**Section 1600.2035 Competitive Selection Procedures for Professional and Artistic Services**

a) Application

1) The provisions of this Section apply to every procurement of professional and artistic 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) below.

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) Professional and artistic 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 professional and artistic services from other services is confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service. These services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts. (See Illinois Attorney General Opinion S-256, January 20, 1971.)

5) 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.

c) The categories of services enumerated below shall be considered and procured as professional and artistic services. With regard to other services, the CPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, require such services to be procured as professional and artistic 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. The following categories are examples of disciplines that would always be professional and artistic services:

1) law;

2) accounting;

3) medicine;

4) dentistry; and

5) clinical psychology.

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 [30 ILCS 535]. Such procurements are not subject to the procedures for other professional services established in the Code or this Part.

e) Conditions for Use of Competitive Selection Procedures

Except as authorized under Section 20-25 (Sole Source Procurement) or Section 20-30 (Emergency Procurements) of the Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of $20,000 or more. Services of less than $20,000 and for a nonrenewable term of one year or less may be procured in accordance with Section 1600.2020 (Small Purchases) of this Part.

f) Prequalification

The CPO may use the list of prequalified professional and artistic vendors maintained by CMS. Persons may amend statements of qualifications at any time by filing a new statement. Failure of a professional and artistic vendor to prequalify shall not be cause for rejection of a proposal provided that the responsive offeror supplies with its proposal all information defined by the prequalification process.

g) Public Notice of Competitive Selection Procedures

1) Notice of the need for professional and artistic services shall be made by the Procurement Officer in the form of a Request for Proposals.

2) Notice shall be given as provided in Section 1600.2010 (Competitive Sealed Bidding) of this Part.

3) Notice shall also be distributed to prequalified persons interested in performing the services required by the proposed contract.

h) Request for Proposals

1) Contents. The Request for Proposals shall be in the form specified by the CPO 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 by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;

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 Request for Proposals;

v) a plan 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. Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. Price will not be evaluated until ranking of all proposals and identification of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:

A) the plan for performing the required services;

B) 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;

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

D) a record of past performance of similar work.

i) Pre-Proposal Conference

A pre-proposal conference, if appropriate, shall be conducted in accordance with Section 1600.2010(f) (Pre-Bid Conference). Such a conference may be held anytime prior to the date established for submission of proposals.

j) Delivery, Receipt and Handling of Proposals

1) Proposals shall be submitted to and opened by the CPO.

2) Public Opening

A) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals.

B) 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, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

C) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only State personnel and contractual agents may review the proposals prior to award.

D) Proposals of offerors who are not awarded the contract shall not be open to public inspection.

k) Discussions

1) Discussions Permissible. The Procurement Officer may conduct discussions with any offeror to:

A) determine in greater detail such 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 Procurement Officer 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 agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be open to public inspection except as otherwise provided in the contract.

l) Selection of the Best Qualified Offerors

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

m) Evaluation of Pricing Data

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

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

2) If the price of the most qualified vendor is not low and if it does not exceed $25,000, the Procurement Officer may award to that vendor.

3) If the price of the best qualified vendor exceeds $25,000, the Procurement Officer must state why a vendor other than the low priced vendor was selected and that determination shall be published in the Bulletin.

n) Negotiation and Award of Contract

1) General. The Procurement Officer shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The Procurement Officer may, in the interest of efficiency, negotiate with other vendors, 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 such 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 Procurement Officer 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, and the agency's identified budget.

4) Failure to 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 therefore shall be placed in the file. The Procurement Officer shall advise such offeror of the termination of negotiations.

B) Upon failure to negotiate a contract with the best qualified offeror, the Procurement Officer may enter into negotiations with the next most qualified offeror.

C) Nothing in this Section shall prohibit the Procurement Officer from making a selection that represents the best value, qualifications, price and other relevant factors established in the request for proposals being considered. The Procurement Officer may, in considering best value, determine the proposal from a fully qualified vendor that submitted the lowest price to be the best value without further evaluation.

o) Multiple Awards

The Procurement Office 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.

p) The Procurement Officer procuring professional and artistic services, including those under an exception described in subsection (e), shall provide to CMS the information necessary for publication in the Bulletin.

q) Notice of Award

Written notice of award shall be public information and made a part of the contract file. Publication shall be in the next available issue of the Bulletin.

r) Small, sole source and emergency procurements of professional and artistic services under the jurisdiction of an SPO do not require approval of the CPO to proceed. Any notices shall be published by the SPO.

s) Post Performance Review

The Purchasing Officer shall provide a synopsis of the contract and shall rate the vendor's performance. A copy of the completed form shall be maintained in the files of the CPO.