

VIII. THE BIDDING PROCESS

A. Simplified Bidding

1. General.

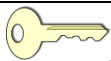
A standard bidding process is always preferred. However, a “simplified bidding process” may be used when the anticipated contract amount is less than \$100,000. A simplified bidding process requires an Agency to develop a specific and detailed statement of work for the service and/or product desired and solicit price quotations from at least three potential Vendors known to provide the specified services or products. However, the Simplified Bid process does not require a public bid posting nor a public bid opening.



NOTE: Contracts that result from the Simplified Bid process may not exceed \$100,000, without a written waiver from the Secretary.

2. Procedures for the Simplified Bid Process

- a. Prepare written specifications before soliciting bids. Elements that should be included are:
- i. General statement of services required (Statement of Work; Scope of Work);
 - ii. Performance requirements;
 - iii. Expectations regarding service location, schedule, including deadlines for deliverables and/or milestones, if applicable;
 - iv. Other specific State requirements or conditions.
- b. Solicit price quotations from 3 or more qualified Vendors. Price quotations may be obtained through: telephone or verbal quotes, facsimile quotations, e-mail quotes or written bids. All communications with the Vendors to obtain price quotes must be documented (emails, fax, notes from phone calls, etc.);
- c. The Vendors solicited must understand they will be required to enter into a standard State Contract for Service, including Attachment C, should they be selected;
- d. All records relating to the simplified bid process, including proposals and a record of the selection process, shall be retained in the contract file in accordance with the Agency’s records retention schedule;
- e. The quotation most responsive to the selection criteria should be selected;
- f. The Vendors solicited must understand that Vendor-required documentation, if any, must be made available at the time of bid and shall be subject to negotiation, should they be selected.



NOTE: If all price quotations received as a result of a Simplified Bid process exceed the \$100,000 threshold agencies must then engage in a formal bid process.

B. Standard Bidding (“Requests for Proposals” or “RFP”)

1. General.

A standard RFP is required for all services which are anticipated to exceed a maximum contract amount of \$100,000 or more. AN RFP is recommended for use when a bid process is more complex and the response requires the bidder to provide a solution or long term commitment. The RFP must contain all requirements and conditions of the particular procurement process. AN RFP must contain a clear and concise statement of work and describe the criteria the State is going to utilize to select the Vendor. The ground rules need to be reasonable and create a level playing field applicable to all potential bidders, and the Agency needs to follow its own ground rules. This Bulletin provides basis Guidance relating to the RFP documentation and process. Additional guidelines for the creation and issuance of RFPs, including a sample RFP template, and the most current versions of all State procurement and contract forms are available on the Office of Purchasing & Contracting website at: <http://bgs.vermont.gov/purchasing/forms>.

Once an RFP or bid solicitation has been issued, and prior to the submission of bids, an Agency may issue an Addendum which may modify any aspect of the RFP. Except as clarified and amended by an Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation Addenda, remain as originally written. Such Addenda shall be publically posted where the RFP is displayed and/or in accordance with instructions indicated in the RFP. Best practice is to have all Addenda acknowledged and/or signed and returned by all bidders with their proposals. If a deadline extension is granted to any bidder it must be granted to all of the bidders. The state does not accept late proposals.

When issuing an Addendum, be as specific as possible, noting the document, the project, the change and where the changes can be found. Addenda shall be published within a reasonable time prior to the submission of bids, to allow prospective bidders to consider the Addenda in preparing proposals.



NOTE: An RFP may only be amended by issuing a written Addendum prior to the submission of bids, and within a reasonable time period.

Disclosures for the purposes of Bidding Integrity are critical to bidding transparency. Refer to Policy on-line at: <http://bgs.vermont.gov/adminpolicies/policy34>.

2. RFP Components

All State Agency RFPs must include the following components:

- a. Cover Page:** Includes: (1) Name and address of State contact person; (2) Due date, time, and location of responses; (3) Notification of the time and location for any scheduled bidders' conference, including a statement as to whether attendance is a condition of selection; and any other special requirements of the RFP process
- b. Introduction:** Explain the purpose and the nature of the services being sought, for example: "The purpose of this RFP is to obtain proposals from independent management consulting firms to perform a management study of the Division of Bulletin Creation."
- c. Brief description of the Agency:** Provide necessary general information about the Agency, if appropriate, such as: the type of government unit; the Agency's statutory authority; number of employees; population served; and mission or purpose.

d. Statement of Work to be performed: Include a Statement of Work (SOW) to be performed and/or products to be delivered. The purpose of this SOW is to provide prospective bidders with clear, concise and thorough information regarding the requested work. At a minimum, the SOW should include the following: (1) a description of the work to be performed; (2) a schedule (including when the work is to be completed, any interim completion dates and/or deliverables); (3) the expected outcomes and/or products, and related performance and/or quality standards. A thorough and well-structured SOW, together with specific detailed deliverables enhances the responsiveness of bidders during the solicitation process, promotes the reliability and comparability of proposals, and minimizes the need for contract negotiations and amendments. Depending on the complexity of the work to be performed, an Agency may want to consider hiring an expert to assist with the development of an appropriate statement of work for inclusion in the RFP. The appropriate investment of work at this stage of the contracting process will result in time savings and greater efficiency not only for the contracting process, but also the project ahead.

e. Purpose and management structure: Provide a brief overview of recent history leading to the decision to seek a contractor. This overview will provide a better understanding of the purpose and context of the work. The bid document should include a statement about the contract management structure, with a description of how the contract will be monitored by the contracting Agency. Bidders should understand the State is going to monitor their activities and performance in order to detect and prevent problems, and to ensure the contract terms are met and State expenditures are appropriate, effective, and efficient.

f. RFP Response Requirements: Clearly explain to bidders the procedural and substantive requirements of the bidding process. For example, the date, time, and address to which bids must be delivered must be explicitly stated. In addition, this section should include information regarding any on-location views of the work area, any pre-bid informational conferences, and any special requirements for submissions with the bid, such as bid bonds, qualification profiles, and resumes of key personnel performing the work, etc.

g. Bidder Confidentiality and Access to Public Records: All responses and other information disclosed in connection with an RFP become the property of the State and, once the resulting contract is finalized, may be subject to disclosure under the State's Access to Public Records Law, 1 V.S.A. § 315 et seq. Accordingly, the RFP must instruct the bidder to identify any material included in the response that is considered by the bidder to be proprietary or otherwise exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c). The bidder's response must include a written explanation for each marked section that would support a reasonable claim of exemption, such as, for example, a description of the proprietary nature of the information and the harm that would occur should the material be disclosed. Additionally, the RFP must instruct the bidder to include a redacted copy of its response. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response or price information be marked confidential. Should the Agency have concerns about the submitted redactions/explanations or lack thereof, the Agency may invite the bidder to provide sufficient explanation and/or appropriate redaction.

h. Reservation of State's Rights: Each RFP must reserve the following State rights:

- to accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State;

- to waive technicalities in submissions; (A technicality is a minor deviation from the requirements of an RFP that does not impact the substantive terms of the bid/RFP and can be considered without a material impact on the RFP process, etc.). If uncertain of whether a condition qualifies as a technicality, consult with the OPC or AGO for clarification. For example, a late bid is NOT considered a technicality;
- to make purchases outside of the awarded contracts where it is deemed in the best interest of the State; and
- to obtain clarification or additional information.

h. Contract Elements: The RFP should describe the key elements to be included in the contract. The RFP shall include a copy of the contract documents: standard State contract shell; Attachment A; Attachment B; Attachment C; Attachment D, and any other applicable Attachments.

Any other contract terms or conditions which may be applicable to the particular service to be procured must be set out in the RFP. For example, with respect to contracts for IT services, the State requires language relating to: Information Security; Intellectual Property Ownership; Confidential Information; access to Data; and cyber liability insurance. Agency counsel or the AGO should be consulted for advice on these additional contract terms.

For IT procurements, Risk Management shall be consulted prior to RFP issuance to determine cyber liability and breach notification amounts. Risk Management’s determination regarding cyber liability and breach notification amounts, and terms and conditions must be identified in the RFP.

i. Price quotation or bid proposal form: The RFP, except for those using a Pre-Qualification selection process (page 29), should include a price quotation form. The form should explicitly include the price components for the core services or products requested, and for each incremental phase of a project, if relevant. If contract extensions are contemplated, the quotation form should explicitly provide a detailed price quotation for each such extension. The form should allow for separate price quotations for optional services that an Agency may request.

j. Worker’s Compensation; State Contract Compliance Requirement: For all Contracts for Services, as well as all State construction and transportation projects, with a total project cost exceeding \$250,000, the RFP must include language mandating the bidders comply with provisions and requirements of [2009 Act 54, Section 32](#): (1) for the Self-Reporting of information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees requested by the applicable Agency; and (2) Subcontractor Reporting requirements. Requirements and forms are identified online and/or directly in RFP templates located on the Office of Purchasing & Contracting website at: <http://bgs.vermont.gov/purchasing/forms>.

k. Construction and Transportation Projects: For all State construction and transportation projects with a **total project cost exceeding \$250,000**, the RFP must include language mandating the contractor record a pay period census of workers onsite each day and upon request submit this record to authorized state agencies and shall become public information. “Total project cost” is defined as the cumulative direct and indirect cost incurred to complete the stated project goal, including planning, design and engineering services, materials procurements, construction services, and construction management and oversight.

1. Basis for selection: The RFP must clearly explain the selection criteria to be used. If certain factors are more important than others, the degree of such relative importance should be clearly stated and, if possible, quantitatively profiled.

3. Request for Information (RFI)

If an Agency does not have sufficient information from which to develop an effective RFP, the Agency may issue a RFI to obtain information on the subject matter of the eventual contract, such as capabilities, practices, systems, licenses, standards, etc. An RFI may be solicited, following the requirements in the section below “Public Notice Regarding the Standard Bid” or individual RFI requests may be sent directly to a representative number of organizations for information. With the information gained, the Agency should then be able to develop an effective RFP resulting in a number of valid competitive RFP responses.



NOTE: An Agency shall not negotiate a contract directly with RFI respondents. Subsequent to issuance of an RFI, a contract may only be developed in response to a separate RFP or a Simplified Bid, to ensure the integrity of the competitive process.

4. Request for Comment

A Request for Comment (RFC) is the process whereby the State issues a future/proposed RFP to the Vendor community in order to solicit input about all or a portion of the RFP structure, language, methodology (or any other aspect of the future/proposed RFP). The use of an RFC allows the Agency to gather information (comments or responses) and to revise the planned RFP if necessary and appropriate, in an effort to create an RFP that will yield the highest number of bidders and a successful outcome for the state.

5. Public Notice Regarding the Standard Bid

At minimum, RFPs shall include posting on the Electronic Bulletin Board (EBB), operated by the Agency of Commerce and Community Development as part of the Business to Business registry. Instructions for posting to the EBB are available at: <http://www.vermontbidsystem.com>. However, all IT related RFPs will be posted by OPC (see IT Guideline).

The opportunity to bid for the proposed work must be broadly publicized. Other methods of solicitation include: advertising in newspapers; direct mailings to potential Vendors; direct mailings to Vendors on a prequalified list (Page 29.); and/or publication in trade journals. It is important for an Agency to maintain a list of those entities or individuals requesting bid documents.

The time between the initial public notice on the EBB (and other methods of solicitation) and the opening of bids must be at least five business days. For RFPs with a relatively complex statement of work, allowing potential Vendors a longer response time is highly recommended, to ensure well-constructed bid responses.

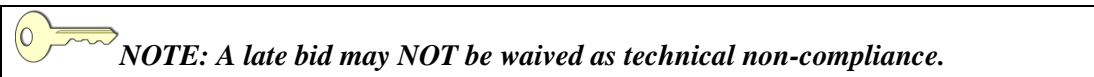
6. Pre-Bid (Bidders’) Conferences and Adjustments to Bid Documents

RFPs for large or complex projects shall require a pre-bid meeting (conference). The purpose of the pre-bid meeting (conference) is for the State to have an opportunity to review the statement of work

and other RFP documents with bidders to ensure the State and the Vendors fully understand the requirements of the RFP. If a pre-bid meeting (conference) is required it must be identified in the RFP and describe the form and format the meeting shall take (i.e. in person, conference call, etc.). During the meeting, agencies may provide an overview of the requirements, opportunity for agencies and Vendors to pose questions, and hear responses to questions related to the RFP. All information exchanged at the meeting, answers to questions and clarifications given must be documented, and posted to the EBB and/or as indicated in the RFP. The documentation must include a statement that Bidders may not rely on any verbal responses.

7. The Bid Opening

A public bid opening and reading of bids should be the norm and is required for contracts over \$100,000. Two staff members from the Agency administering the bid process should attend the bid opening. Bids received after the established submission deadline shall be returned unopened to the bidder. The Agency administering the bid process may waive technical non-compliance when doing so is in the best interest of the State, and with the approval of the AGO. Such waivers must be fully documented and included in the contract file.



8. Contractor Selection, Documentation and Apparent Conflict of Interest

a. Selection:

- i. The bid most responsive to the selection criteria established in the RFP should be accepted. Agency staff with the relevant subject matter expertise should review each proposal for responsiveness in accordance with the requirements outlined in the RFP. When appropriate, an Appointing Authority (Agency) may establish a contract selection committee to review the bids.
- ii. If it is determined by the Agency that an on-site interview is required prior to a final selection, the sole point of contact as stated in the RFP should contact finalist(s) to schedule interviews and to provide an agenda for the interviews.
- iii. An Agency may request a best and final offer (**BAFO**) from a bidder or several bidders in an effort to award a contract in the best interest of the State. The Agency may consider requesting a BAFO when:
 - no single proposal addresses all the specifications;
 - all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;
 - additional information is needed in order for the evaluation committee to make a decision;
 - differences between proposals are too slight to distinguish; all cost proposals are too high or over the budget;
 - multiple contract awards are necessary to achieve regional or statewide coverage for an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed.

iv. Agencies shall post public notification on the EBB, of the contract award after the contract has been fully executed.

b. **Documentation:** A complete copy of the RFP, Vendors solicited, price quotations, bids received, and written selection justifications must be placed in the contract file. When other than the lowest responsible bid is selected, for instance RFPs that include a specific selection criterion; the file must include written documentation consistent with the RFP selection criteria justifying the selection. Please reference the [Contract File Checklist](#) for a complete list of documents required to be retained.

c. **Apparent conflict of interest:** If a reasonable person might conclude a contractor was selected for improper reasons, the Appointing Authority should disclose this fact in writing to the AGO and the Secretary and document the reasons why selecting the desired contractor is still in the best interests of the State.

C. Pre-Qualifying Vendors for Statewide or Retainer Contracts

To streamline procurement for work routinely bid out, an Agency may employ prequalification procedures as a means of predetermining eligible Vendors from which an Agency may accept bids and proposals. Depending on the type of procurement and contract, prequalification may vary in formality and complexity. Prequalification may be determined through a structured process supported by approved specifications.

Pre-qualified Vendors must be identified through a standard solicitation process through which the Agency publicly solicits Vendors seeking the opportunity to be prequalified. This may take the form of placement on a prequalified list or award of a retainer-type contract, customarily with a maximum dollar amount, set duration, and providing no guaranteed assignment of work for the contract term. The Agency should establish clear criteria necessary for potential Vendors to be included on the pre-qualification list. Additionally, during the period between formal list revisions, the Agency must maintain an ongoing process that allows additional Vendors to request review and inclusion on the pre-qualification list at least every two years. All Vendors determined qualified by the Agency, and who so request it, should be included on the prequalified list.

An Agency's internal procedures and this Bulletin should be consulted prior to utilizing prequalification to determine if established or recommended procedures exist. An Agency shall document their prequalification procedure in writing and in accordance with this Bulletin.

D. Exceptions and Waivers

1. Sole Source Contracts

Use of "sole source" or "no-bid" contracts is contrary to the competitive process supported by the State. Sole Source Contracts will be avoided except when no available alternative exists. A clear and convincing link must exist between the service requirements sought and the reasons why the Agency deems the sole source Vendor or contractor "the only one capable" of meeting the requirements. Possible sole source uses might include:

- an unusual and compelling urgency, such as when health, public safety, or the conservation of public resources is at stake;
- situations posing extreme financial consequences to the State;
- legislatively mandated situations; and,
- when required by a warranty or proprietary license agreement.

a. Sole-Source Contract Greater than \$10,000 (non-emergency)

In other than an emergency situation, the Appointing Authority must forward a copy of the proposed sole-source justification request and contract, to the Secretary at least four weeks prior to the planned execution date. AGO approval As to Form is not effective until approval by the Secretary of the Sole Source.

b. Sole-Source Contracts in Verifiable Emergency Situations

In an emergency situation, a Sole Source Contract may be executed in accordance with Agency protocols and applicable law, **but** the contract and the justification **must** be forwarded to the Secretary and the AGO within 10 business days of the contract execution. It is recommended the Agency notify the assigned Finance & Management Budget Analyst as soon as the emergency is known.



NOTE: *It is insufficient to justify a sole source agreement by stating that “this is the only Vendor/contractor/party” qualified, or able to do the work. Such assertions must be verifiably documented. Acceptable examples may include: the single authorized agent for warranty work; the only entity or individual properly licensed within the 4-hour response time area; a legislatively determined party; or a federally mandated party.*



NOTE: *Failure to allow sufficient time to follow the bidding and procurement process is not considered an emergency, and is not a justification for the use of a Sole Source Contract.*

2. One-Time Waivers (Other than Sole Source)

The Secretary may waive provisions of this Bulletin on a case-by-case basis pursuant to a written request from an Appointing Authority. Any request must specify the basis for the request and reference the Bulletin section(s) and language or variations from the standard State contract provisions for which the waiver is sought. Waiver approval must be granted by the Secretary prior to other required approvals and the signing of the contract by either the State or the contractor. Copies of all waiver requests granted by the Secretary must be retained in the contract file.

3. Agency/Department Contracting Waiver Plan

Agencies may develop a written Contracting Waiver Plan (Plan) which shall propose acceptable alternatives to non-statutory requirements of this Bulletin. The Plan must be submitted to the Secretary for approval. Development of a Plan provides a process to request modifications for certain classes of contracts or requirements that cannot reasonably be accommodated within the policies of this Bulletin, or which will allow for more efficient operations without an undue increase in risk to the State.

Plans must: a) be submitted on the [Bulletin 3.5 Contracting Waiver Plan](#) template; b) detail the referenced section(s) and Bulletin language for which a waiver(s) or modification(s) is requested, (c)

provide detail of an acceptable alternative (if appropriate), and (d) be signed by the Appointing Authority. A Plan must clearly delineate any proposed deviations from this Bulletin and include written justification for each change requested. The Secretary may approve or reject the Plan, in part or in whole.

Approved Contracting Waiver Plans expire 90 days after re-issuance of this Bulletin, or upon a request from the Secretary, and must be resubmitted for the Secretary's approval within those 90 days.

A Plan must be one unified form detailing all waiver elements, and must be updated to include additional waiver items as they are requested. The Secretary will indicate approval or disallowance by individual change and return an executed copy of the Plan to the requesting Agency/department.



NOTE: Approved Contracting Waiver Plans expire 90 days after re-issuance of this Bulletin, or upon a request from the Secretary, and must be resubmitted for the Secretary's approval within those 90 days.

[END SECTION VIII]