

# State of Nebraska Procurement Manual

## NOTICE

This guidance document is advisory in nature but is binding on the Nebraska Department of Administrative Services until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department of Administrative Services and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. See Neb. Rev. Stat. § 84-901.03

This Manual is established under Neb. Rev. Stat. § 73-504 (2) to govern the procurement of services. It replaces all previously published procurement manuals and, unless otherwise permitted by the State Purchasing Bureau ("SPB"), is effective for Requests for Proposals posted to the Department of Administrative Services' ("DAS") website after November 20, 2023.

## I. EXISTING SOURCES

- A. Before contracting for services, agencies must determine if the services are available on an existing contract or by another state agency.
- B. The following are types of existing services:
  - 1. Items on Existing Contracts: Agencies may not purchase services when a contract for those same services has been entered into by the State of Nebraska through Department of Administrative Services - Materiel Division, State Purchasing Bureau, unless they receive written approval from SPB.
  - 2. Print & Copy: All printing requests must be processed through the Department of Administrative Services - Materiel Division, Printing Services.
  - 3. Information Technology ("IT") and Communication-Related:
    - i. The Office of the Chief Information Officer ("OCIO") must approve the acquisition of any information management item prior to any purchase. This includes computer hardware, software, and maintenance and professional services for any IT project.
    - ii. The Nebraska Information Technology Commission policy permits the OCIO to preapprove items for purchase. A copy of this policy, the criteria used in conducting reviews of information management purchases and the list of preapproved items are available at <http://nitc.ne.gov/standards/1-204.html>.

## II. COMPETITIVE BIDDING

- A. Service contracts subject to Neb. Rev. Stat. § 73-501 et seq. with a total cost greater than fifty-thousand dollars (\$50,000) must be competitively bid unless an exception applies.

1. Typically, services are competitively bid using a Request for a Proposal (RFP).
2. An RFP is a document that is used to solicit proposals from potential services vendors and that provides for the negotiation of some terms before the contract award.
3. The competitive bidding process may be managed by the agency or, upon agreement between SPB and the agency, by SPB.
4. If the agency manages the competitive bidding process, the RFP must be prereviewed by SPB before the bid.
5. SPB must review any changes in the proposed contract from the contract document that was posted with the RFP prior to execution of the proposed contract.

**B. Minimum RFP Contents**

1. Scope of Work:
  - i. The RFP should describe the service that is sought by the agency.
  - ii. The description of services should be broad enough to attract as many bidders as possible but narrow enough to procure the necessary services.
  - iii. Responsibility for defining the services required lies with the agency in all procurements.
2. Mandatory Service Contract Requirements:
  - i. The RFP should designate mandatory requirements.
  - ii. Mandatory requirements are the requirements that will be used to evaluate each bidder's proposal.
  - iii. The use of the words "must," "shall," or "will" may indicate a mandatory requirement.
3. Terms and Conditions:
  - i. Agencies are encouraged, but not required, to use the applicable SPB RFP Boilerplate when feasible.
  - ii. Agency contracts must incorporate all nonnegotiable provisions contained in the applicable SPB RFP Boilerplate, unless otherwise approved by SPB.
  - iii. Any provision that an agency labels as "nonnegotiable" may not be substantively altered in the final contract, unless approved by SPB.
4. Establish Evaluation Criteria:
  - i. Agencies must have a fair and impartial scoring process.
  - ii. The agency must establish criteria to evaluate eligible proposals and assign points for those criteria. These criteria must include corporate criteria, technical criteria, and cost criteria.
  - iii. Unless otherwise approved by SPB, when added together, the points for each criterion must total to 100 points and must be within the following ranges by category:
    - a. Corporate Criteria:
      - i. Corporate criteria ask about the bidder's businesses operations, qualifications, and competencies (e.g., prior experience, corporate composition, financial stability, contract performance, etc.).

- ii. A bidder's response to corporate criteria ("Corporate Proposal") must be worth at least 25 percent of the total points.
  - b. Technical Criteria:
    - i. Technical criteria ask the bidder to describe their method for executing the requirements listed in the RFP's scope of work.
    - ii. The bidder's response to technical criteria ("Technical Proposal") must be worth at least 25 percent of the total points.
  - c. Cost Criteria:
    - i. Cost criteria ask the bidder to propose a price at which they can perform the services listed in the technical proposal.
    - ii. The bidder's response to cost criteria ("Cost Proposal") must be worth at least 10 percent of the allocated points but no more than 20 percent of the allocated points.
  - iv. Only requirements specified in the RFP may be evaluated.
- 5. Establish Evaluators
  - i. The agency must designate the individual or individuals who will evaluate the proposals that are submitted in answer to the RFP.
  - ii. The agency may assign evaluation criteria to the designated evaluators as the agency sees fit.
- 6. Public Notice
  - i. The RFP must be posted for at least fifteen (15) calendar days, unless upon the agency's showing of exigent circumstances the Materiel Administrator approves a posting for less time.
  - ii. The RFP must be filed with the Materiel Division "for dissemination or website access to interested vendors," but it may also be published on any public forum, such as in a newspaper. Neb. Rev. Stat. § 73-504 (5).
  - iii. The RFP must state the forum upon which interested vendors can find updates about the solicitation (e.g., the procuring agency's website, SPB's website, a specific newspaper, etc.).
  - iv. The public notice should minimally include:
    - a. A brief description of the goods or services needed;
    - b. Where the solicitation may be viewed;
    - c. A point of contact with the State; and
    - d. The deadline for response.
- 7. Secured Submission
  - i. The proposals must be submitted by a secured method (e.g., mailed or hand-delivered sealed envelopes, a secured electronic platform, etc.) and must not be opened until the bid opening as specified in the RFP.
  - ii. Regardless of submission method, the procuring agency must document the date and time of the submitted proposals' receipt.
- 8. Public Bid Opening
  - i. The procuring agency must have a public meeting (called a public bid opening), at which the names of the contractors that submitted proposals in response to an RFP are read aloud.
  - ii. Public bid openings may be in-person or virtual.

9. Evaluation
  - i. Agencies may direct evaluators to score proposals by individual scoring or by consensus scoring, but not by both for the same RFP.
  - ii. Individual scoring is any proposal evaluation method in which evaluators individually score vendor proposals without discussing their scoring decisions with one another.
  - iii. Consensus scoring is any proposal evaluation method in which evaluators discuss vendor proposals with one another to agree on a single group score.
10. Public Award
  - i. The contract for services described in the RFP will be awarded to the highest scoring proposal or proposals.
  - ii. A memorandum describing which proposal or proposals have been awarded the services contract (i.e., an "Intent to Award") will be published on DAS's website.
  - iii. The evaluated proposals must be available to the public after the Intent to Award has been published. The proposals may be withheld from disclosure until an Intent to Award has been published.
11. Contract Negotiation & Execution
  - i. Contract negotiations may commence after an Intent to Award has been published on DAS's website, even if the protest period has not yet passed.
  - ii. A contract may not be executed until after the protest period, unless otherwise approved by the Director of the Department of Administrative Services or their designee.
12. Protests & Debriefs
  - i. Bid protests must be filed in accordance with the SPB Policy 23-07, Protests.
  - ii. Agencies may debrief vendors on the solicitation, but that debrief may only occur after the protest period has passed.

**C. Ethical Requirements**

1. Contractors involved in the development or execution of an RFP may not bid on that RFP.
2. Evaluators may not have a conflict of interest, as determined by the Materiel Administrator.
3. Evaluators must sign an "Evaluator Agreement," provided or approved by SPB.

**D. Alternative Process**

1. If the procuring agency wishes to deviate from the requirements set forth in this Procurement Manual, it must receive express, written permission from the Director of Administrative Services to deviate from the Procurement Manual's requirements.
2. An agency may draft and post a Request for Information ("RFI").
  - i. An RFI is used to gather information, is not considered a competitive bid, and is not subject to the requirements of this manual.
  - ii. An RFI may not result in a contract or procurement, unless SPB approves, in advance, an RFI being a mandatory requirement of an RFP.

3. A Request for Qualifications ("RFQ") is a formal process used to screen vendors who may submit a proposal in response to a solicitation based on their qualifications to provide the required services. An agency may use an RFQ in addition to or instead of an RFP with permission from the Director of Administrative Services or his or her designee.

### **III. Exceptions**

- A. An agency seeking an exception to the competitive bid process must complete and submit Procurement Exception/Deviation Form GS-1 to SPB. Except for emergencies, all exception requests must be submitted to and approved by SPB before an agency procures the service.
- B. Exceptions to competitive bidding include:
  1. Sole Source (Neb. Rev. Stat. §§ 73-502(5) & 73-507(1)(a))
  2. Emergency (Neb. Rev. Stat. §§ 73-502(3) & 73-507(1)(a))
  3. Price is established by the General Services Administration (GSA) (Neb. Rev. Stat. § 73-507(1)(a))
  4. Contracts already competitively bid elsewhere (e.g., NASPO Contracts) (Neb. Rev. Stat. § 73-507(1)(a))
  5. Other circumstances in accordance with law (Neb. Rev. Stat. § 73-507(1)(b))
  6. Those listed in Neb. Rev. Stat. § 73-507(2)
- C. Information-Gathering Tools:
  1. Methods primarily used to gather information, as opposed to directly and immediately result in a contract, are not subject to competitive bidding rules.
  2. Such methods may include, but are not limited to, Requests for Information or Draft RFPs.

### **IV. Contracts Exempt from this Manual**

Common statutory exemptions from Neb. Rev. Stat. § 73-501 et seq. include, but are not limited to:

- A. Construction, Repair, & Renovation of Buildings or Roads (Neb. Rev. Stat. § 72-803) & (Neb. Rev. Stat. § 39-1348 et seq.).
- B. Services contracts of the University of Nebraska, the Nebraska State Colleges, the Courts, the Legislature, or an officer or State Agency established by the Constitution of Nebraska (Neb. Rev. Stat. § 73-502(6)).

**[SIGNATURE PAGE TO FOLLOW.]**

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The foregoing policy is duly signed and executed on this 20<sup>th</sup> day of November, 2023.

  
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**Director,**  
State of Nebraska, *Department of Administrative Services*

20 Nov 23  
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DATE

Amarza Block  
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**Material Administrator,**  
State of Nebraska, *Department of Administrative Services*

11/20/23  
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DATE

