**Section 1.2035 Competitive Selection Procedures for Professional and Artistic Services**

a) Application

1) The provisions of this Section apply to every procurement of professional and artistic (P&A) services, except those subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and except as provided in subsection (e).

2) *"Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability* [30 ILCS 500/1-15.60].

b) P&A services are further defined as follows:

1) "Qualified by education" means the individual who would perform the services must have obtained the level of education specified in the Request for Proposals.

2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the Request for Proposals.

3) "Qualified by technical ability" means the individual who would perform the services must demonstrate a high degree of skill or ability in performing services that are the same, similar or closely related in nature to those specified in the Request for Proposals.

4) An essential element distinguishing P&A services from other services is confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service.

5) P&A services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not P&A services contracts.

6) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.

7) When a State agency requires services that meet the requirements of this subsection (b), the competitive selection procedures described in this Section must be followed. Services that do not meet the requirements of this Section must be procured in accordance with other methods of source selection authorized by the Code and this Part.

c) The SPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, must be procured as P&A under these competitive selection procedures or as services that are subject to one of the other methods of source selection authorized by the Code and this Part.

d) Architect, engineering and land surveying services shall be procured pursuant to the procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act. These procurements are not subject to the procedures for other professional services established in the Code or this Part.

e) Except as authorized under Section 20-25 (Sole Source Procurements) or Section 20-30 (Emergency Purchases) of the Code, these competitive selection procedures shall be used for all procurements of P&A services of $100,000 or more.

f) Request for Proposals

P&A services shall be procured using an RFP.

1) Contents. The RFP shall be in the form specified by the CPO-GS and shall contain at least the following information:

A) the type of services required;

B) a description of the work involved;

C) an estimate of when and for how long the services will be required;

D) the type of contract to be used;

E) a date by which proposals for the performance of the services shall be submitted;

F) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:

i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

ii) if deemed relevant, the age of the offeror's business and average number of employees over a previous period of time, as specified in the RFP;

iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

iv) a listing of other contracts under which services similar in scope, size or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFP;

v) a plan, giving as much detail as is practical, explaining how the services will be performed;

G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package); and

H) the factors to be used in the evaluation and selection process and their relative importance.

2) Evaluation Factors, Evaluation Subfactors, and Scoring Tools

A) The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:

i) the plan for performing the required services;

ii) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

iii) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and

iv) a record of past performance of similar work.

B) Establishment of subfactors, if any, and their relative importance must be finalized before publication of the RFP and made available for inspection and copying upon opening.

C) Numerical rating systems shall be used unless another scoring tool is authorized by the SPO. Any scoring tool shall reflect the evaluation criteria and ranking set forth in the P&A RFP and any subfactors available at the opening.

D) The scoring tool used by the Evaluation Team must be finalized and approved by the SPO before publication of the RFP and made available for inspection and copying upon opening.

g) Proposals shall be submitted in three parts: the first, covering price; the second, covering commitment to diversity; and the third, covering all other items. Price must be submitted separately in the proposal package and shall not be mentioned elsewhere in the proposal package. Each part of all proposals shall be evaluated and ranked independently of the other parts of all proposals. The results of the evaluation of all 3 parts shall be used in the ranking of proposals.

h) Receipt and Registration of Proposals

1) Proposals and modifications shall be opened publicly at the time, date and place designated in the RFP.

2) Opening shall be witnessed by a State employee or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, a description sufficient to identify the supply or service item offered, and a notation that the package contains a price proposal. The record of proposals shall be open to public inspection after award of the contract.

3) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to other offerors. Other than information that was recorded, read and made publicly available at the opening of the proposals, the State agency conducting the procurement shall not disclose any information contained in the offer outside of the persons authorized by the SPO until after award of the proposed contract has been posted to the Bulletin. This does not restrict the disclosure of information to board or authority members or to commissioners of a State agency. Only State personnel and contractual agents authorized by the SPO may review the proposals prior to award. In authorizing State personnel under this Section, the SPO may require confidentiality and conflict of interest statements be executed. The SPO may provide blanket authorization to:

A) State employees who have primary responsibility for the procurement;

B) State employees who exercise experience or expertise in the subject matter of the particular procurement in the normal course of business and as part of official responsibilities;

C) State employees who exercise oversight, supervisory or management authority over the procurement in the normal course of business and as part of official responsibilities.

i) Evaluation of P&A Proposals

1) Prior to evaluation, an evaluation team kick-off meeting must be held. The purpose of that meeting is to provide the evaluation team with information regarding the evaluation process, including but not limited to conducting the evaluation with fairness and integrity, maintaining confidentiality, and discussing any possible conflicts of interest of evaluation team members. The SPO and all evaluation team members must attend the meeting. Attendance may be in person, by conference call, or by videoconference call.

2) The evaluation shall be based solely on the evaluation factors set forth in the RFP, except as communicated in advance to each offeror with the opportunity to make necessary adjustments to the proposal.

3) Each member of the evaluation team must evaluate the first part individually.

4) After completion of the individual evaluations, the SPO shall determine whether the evaluation team should meet to confirm the individual scores. Factors the SPO should consider in determining whether the evaluation team should meet include whether there is a significant or substantial variance of scores, divergent scoring comments, or other information that suggests the need for further discussion.

5) Price will not be evaluated until ranking of all proposals and identification of the most qualified vendor.

j) Discussions with Offerors

1) Discussions Permissible. The CPO-GS, SPO or State employee with the approval of the SPO on behalf of the CPO-GS may conduct discussions with any offeror to:

A) determine in greater detail the offeror's qualifications; and

B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach. The SPO or designee may allow changes to the proposal based on those discussions.

2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the State agency conducting the procurement shall not disclose any information contained in any proposals outside of contracting officers, identified State agency personnel or others specifically authorized by the CPO-GS or SPO until after the award of the proposed contract has been posted to the Bulletin. This does not restrict the disclosure of information to, or receipt by, State agency personnel identified by the State agency head or the chief executive officer of a board or commission to receive the information. The SPO may require confidentiality and conflict statements from those persons identified by the agency head or the chief executive officer to receive the information. The agency head or chief executive officer may identify:

A) State employees who have primary responsibility for the procurement;

B) State employees who exercise experience or expertise in the subject matter of the particular procurement in the normal course of business and as part of official responsibilities;

C) State employees who exercise oversight, supervisory or management authority over the procurement in the normal course of business and as part of official responsibilities.

k) Selection of the Best Qualified Offerors

After conclusion of validation of qualifications, evaluation and discussion, the SPO shall rank the acceptable offerors in the order of their respective qualifications.

l) Evaluation of Pricing Data

Pricing submitted for all acceptable proposals timely submitted shall be opened and ranked.

1) If the low price is submitted by the most qualified vendor, the SPO may award to that vendor.

2) If the price of the best qualified vendor exceeds $100,000, the SPO, but not a designee, must state why a vendor other than the low priced vendor was selected and that determination shall be published in the Bulletin.

m) Negotiation and Award of Contract

1) General. The purchasing agency, in consultation with the SPO, shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The purchasing agency, in consultation with the SPO, may, in the interest of efficiency, negotiate with the next highest ranked vendor, while negotiating with the best qualified vendor.

2) Elements of Negotiation. At a minimum, contract negotiations shall be directed toward:

A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity, and nature of those services.

3) Successful Negotiation of Contract with Best Qualified Offeror

A) If compensation, contract requirements and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled.

B) Compensation must be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be determined by the purchasing agency, in consultation with SPO, based on the circumstances of the particular procurement, including but not limited to the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement, other available pricing information and the State agency's identified budget.

C) Contracts entered into under this Section shall provide:

i) The duration of the contract, with a schedule for delivery when applicable;

ii) The method for charging and measuring cost (hourly, per day, etc.);

iii) The rate of renumeration; and

iv) The maximum price.

4) Failure to Successfully Negotiate Contract with Best Qualified Offeror

A) If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons shall be placed in the file. The purchasing agency, in consultation with the SPO, shall advise such offeror of the termination of negotiations.

B) Upon failure to successfully negotiate a contract with the best qualified offeror, the purchasing agency, in consultation with the SPO, may enter into negotiations with the next most qualified offeror.

n) Multiple Awards

The purchasing agency, in consultation with the SPO, may enter into negotiations with the next most qualified vendor or vendors when the purchasing agency has a need that requires multiple vendors under contract.

o) Notice of Award

1) After completion of the evaluation, if board, commission, or authority approval of a contract award is necessary, the State agency may have separate discussions with individual board, commission, or authority members to obtain each individual board, commission or authority member's approval of the award prior to publishing the award in the Bulletin.

2) An award shall be made by the SPO pursuant to a written determination showing the basis on which the award was found to be most advantageous to the State, taking into consideration price and evaluation factors set forth in the RFP. An award made to the highest scoring vendor is presumed to be most advantageous to the State, taking into consideration evaluation factors set forth in the RFP, including price. The contract file shall contain the basis on which the award is made.

p) Prequalification

Prequalification of P&A vendors shall not be used to bar or prevent an otherwise qualified person from responding to a request for proposal for P&A services.

(Source: Amended at 46 Ill. Reg. 10208, effective June 2, 2022)