RFP requirements that has been designated as "mandatory" the proposal must be rejected. Generally, there are at least two "mandatory" requirements: the proposal must be timely submitted, and the proposal must be signed by the offeror. The purchasing agency

may add other mandatory requirements, but should consider the consequences (absolute rejection with no discretion to consider) before adding other mandatory requirements.

- (3) If a proposal does not meet an RFP term that is not labeled as “mandatory,” it should be evaluated under Step 2 of this procedure only if the issuing office determines, after consulting with agency legal counsel, that the deficiency is a technical, waivable defect. If the variance gives the offeror a competitive advantage over other offerors or has an adverse effect on what is or will be received by the Commonwealth, the deviation is material and the proposal must be rejected.
- (4) The offeror should be informed immediately if the agency determines that a proposal must be rejected. The agency shall document all reasons for the rejection of a proposal so the issuing office, if requested, can debrief the offeror.

b. Step 2—Preliminary Evaluation.

- (1) The evaluation committee scores and ranks the responsive technical submittals based on the criteria listed in the RFP. To reduce the subjective factor and ensure that each voting member of the evaluation committee applies reasonably consistent judgment to each proposal with respect to all other proposals and voting members of the evaluation committee, all evaluators must use the uniform evaluation score sheet prepared by the issuing office (see subsection B.3. of this chapter).
- (2) BSBO evaluates the Small Diverse Business participation and provides the issuing office with a score for each proposal.
- (3) The issuing office will review and score domestic workforce utilization.
- (4) Agencies that require an analysis of a supplier’s financial capability as part of an RFP evaluation are required to utilize the services of the Office of Budget, Bureau of Commonwealth Accounting. The financial analysis will include a review of the entity’s previous three financial statements, calculating and analyzing various financial ratios, and comparing the information against industry standards and trends. Upon completion of the review a recommendation, including some key financial information will be provided to assist the agency in determining if the entity should be included or excluded from the procurement process for financial reasons.

c. Step 3—Discussions for Clarification.

- (1) The evaluation committee may ask the issuing office to seek clarification from an offeror to assure full understanding of and responsiveness to the RFP. Requests for clarification generally

occur during the evaluation committee's preliminary evaluation but may occur anytime prior to contract execution.

- (2) The offeror may not materially alter or add to its proposal after the opening; any changes must be in the nature of clarifications. The issuing officer, on behalf of the evaluation committee, shall make all contacts with the offeror, in writing. Each offeror contacted will be requested to respond in writing, making reference to specific paragraphs or sections of its proposal needing clarification.

d. Step 4—Cost Evaluation.

- (1) The issuing office reviews and ranks—in order of lowest to highest—the cost submittals that meet the RFP requirements.

e. Step 5—Best and Final Offers.

- (1) **Usage.** To the extent provided in the RFP, the issuing office may conduct discussions and negotiations with offerors for the purpose of obtaining best and final offers.

- (a) Those offerors, which the issuing office has determined to be not responsible or whose proposals the issuing office has determined to be not responsive, shall not be invited to participate in the Best and Final Offers process.

- (b) In order for an offeror to participate in the Best and Final Offers process, the issuing office must determine that the submitted and gathered financial and other information of the offeror demonstrates that the offeror possesses the financial and technical capability, experience and qualifications to assure good faith performance of the contract.

- (c) In order for an offeror to participate in the Best and Final Offers process, the score for its technical submittal of the proposal must be greater than or equal to 70% of the total amount of technical points allotted to the technical criterion for selection.

- (d) The issuing office may further limit participation in the best and final offers process to those remaining responsible offerors which the issuing office has, within its discretion, determined to be reasonably susceptible of selection.

- (e) The issuing office may give offerors the opportunity to revise the technical, cost or small diverse business participation submittal or two of the three submittals or all of their submittals at this stage of the procurement.

(f) It is imperative that offerors selected to submit a best and final offer be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

(2) **Procedure.** The issuing office will send a letter only to those offerors deemed eligible to participate using the criteria above. The letter will invite eligible offerors to improve one or more of their submittals - technical submittal, cost submittal or small diverse business participation submittal. To obtain best and final offers, the issuing office may do one or more of the following, in any combination and order: request written information that revises the original submittals; schedule oral presentations; conduct a reverse online auction; enter into pre-selection negotiations.

(a) If the issuing office conducts a reverse online auction to receive best and final cost proposals, the names of the offerors may not be disclosed during the auction.

(b) If the agency wants to proceed with pre-selection negotiations, it must request and receive approval from the Chief Procurement Officer. Pre-selection negotiations should be considered when:

i. If after an initial BAFO two or more offerors remain sufficiently close in total points and the issuing officer wishes to determine the final parameters of a contract with each of the offerors prior to making a selection. This condition would require a re-scoring of the specific areas of the technical submittals that were modified based on the pre-selection negotiations.

ii. After identification of the highest scoring offeror, the issuing officer needs that offeror to agree to make a change in its proposal prior to making the selection. Changes may be to overall cost or technical requirement.

(c) The issuing office, or the evaluation committee chairperson or designee, will conduct the pre-selection negotiations. Evaluation committee members should be available to assist the negotiators.

(d) BSBO shall participate in any discussions and pre-selection negotiations involving small diverse business participation.

(e) The contents of other proposals should not be disclosed during the negotiations or at any time during the best and final offers phase.

- a. The agency contracting officer must select for contract negotiations the offeror with the highest overall score recommended by the issuing officer.
 - b. The agency contracting officer has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in the best interest of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.
- 12. **Offeror Notification.** The issuing office will notify all offerors in writing of the offeror selected for contract negotiations.
- 13. **Negotiations with selected offeror.**
 - a. **Preparation for negotiations.**
 - (1) Negotiations are discussions between the agency and the offeror for the purpose of arriving at a common understanding of contract essentials—such as technical requirements, schedules, small diverse business participation, prices, and terms. Because of the interrelations of these and other factors, negotiation is a difficult “art” requiring the exercise of judgment to a large degree, demanding tact and common sense in an attempt to reach a point that will satisfy interests of both parties.
 - (2) Contract negotiations take place after the selected offeror has received written notification that its proposal has been selected for contract negotiations.
 - (3) The agency will designate the contract negotiating team, to include individuals with technical, contracting, fiscal, and legal expertise, selecting a chief negotiator based upon availability of individuals with negotiating knowledge and experience. The agency should consider inviting BSBO and agency comptroller to participate as a member of the team or as an observer.
 - (a) The chief negotiator shall conduct a meeting of the agency's negotiating team prior to the first negotiating session to discuss the negotiating objectives and strategy and to establish a unified negotiating position. The agency should provide the chief negotiator with a draft contract that will be used as a basis of discussion. At a minimum, the team should:
 - i. Ensure there is a clear mutual understanding of the work statement.
 - ii. Agree on the inclusion of all required contract provisions and required clauses.

- iii. Agree on the appropriate type of contract.
- iv. Determine a fair and reasonable price or cost estimate.

(b) The team should prepare techniques, including logical presentation of facts, data, and arguments, to use in the negotiation. The negotiation strategy should not include force, threats, or coercion. This does not mean, however, that the agency should accept offeror positions that are detrimental to the Commonwealth. The strategy should consider the long-range effect on the mutual relationship of the parties to be reflected in the contract.

b. Conducting Negotiations.

- (1) The chief negotiator shall contact the selected offeror to make the arrangements for the negotiations.
- (2) The chief negotiator is responsible for the overall conduct of the negotiations and should:
 - (a) Ensure the integrity of the negotiation process;
 - (b) Rely heavily on the other team members; and
 - (c) Ensure that a mutual understanding has been reached before conclusion of the negotiation session.
- (3) Fair and reasonable compensation shall be determined through negotiation. The chief negotiator may tell the offeror that a nonselected offeror's prices or rates were lower than the selected offeror's prices or rates, or that there was a "substantial" or "significant" difference in price, in an attempt to negotiate price or rate reductions. However, the agency shall not reveal any specific dollar amounts, or any difference(s) between the selected offeror's price and the prices in other cost proposals.
- (4) If the parties cannot reach a final, mutual agreement with the selected offeror, then the Commonwealth should formally terminate negotiations with the original selected offeror and initiate negotiations with the next highest-ranked offeror if that offeror has agreed to hold its proposal open for negotiation. However, the Commonwealth cannot move to the next highest-ranked offeror solely because of a failure to negotiate a lower price with the original selected offeror, as the cost weighting has already been factored into the overall ranking. In the event the Commonwealth cannot enter into a contract at the final price offered by the original selected offeror, the Commonwealth's options are limited to canceling the solicitation and re-issuing the RFP after considering increasing

the relative weight of cost in the evaluation and disclosing the amount of money available for the contract with DGS approval.

- (5) Prior to conclusion of negotiations, the agency negotiating team should assure itself that the selected offeror fully understands the details of the contract requirements, particularly the work statement. A negotiating team member should record all agreements reached and other pertinent portions of the negotiations.

- c. **Notification of Award.** When negotiations have been successfully completed and the issuing office has received the final negotiated contract signed by the selected offeror, the issuing office will notify the other offerors in writing of the award and of the opportunity for a debriefing.

14. Debriefing.

- a. Upon notification of award, offerors whose proposals were not selected will be given the opportunity to be debriefed. The issuing office shall schedule and conduct the debriefing at a mutually agreeable time. *Note: An offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest.*
- b. The purpose of the debriefing is for the offeror to learn why its proposal was unsuccessful. Information given during a debriefing conference must be factual and precise. The offeror is looking for justification for its lack of success. Therefore, an offeror should be informed where its proposal failed.
- c. The debriefing should be written beforehand and read to the offeror during the debriefing conference. The evaluation committee should participate in drafting the written debriefing notes that will be read to the offeror, though it is not required that members of the evaluation committee be present at the debriefing conference. The issuing office may provide a copy of the debriefing notes that are read to the offeror. It is in the agency's best interest to record all questions asked and responses given during the conference.
- d. The debriefing should not compare the offeror to any other offeror. The offeror can, and should, be advised of the ranking of the offeror's proposal in relation to the proposals submitted by other offerors for each of the three major selection criteria (technical, cost, and small diverse business participation). At the discretion of the issuing office, the debriefing may point out key differences between the successful offeror and the offeror being debriefed.
- e. The Recommendation for Contractor Selection memorandum, successful proposal and contract, with any non-public information redacted, or a link to where posted online, shall be provided upon request.

C. Multiple Award Contracts.

1. **Conditions for Use.** Contracts may be entered into on a multiple award basis when the head of the purchasing agency determines that one or more of five stated criteria are applicable. Those criteria are:
 - a. It is administratively or economically impractical to develop or modify specifications for a myriad of related supplies because of rapid technological changes.
 - b. The subjective nature in the use of certain supplies and the fact that recognizing this need creates a more efficient use of the item.
 - c. It is administratively or economically impractical to develop or modify specifications because of the heterogeneous nature of the product lines.
 - d. There is a need for compatibility with existing systems.
 - e. The agency should select the contractor to furnish the supply, service, or construction based upon best value or return on investment.
2. **Solicitation Process.** IFBs or RFPs must be issued for the supplies or services to be purchased.
3. **Public Notice.** Public notice is given in the same manner as public notice is given for the competitive sealed bidding method.
4. **Receipt of Bids or Proposals.**
 - a. **Bids.**
 - (1) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB.
 - (2) The purchasing agency must record and make available for public inspection, the following information:
 - (a) The name of each bidder;
 - (b) The amount of each bid, if applicable; and
 - (c) Any other information as may be specified by regulation.
 - b. **Proposals.**
 - (1) Proposals must be received prior to the time and date established for receipt of proposals.
 - (2) Proposals must be submitted in the format required by the request for proposals.
 - (3) Proposals must be opened so as to avoid disclosure of their contents to competing offerors.

- c. **Invitation to Qualify.** An Invitation to Qualify (“ITQ”) is the name sometimes used to describe the solicitation document, process and umbrella contract for certain multiple-award contracts entered into by the Commonwealth. ITQs generally are solicited using an invitation for bids, which may be conducted through an electronic system (portal), and open to enrollment to qualified suppliers throughout the term of the umbrella contract.

5. Award of Contracts.

- a. The IFBs or the RFPs must describe the method for selection of the successful bidders or offerors.
- b. There are three alternative methods for contract award.
 - (1) Awards may be made to the lowest responsible and responsive bidder or offeror for each designated manufacturer.
 - (2) Awards may be made to the two or three lowest responsible and responsive bidders or offerors for each designated manufacturer.
 - (3) Awards may be made to all responsible bidders or offerors.

6. Selection of Supplier. A Commonwealth agency may select a supplier from the awarded contractors to furnish the supply, service, or construction based upon best value or return on investment.

- a. "Best Value" takes into consideration the life cycle costs, discounts, availability, support and service, warranty/guarantee, etc.
- b. "Return on Investment" takes into consideration what the Commonwealth receives in return for its procurement from the selected contractor, such as payment of taxes, increased or continued employment of Pennsylvania citizens, investment in infrastructure in Pennsylvania, etc.
- c. Agencies should refer to [Part I Chapter 49, Best Value and Return on Investment](#) for further explanation relating to best value and return on investment criteria.
- d. Solicitation is done through a Request for Quote (RFQ) process. The criterion to be utilized to determine “best value” or “return on investment” must be defined in the RFQ.
- e. All qualified contractors for any given category or lot must generally be solicited.
- f. Multiple award contracts may specify different thresholds, solicitation and evaluation requirements to be utilized as provided in the solicitation, contract or purchasing procedures.

D. Small Procurements.

1. Conditions for Use.

- a. The procurement cannot be the subject of a statewide requirements contract between the purchasing agency and a contractor.
- b. The dollar amount of the procurement cannot exceed the thresholds established by DGS.

2. Small, No-Bid Procurements.

- a. DGS may authorize the procurement of a supply or service on a no-bid basis for procurements which do not exceed the amount established by DGS for small no-bid procurements.
- b. DGS may authorize procurement on a no-bid basis for construction projects that do not exceed a total construction cost of \$10,000 (this amount shall be adjusted annually by DGS to reflect the annual percentage change in the United States Department of Commerce Composite Construction Cost Index).
- c. Small, no-bid procurements do not require the approval of the Board of Commissioners of Public Grounds and Buildings prior to the award of the contract.

3. Small, Informal Bid Procurements.

- a. DGS may authorize agencies, in writing, to make procurements, not exceeding the amount established by DGS.
- b. Small, informal bid procurements are made without formal bid procedures.
- c. The authorized Commonwealth agency shall make the procurement in accordance with the requirements of the written authorization and *Commonwealth Procurement Code, 62 Pa C.S.*

4. Procurement requirements cannot be artificially divided so as to constitute a small procurement. DGS may revoke delegations to a particular agency when it is determined that the agency artificially divided its procurement requirements so as to constitute a small procurement.

5. The agency shall maintain a record listing of all small procurements for a minimum period of four years from the contract end date. The record shall contain:

- a. Each contractor's name.
- b. The amount and type of each contract.
- c. A listing of the supplies, services, or construction procured under the

contract.

6. DGS strongly encourages the use of small and small diverse businesses for small procurements.
7. Small procurements should not reflect a pattern of repeated procurement from the same contractor and should reflect a cost which is equal to or less than the market price. An exception to this stipulation would be if there is a limited number of contractors and utilizing others would not result in procurements at market price. If DGS finds a pattern of repeated use of the same contractor(s) without adequate justification, DGS may revoke delegations to the particular agency.

E. Sole Source Procurement.

1. Conditions for Use.

- a. Sole source procurement may be used when the contracting officer determines in writing, that one of the following conditions exists:
 - (1) Only a single contractor is capable of providing supplies, services, or construction.
 - (2) A state or federal statute or regulation exempts supplies, services, or construction from a competitive procedure.
 - (3) It is clearly not feasible to award the contract for supplies or services on a competitive basis.
 - (4) The services are to be provided by attorneys or litigation consultants selected by the Office of General Counsel, Office of Attorney General, Department of Auditor General, or the Treasury Department.
 - (5) The services are to be provided by expert witnesses.
 - (6) The total cost for services involving the repair, modification, maintenance, or calibration of equipment and are to be performed by the manufacturer of the equipment or by the manufacturer's authorized dealer and the purchasing Agency head (or designee) determines bidding not to be appropriate under the circumstances.
 - (7) The contract is for investment advisors or managers selected by the Public School Employees' Retirement System, the State Employees' Retirement System or a state affiliated entity.
 - (8) The contract is for financial or investment experts to be used and selected by the Treasury Department or selected by the Secretary of the Budget.
 - (9) The contract for supplies or services is in the best interest of the Commonwealth.

- b. The written justification for sole source must be included in the contract file.
- c. The prospective contractor and subcontractors must be determined to be responsible in accordance with [Management Directive 215.9, Contractor Responsibility Program, Amended](#).
- d. Small, no-bid procurements are not considered sole source procurements.

2. Justification.

- a. The use of a sole source procurement will be the rare exception and must always be justified, in writing, and it must be approved by the agency head or deputy secretary (or equivalent) and DGS. DGS approval is not required under the circumstances described in b., c., d., and e. below. Justification shall include preparation of the [Online Source Justification Form](#). Approval for these sole source procurements must be obtained prior to forwarding a contract to the contractor for signature. Under no circumstances shall a contractor be advised a contract will be awarded on a sole source basis before there is a sole source approval from the agency head or deputy secretary (or equivalent) and a fully executed contract.
- b. Where outside counsel or a litigation consultant is selected by the Office of General Counsel, the using agency shall not be required to prepare written sole source justification or seek DGS approval so long as it has received a letter of appointment from the Office of General Counsel. A copy of the Office of General Counsel letter appointing the attorney, law firm, or litigation consultant shall be inserted in the contract file or appended to the contract for legal services. If the agency needs the attorney, law firm, or litigation consultant to begin work immediately (before a contract is fully executed), the agency shall include in the request for appointment a request for authorization to immediately commence performance of legal services upon appointment. The contract for legal services shall provide for payment for authorized work performed prior to the execution date of the contract.
- c. For investment advisors or managers selected by the Public School Employees' Retirement System, the State Employees' Retirement System, or a state-affiliated entity and for financial or investment experts to be used and selected by the Treasury Department or financial or investment experts selected by the Secretary of the Budget, the using agency shall not be required to prepare written sole source justification or seek DGS approval so long as written documentation of the selection by the Public School Employees' Retirement System, the State Employees' Retirement System, the state-affiliated entity, the Treasury Department, or the Secretary of the Budget is included in the contract file or appended to the contract for services.

- d.** For expert witnesses selected by Commonwealth attorneys, the using agency shall not be required to seek DGS approval of the sole source selection of the expert witnesses. A brief justification shall be inserted in the contract file or appended to the contract.
- e.** For clergy (or equivalent) providing chaplaincy services, the using agency shall not be required to seek DGS approval of the sole source selection nor shall the using agency be required to prepare a Source Justification Form. A brief written justification (Individual Personal Preference or equivalent) must be inserted in the contract file or appended to the contract. The using agency shall limit contracts under this exemption to hourly rate contracts. Normal business hour travel, by contractors, will not be reimbursed. Any travel outside normal business hours must be preapproved by the using agency and will be reimbursed in accordance with Management Directive 230.10. All other requirements set forth in Part III, Chapter 05, Sole Source Procurement of Services, are applicable to procurements of chaplaincy services.
- f.** Justification should be kept to the minimum necessary to clearly and concisely support the sole source decision. Unsupported personal opinion, personal acquaintance with the contractor, or the contractor's prior association with the agency is not in itself acceptable justification for a sole source award. Terms and phrases such as "unique experience," "uniquely qualified," "only qualified contractor," and similar unsupported and meaningless statements will not be acceptable justification.
- g.** Sole source justification should include, but not be limited to, the following pertinent items:

 - (1)** If timing is a factor supporting sole source procurement explain:

 - (a)** Who established the time frame and the logic used.
 - (b)** Possible specific consequences of altering the time frame.
 - (c)** How long the agency has known that supplies, services, or construction was needed and why the contract process was not started earlier.
 - (2)** Describe specific efforts taken to locate other contractors. Statements such as "contacted several contractors and no one is interested" are not acceptable. If individuals are contacted, show names and telephone numbers of persons contacted.
 - (3)** If the sole source situation results from a lack of response to a former competitive effort, describe the follow-up efforts and the reasons for the non response. Also, explain why further advertising is not possible.

- b.** Circumstances outside the control of the agency create an urgency of need which does not permit the delay involved in using more formal, competitive methods.
- 2. Selection Process.** Whenever practical, in the case of a procurement of a supply, at least two bids shall be solicited.
- 3. Preapproval.** All emergency procurements which exceed the small no-bid threshold must be preapproved by DGS unless the agency can establish that because of the nature or time of the emergency, proper DGS officials were not available or that time would not permit prior contact with the department.
- 4. Written Determination.** 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 in the Appendix of Forms.
- 5. Record Listing.** The purchasing agency shall maintain a record listing of all emergency contracts for a minimum period of four years from the contract end date. The record shall contain:
 - a.** Each contractor's name.
 - b.** The amount and type of each contract.
 - c.** A listing of the supplies, services, or construction procured under the contract.

G. Competitive Selection Procedures for Certain Services.

- 1. Conditions for Use.**
 - a.** This is the procedure for procuring the services of accountants, clergy, physicians, lawyers, dentists, and other professional services.
 - b.** Commonwealth agencies are not required to use this method if procurement is otherwise authorized as a small procurement, sole source procurement, or emergency procurement.
- 2. Statement of Qualifications.**
 - a.** Persons engaged in providing professional services may submit statements of qualifications and expressions of interest in providing these services.
 - b.** When professional services are needed on a recurring basis, the contracting officer can also actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed, uniform format.
 - c.** Persons may amend the statements at any time by filing a new statement.

3. Request for Proposals.

- a. This method requires the issuance of a RFP which provides adequate notice of the need for the services.
- b. The RFPs must:
 - (1) Describe the required services.
 - (2) List the type of information required of each offeror.
 - (3) State the relative importance of the particular information.

4. Discussions.

- a. The contracting officer may conduct discussions with any responsible offeror.
- b. The discussions cannot disclose any information derived from proposals submitted by other offerors.

5. Award and Negotiation of Contract.

- a. Award is made to the responsible offeror determined, in writing, by the contracting officer to be the best qualified based on the evaluation factors set forth in the RFPs.
- b. Fair and reasonable compensation shall be determined through negotiation.
- c. If compensation cannot be agreed upon with the best qualified responsible offeror, then negotiations will be formally terminated with the offeror and negotiations may be initiated with the offeror who is the next best qualified.

H. Selection Procedures for Insurance and Notary Bonds.

1. Conditions for Use.

- a. This is the method of procurement for insurance and notary bonds to be procured by DGS.
 - (1) DGS has the power and duty to procure notary bonds for state officers and employees.
 - (2) DGS has the power and duty to procure automobile liability insurance covering vehicles owned by the Commonwealth or its instrumentalities as well as vehicles owned by the federal government which are loaned to and operated by state officers or employees or officers and enlisted persons of the Pennsylvania National Guard, Pennsylvania Reserve Corps. or its successor.

(3) DGS has the power and duty to procure public liability insurance for state employees while engaged in the performance of their duties.

(4) DGS has the power and duty to purchase excess fire insurance on state buildings and any kind of insurance which it may be lawful for the Commonwealth, or any Commonwealth agency to carry and for which an appropriation has been made.

b. No Commonwealth agency has the authority to contract for any bonds or insurance of any kind or description except through DGS as purchasing agency except the Treasury Department which may contract for insurance covering the securities of which it or the State Treasurer, is custodian.

c. The Secretary of General Services is authorized to transact business as a licensed insurance broker for the purpose of contracting all insurance and surety bonds for any Commonwealth agency or state affiliated entity.

2. Statements of Qualifications.

a. Insurance and bond carriers may submit statements of qualifications and expressions of interest in providing insurance or notary bonds to DGS.

b. The department may specify a uniform format for statements of qualifications.

3. Requests for Proposals.

a. DGS must issue a RFP which provides adequate notice of the need for the insurance or notary bond coverage.

b. The RFPs shall describe the type of insurance or bond coverage required and list the type of information and data required of each offeror.

4. Receipt of Proposals.

a. Offerors must submit their proposals to DGS prior to the time and date specified.

b. The proposals must include the information and data required by the RFP.

5. Discussions and Negotiations.

a. Discussions and negotiations may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award.

- b. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion, negotiation, and revision of proposals.
- c. Revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers.

6. Award.

- a. Award shall be made to the offeror whose proposal is determined, in writing, by DGS, to be the most advantageous to the Commonwealth based upon the criteria determined by DGS.
- b. The criteria shall include consideration of the coverage offered and the cost of the premium.

I. Procurement of Supplies Manufactured by, and Services Performed by, Persons with Disabilities.

1. Conditions for Use.

- a. These are the requirements and procedures for contracting for supplies manufactured by, and services performed by, persons with disabilities.
- b. Competitive bidding is not a requirement.
- c. Act 57 does not supersede any contract in force between a Commonwealth agency and another party as of November 11, 1998.

2. Fair Market Price.

- a. DGS has the power and duty to determine fair market prices for supplies manufactured by, and services performed by, persons with disabilities and offered for sale to any Commonwealth agency by an agency for persons with disabilities.
- b. DGS will make such determinations after receiving a request and after notice is provided to the purchasing agency.
- c. DGS shall revise the fair market prices in accordance with changing market conditions.
- d. The establishment of fair market prices is within the discretion of DGS.

3. Procurement of Supplies Manufactured by, and Services Performed by, Persons with Disabilities.

- a. Persons with disabilities must make an appreciable contribution in manufacturing a supply or performing a service.
- b. DGS shall determine whether the contribution by individuals with disabilities is appreciable.
- c. Persons with disabilities include:

- (1) The mentally retarded. A person with subaverage general intellectual functioning which originates during the developmental period and is associated with the impairment of maturation, learning, or social adjustment.
 - (2) The physically disabled. A person with a limitation of most activities and functioning by virtue of a severe impairment of the various bodily systems which cannot be eliminated, modified, or substantially reduced by the usual rehabilitation services and which precludes competitive employment.
 - (3) The visually impaired. A person with a condition in which central visual acuity does not exceed 20/200 in the better eye with correcting lenses or in which the widest diameter of the visual field subtends an angle no greater than 20 degrees.
- d. At least 75 percent of the personnel either engaged in the direct labor of manufacturing of a product, or engaged in a direct labor in performing a service in this Commonwealth must be visually impaired, mentally retarded, or physically disabled.
- e. In addition, at least 75 percent of the amount paid by the Commonwealth agency for the product or the service must be remitted to the agency for persons with disabilities to cover payment of wages and salaries to persons with disabilities and to cover other actual manufacturing costs incurred by the agency for persons with disabilities in manufacturing of a product. This 75 percent requirement does not apply to the Commonwealth's driver's license photo center contract, if at least 70 percent of the amount paid by the Commonwealth is used to cover the payment of wages and salaries to persons with disabilities and to cover actual manufacturing costs, real estate lease costs, property insurance, and other costs which are specifically required by the contract.
- f. All supplies and services must meet the applicable specifications of DGS or other Commonwealth agencies.
- g. In order for a supply to be considered "manufactured" by an agency for persons with disabilities, the agency must:
 - (1) Transform raw materials in the production of the supply;
 - (2) Assemble essential component parts in the production of the supply; or
 - (3) A combination of both.
 - (4) In addition, the supply must be different in form, composition, or character from the raw materials or the essential component parts.
- h. In order for a service to be considered "performed" by an agency for

persons with disabilities, the agency must provide the labor to do the work to fulfill the requirements of the contract.

- i. Services include such packaging or repackaging which, as determined by DGS, provide a substantial and real benefit to the using agency. When packaging or repackaging services are to be provided, the purchasing agency shall procure the supplies to be packaged or repackaged. Packaging or repackaging shall not be considered "services" if the manufacturer usually packages or repackages the supplies, in the quantity required by the agency, as a part of the manufacturing process.

4. Distribution.

- a. At the request of DGS, the Department of Public Welfare (DPW), or a nonprofit agency with the approval of DPW, shall facilitate the distribution of supplies manufactured by, or services performed by, persons with disabilities among agencies for persons with disabilities.
- b. The head of a purchasing agency shall annually discuss its needs for supplies or services with any agency for persons with disabilities.

5. Procurement from a Commonwealth Agency.

- a. If any supply manufactured by, or any service performed by, persons with disabilities and offered for sale to the Commonwealth is available for procurement from any Commonwealth agency, and procurement of the supply or service is required by law from the Commonwealth agency, then the procurement of the supply or service shall be made in accordance with the provisions of the law.
- b. Procurement of supplies manufactured by, or services performed by, inmates in correctional institutions is required by policy and not required by law.

J. Procurement of Design Professional Services.

1. Conditions for Use.

- a. These are the methods for procurement of design professional services.
- b. In addition, design professional services can be procured as small procurements, sole source procurements, and emergency procurements, where applicable.
- c. Right-of-way acquisition assistance services to be provided in conjunction with the planning, development, design, construction, alteration, or repair of bridges and highways by the Department of Transportation shall also be procured in accordance with this method of procurement.

2. Policy.

- a. It is Commonwealth policy to publicly announce all requirements for design professional services and to award contracts for design professional services on the basis of demonstrated competence and qualification for the types of services required.
- b. Selections Committees shall be established to review the qualifications, experience, and work of design professionals seeking contracts with purchasing agencies.

3. Selections Committees.

- a. Where they are authorized by law to act as purchasing agency for design professional services, the Departments of Transportation, Environmental Protection, Conservation and Natural Resources, and state-affiliated entities shall each establish as many Selection Committees as the department deems appropriate, and a procedure for the selection of committee members.
- b. The Governor shall also appoint a Selection Committee, comprised of five members, as the Selection Committee for all other Commonwealth agencies.
 - (1) None of the committee members can be employees of the Commonwealth.
 - (2) None of the committee members can hold an elective office or office in any political party.
 - (3) The committee members shall be architects, engineers, or other persons knowledgeable in construction.
 - (4) The committee members shall serve for terms of two years and shall not be removed except for cause.
 - (5) Of the original committee members, three shall serve for terms of two years and two for terms of one year. Thereafter, all terms shall be for two years.
 - (6) Each committee member shall be reimbursed for reasonable travel and other expenses incurred incident to attendance at meetings and to assigned duties and also a per diem allowance in accordance with Commonwealth travel policies.

4. Selections Committees Procedures.

- a. The committees shall give public notice of projects requiring design services.
- b. If desired, the committees may conduct discussions with three or more professionals regarding anticipated design concepts and proposed methods of approach to the assignment.

- c. The committees shall evaluate the design professionals based upon the following factors:
 - (1) An equitable distribution of contracts to design professionals.
 - (2) Particular capability to perform the design or construction services for the contract being considered.
 - (3) Geographic proximity of the design professional to the proposed facility.
 - (4) The design professional selected has the necessary, available personnel to perform the services required by the project.
 - (5) Any other relevant circumstances peculiar to the proposed contract.
- d. The committees shall select, based upon the criteria established by the head of the purchasing agency and the five evaluation factors stated above, no less than three design professionals deemed to be the most highly qualified to provide the services required.

5. Selection of Design Professional.

- a. Selection method for the Departments of Transportation, Conservation and Natural Resources, Environmental Protection, and state-affiliated entities.
 - (1) The head of the purchasing agency or state-affiliated entity shall choose one of the three firms approved by the Selections Committee.
 - (2) The head of the purchasing agency or state-affiliated entity shall negotiate with the firm determined to be the highest qualified firm for design professional services at a fee which is determined to be fair and reasonable to the Commonwealth.
 - (a) In determining the fee, the head of the purchasing agency or state affiliated entity shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered.
 - (b) If the head of the purchasing agency or state-affiliated entity is unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a fee which the head determines to be fair and reasonable to the Commonwealth, negotiations with that firm shall be formally terminated and the head shall then undertake negotiations with the firm determined to be the second highest qualified firm.
 - (c) If the head of the purchasing agency is unable to negotiate a satisfactory contract with the second most

qualified firm, the head shall formally terminate negotiations and undertake negotiations with the third highest qualified firm.

- (d) If the head of the purchasing agency is unable to negotiate a satisfactory contract with any of the selected firms, the selections committee shall select additional qualified firms and the head of the purchasing agency or state affiliated entity shall conduct negotiations in the order established by the head in order of the highest qualified of the three firms to the lowest qualified of the three firms.

b. Other Commonwealth Entities.

- (1) Where the amount of the base construction allocation is less than \$20,000,000, the head of the purchasing agency shall choose one of the three firms approved by the Selections Committee.

- (a) The fee to be paid to the appointed design professional may be established by the Selections Committee or may be negotiated at the discretion of the head of the purchasing agency.

- (b) The \$20,000,000 threshold shall be adjusted by DGS to reflect the annual percentage change in the United States Department of Commerce Composite Construction Cost Index occurring in the one-year period ending December 31 each year.

- (2) Where the amount of the base construction allocation is in excess or equal to \$20,000,000 (as adjusted annually), the head of the purchasing agency shall choose one of the three firms approved by the Selections Committee to begin contract negotiations.

- (a) The fee to be paid to the design professional and the terms of the contract between the design professional and the agency shall be negotiated by the head of the purchasing agency.

- (b) In negotiating the contract and fee, the head of the purchasing agency shall take into account the estimated value, scope, complexity, uniqueness, and the professional nature of the services to be rendered.

- (c) In the event the head of the purchasing agency is unable to negotiate a satisfactory contract or fee with the appointed design professional, negotiations with that design professional shall be terminated and the head of the purchasing agency shall commence negotiations with one of the other firms chosen by the Selections

Committee.

- (d) In the event the head of the purchasing agency is unable to negotiate a satisfactory contract or fee with the second firm, the head of the purchasing agency shall terminate negotiations with the second design professional and commence negotiations with the third firm.
- (e) In the event the head of the purchasing agency is unable to negotiate a satisfactory contract with any of the selected firms, the Selections Committee shall choose additional qualified firms and the head of the purchasing agency shall conduct negotiations in the same order of selection until an agreement is reached.

References:

1. [GSPUR-89, Reciprocal Limitations Act Requirements](#)
2. [Notice of Award](#)
3. [Management Directive 215.9, Contractor Responsibility Program, Amended](#)
4. [BOP-124, Determination to Use Competitive Sealed Proposals \(RFP\) Method of Procurement](#)
5. [RFP Evaluation Committee Certification of Confidentiality and No Conflict of Interest form](#)
6. [Part I Chapter 49, Best Value and Return on Investment](#)
7. [Online Source Justification Form](#)
8. [Political Contributions Letter](#)