Best-Value Procurement Manual

MnDOT
Office of
Construction and
Innovative
Contracting (OCIC)

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Your Destination...Our Priority

Table of Contents

1 Preface 1

1.1 Purpose of Manual 1

1.2 What is Best Value Procurement? 1

1.3 State Law for Best Value Procurement 1

2 Applying Best Value 3

2.1 What the Process Offers 3

2.2 What the Process Does Not Offer 3

2.3 When to Use Best Value 3

3 Best Value Procurement Approach 6

3.1 Introduction 6

3.2 Definitions 6

4 Best Value Procurement Steps 7

4.1 Select Project for Best Value 7

4.2 Coordinate with FHWA 7

4.3 Coordinate with Industry 7

4.4 Determine Best Value Criteria 8

4.5 Prepare Request for Proposals and Final Design 8

4.6 Advertise Project 8

4.7 Optional Pre-Bid Conference 8

4.8 Receive Proposals and Bids 9

4.9 Opening of Bids 10

4.10 Selection and Award 11

Appendix A: Minnesota Statute 16C.02, 16C.03 and 16C.28 ..... A-1

16C.02 DEFINITIONS. A-1

16C.03 COMMISSIONER'S AUTHORITY; POWERS AND DUTIES. A-5

16C.28 CONTRACTS; AWARD. A-10

Appendix B: Best Value Specification Template B-1

Appendix C: Future Best Value Techniques C-1

Appendix D: Sample Proposal Evaluation Manual D-1

1 Preface

1.1 Purpose of Manual

This manual is intended to aid the Minnesota Department of Transportation (MnDOT) in using the best value method to procure construction contracts. It seeks to promote a consistent procurement process for the agencies and also a consistent proposal process for construction contractors involved in best value procurement. Specific objectives of the manual include:

- Provide baseline approaches that fit within MnDOT policies and State law.
- Provide guidance for determining when to use best value procurement.
- Provide guidance for completing a transparent best value process that is fair to both the agency and the industry.
- Establish a foundation for best value procurement that can be expanded as additional Best Value Procurement methods are used. (Appendix C)

1.2 What is Best Value Procurement?

While definitions of best value vary widely, the following definition has been adopted by the National Cooperative Highway Research Program (NCHRP):

A procurement process where price and other key factors can be considered in the evaluation and selection process to minimize impacts and enhance the long-term performance and value of construction.

Traditionally, price has been the sole factor considered in selection of construction contractors by state departments of transportation. Best-value procurement allows other factors, such as qualifications, schedule, quality, and performance-based criteria, to be used in evaluation and selection. MnDOT and the FHWA do not consider the use of A+B, lane rental, or incentive/disincentives as best-value.

1.3 State Law for Best Value Procurement

In 2007, the Minnesota Legislature enacted a law that enables public agencies to select contractors based on best value, rather than low bid. The law applies to state agencies, cities, counties, and school districts. (Applicable portions of the statute are included in Appendix A of this guide.)

Highlights of the law include the following:

- Price must be one of the evaluation criteria when procuring construction contracts.
- Other evaluation criteria may include, but are not limited to: quality performance, timeliness of performance, customer satisfaction, on-budget performance, ability to minimize change orders, ability to prepare plans, technical capacity, qualifications, and ability to assess and minimize risks.
- Performance on previous projects does not include the exercise or assertion of a person's legal rights.

- Best value determination must be based on the evaluation criteria detailed in the solicitation document. If criteria other than price are used, the solicitation document must clearly state the relative importance of price and other factors.
- Any personnel administering procurement procedures for a user of best value procurement, or any consultant retained by a local unit of government to prepare or evaluate solicitation documents must be trained, either by the department or through other training, in the request for proposals (RFP) process used for best value contracting for construction projects. Application of this manual cannot be substituted for the required training.

The 2007 best-value authority does not extend to design-build contracting. MnDOT's authority for design-build (low bid or best-value) contracting is provided in state statutes 161.3410 through 161.3428.

2 Applying Best Value

2.1 What the Process Offers

Best value procurement provides MnDOT with another tool to address the increasing pressure to deliver high-quality projects faster and more cost effectively by allowing the award of contracts on factors other than low price.

This manual provides a straightforward method for evaluating proposals using price and other factors. Best value procurement and the state law allow for a broad range of procurement options. Several of these options are included in Appendix C – Future Best Value Techniques.

MnDOT has developed the simplified best value approach included in this manual as a starting point for MnDOT to apply best value procurement. The application of best value may be expanded as agencies and contractors become more familiar with its use.

2.2 What the Process Does Not Offer

Project managers should be aware that best value procurement:

- cannot guarantee the success of a project.
- should not be used as a vehicle for restricting competition or applying arbitrary or unreasonable discretion in the selection of contractors.
- will not resolve existing administration problems or remedy unclear specifications.
- may take longer than a traditional low-bid process, depending on how much time is provided to prepare proposals.
- may require additional agency effort for the preparation of bid documents and evaluation of proposals.
- may increase the costs to the industry to prepare and submit bids for the project.
- may increase the project cost if selection is based on higher quality or an increased effort by the contractor.

2.3 When to Use Best Value

Best value procurement is most useful when a project has unique objectives or challenges that may be difficult to meet using traditional low-bid procurement. The series of questions shown in the checklist below can be used to help determine if a project is a good candidate.

If the answer is “yes” to most of the questions, the project may be suitable for best value procurement. If the answer is “no” to some of the questions, the project may still be a good candidate, but careful consideration should be given to whether or not those items with a “no” answer can be successfully addressed.

Checklist – Implementing Best Value Procurement

Determine if the project is a good candidate for Best Value Procurement by answering the following questions:

Are the agency's experience level, staffing, funding and project performance evaluation metrics adequate?		
Yes	No	
		Internal and external resistance to shifting from low-bid award to Best Value Procurement is minimal.
		Experienced personnel are available to participate on evaluation teams.
		Consultants are available to fill agency personnel gaps in specialized areas.
		Agency employees and/or consultants retained by the agencies have received appropriate training in the application of Best Value Procurement.

Is the industry's experience level adequate?		
Yes	No	
		Contractors have experience responding to qualifications-based procurements.
		Contractors can meet the bonding and insurance requirements for the procurement.
		Any relationships between contractors, designers, testing agencies, material suppliers, and/or other relevant parties that are necessary to complete the project are currently in place, or can be readily achieved.

Will there be measureable benefits and value added to the project through Best Value Procurement?		
Yes	No	
		Qualification Benefits
		Performance of the project requires specialized certifications, licensures or training for successful completion.
		The project will significantly benefit from the dedication of key individuals with specific types or levels of experience.
		The project will significantly benefit from the skills that the Contractor has developed performing similar work on previous projects.
		Quality Enhancement Benefits
		Higher quality materials are favored.
		Higher quality construction is required.
		Higher quality management capabilities are necessary.

Will there be measureable benefits and value added to the project through Best Value Procurement?		
Yes	No	
		Performance of the project requires specialized equipment or materials to meet schedule or quality goals.
		Cost Savings Benefits
		Life-cycle costs can be lowered by higher levels of experience or qualifications.
		First cost can be lowered through contractor innovation.
		Cost growth including change orders and overruns can be reduced by higher levels of experience or qualifications.
		Schedule Savings Benefits
		Competition will encourage shorter schedule.
		Shorter schedule will require innovative procedures and processes.
		Limits are necessary on duration of schedule.

Will Best Value Procurement negatively affect small or disadvantaged business opportunities?		
Yes	No	
		Pool of available small or disadvantaged businesses is adequate to provide ample competition through this procurement.

It is ultimately a project management decision to determine whether best value procurement will bring enough benefit to the project to offset the additional proposal efforts required of both the agency and the contractors, compared to traditional low-bid procurement.

Project managers must contact the MnDOT Office of Construction and Innovative Contracting (OCIC) if they are considering using best value. Contact should be made at or prior to an approved 30- to 50-percent design to allow time to implement a Best Value Procurement.

3 Best Value Procurement Approach

3.1 Introduction

This manual introduces a streamlined approach to best value procurement that can be applied to a variety of projects. Both small and large scale projects can benefit from the use of best value procurement. The approach is intended for projects that have been advanced through the final design stage by the Owner. The process uses pass-fail criteria based on what will most benefit the project and selects the low bid from the proposals meeting the criteria. It is designed to balance the ability to evaluate best value with the additional effort required for proposal preparation and evaluation.

A template specification for the streamlined approach is included in Appendix B. Future options for expanding the streamlined approach to allow more flexibility in the process are included in Appendix C.

3.2 Definitions

Non-Responsive Bidder – A bidder who fails to meet the proposal requirements, fails to submit the required elements of the technical proposal, or whose submittal fails to prove they meet the requirements of the project Special Provisions. MnDOT, however, reserves the right to waive minor deficiencies or informalities in bids. A deficiency or informality is minor, if, in the judgment of the department, it does not provide a material advantage to a bidder or prejudice the rights of other bidders.

Responsive Bidder – A bidder who meets the proposal requirements, submits the required elements of the technical proposal as defined in the project Special Provisions and meets the pass/fail criteria for the work described in the project Special Provisions.

4 Best Value Procurement Steps

The following steps should be conducted by MnDOT for procurement of a best value contract.

4.1 Select Project for Best Value

Follow the screening criteria outlined in Section 2 of this guide to determine if a project is appropriate for best value procurement. Contact MnDOT OCIC as early in the process as possible (recommended at 30- to 50-percent plan completion) to assist with this determination. MnDOT OCIC concurrence is required to use the best value procurement process.

4.2 Coordinate with FHWA

If federal funds are used, Federal Highway Administration (FHWA) approval is required. The approval process will vary based on the type of best-value procurement, as listed below.

- If the best-value process follows steps 4.4 through 4.10 of this manual, the FHWA considers this a prequalification process under 23 CFR 635.10. After the evaluation criteria is developed under step 4.5 and before project advertisement, the MnDOT project manager must submit the requirements to the FHWA on each project. FHWA requires two weeks to review/approve. Advance discussions with the FHWA are encouraged to expedite the review and approval time. The submittal must include:
    - A cover letter addressed to the FHWA Division Administrator requesting approval of the pre-qualification criteria. The letter must include a description of the project, purpose for using best-value, and project schedule. Carbon copy (cc) the respective FHWA Area Engineer, FHWA Construction and Contract Administration Engineer, MnDOT OCIC Innovative Contracting Director, and MnDOT Pre-Letting Engineer.
    - Special Provision 1301 Consideration of Proposals (Best Value Method) with the final evaluation criteria.
- If the best-value process follows any process listed in Appendix C or any other type of best-value not listed within this manual, the project must receive Special Experimental Project 14 (SEP-14) approval prior to advertisement. More information regarding the SEP-14 process can be found on the FHWA website. The SEP-14 application and review process may take several weeks to several months to complete. Contact OCIC and the FHWA early to begin the application process.

4.3 Coordinate with Industry

Early coordination with the contracting industry will allow the industry to prepare for a best value procurement and increase competition on the project. MnDOT has ongoing meetings

with the Association of General Contractors (AGC) where this coordination can take place. Contact MnDOT OCIC for more information.

4.4 Determine Best Value Criteria

Determine the pass/fail best value evaluation criteria that will be used in the procurement. Evaluation criteria should be based on the elements that will bring the most value to the project. The following categories of evaluation criteria can be used with this approach:

- Qualifications of Personnel – Certain work tasks may benefit from personnel with specific licensure, training, or certifications. Establish pass-fail criteria based on the needs of the project.
- Experience of Personnel on Similar Projects – The personnel that will perform the work on the project should have experience on similar projects. Establish pass-fail criteria requiring minimum experience levels.
- Experience of Contractor on Similar Projects – Experience with projects of a similar size, type or complexity may benefit the project. Establish pass-fail criteria requiring minimum experience levels.
- Availability of Key Personnel, Equipment or Materials – Establish the required personnel, equipment or materials that will be necessary to successfully complete the project. Contractor will indicate availability of these items in the proposal.
- Ability to Meet Completion Date – Establish project completion requirements and request contractor completion dates.

4.5 Prepare Request for Proposals and Final Design

Prepare a traditional plans and specification package. Prepare special provision S-XX ([1206] (Preparation of Proposal)) for the project that describes any necessary bid forms, required proposal content, evaluation criteria, and the necessary elements for bidders to achieve a “pass” rating. It is important that the requested proposal information, the evaluation criteria, and the threshold for achieving a passing rating are clear and easily understood by the evaluators and the contractors. Submit special provision 1206 (Preparation of Proposal) to OCIC for approval.

4.6 Advertise Project

Advertise the project following MnDOT’s normal advertising process for projects.

4.7 Optional Pre-Bid Conference

An optional pre-bid meeting may be held prior to the submission of both the unpriced technical proposals and the cost proposals. Attendance should be optional for all bidders. All attendees will be required to sign-in at the pre-bid conference. The technical proposal requirements will be reviewed in detail at the pre-bid conference.

4.8 Receive Proposals and Bids

Proposals will be delivered in two parts: technical proposals and cost proposals. The technical proposals should be submitted at least two weeks prior to the cost proposals to allow sufficient time to review the technical proposals before opening the responsive bidders' cost proposals.

A. Technical Proposal

A.1 Submittal Instructions

MnDOT will provide bidders with instructions for assembling and submitting technical proposals. These instructions should be provided in a format similar to S-XX ([1206] (Preparation of Proposal)) shown in Appendix B. Include forms that represent the best value criteria selected in 4.4 above. The following forms are currently available, as described below:

- FORM A: Qualifications of Personnel—Identifies any specialty personnel positions and the minimum qualifications, including specific certifications, licenses, and other required qualifications of individual personnel (e.g., Professional Engineer with five years of experience). Bidders indicate which employee(s) have those certifications.
- FORM B: Experience of Personnel—Identifies specialty personnel positions and the minimum amount of experience required (e.g., five years of experience managing historic renovation projects). Be specific on the requirements for project size, types of experience, actual roles on the project and actual durations of work performed. Bidders identify experience levels of key personnel assigned to the project.
- FORM C: Experience of Bidder—Identifies required project experience for bidders, including both prime contractor and key subcontractors. Be specific on the types of projects, size of projects, complexity of projects, types of experience, work methods, actual roles on the project and actual durations of work performed that are required. Bidders list specific projects and provide key details on those projects.
- FORM D: Availability of Equipment or Material— Identifies required materials and equipment not otherwise included in the specifications for the work. Bidders confirm availability and commitment to use those materials, equipment and approaches.

The work, including the overall project management, may be performed by the Contractor or a Subcontractor, whoever meets the requirements of the specification. Each bidder may propose only one firm for each specialty category listed.

A.2. Opening and Review of Proposal Packages

1. The unpriced technical proposals will be reviewed by a panel consisting of at least three individuals selected by MnDOT. An oversight committee, which must include a member from OCIC, will develop an evaluation plan and oversee the review of the technical proposals. A sample proposal evaluation manual is included in Appendix D.

2. The unpriced technical proposals submitted by the bidders will be evaluated solely in accordance with the criteria set forth in the specification. The technical proposals will be

evaluated on a pass/fail basis to determine which proposals, if any, meet the criteria necessary for a passing rating.

3. The technical proposal review will be completed within seven calendar days, at which time all bidders will be notified in writing as to whether their technical proposal package was deemed responsive or non-responsive.

4. When MnDOT deems a bidder's technical proposal non-responsive, as defined in Section 3 of this manual, no additional opportunity to supplement the technical qualifications will be afforded to the bidder.

5. All bidders that have submitted responsive technical proposals will have their cost proposals considered.

6. All bidders that have submitted non-responsive proposals will not be permitted to submit a cost proposal.

A.3 Determination of Responsiveness

Proposals will be evaluated for responsiveness based on the following pass/fail criteria:

1. Bidder information, certifications, and documents as described in 1206 (Preparation of Proposal) are included in the technical proposal and are complete and accurate.

2. A bidder must receive a "pass" on all "pass/fail" criteria for the Proposal to be deemed responsive. Failure to achieve a "pass" rating on one or more "pass/fail" factors will result in the Proposal being declared non-responsive. Failure to submit information in the manner, format, and detail specified will result in the Proposal being declared non-responsive.

B. COST PROPOSALS

MnDOT will initiate this phase of the best value procurement procedure if there is at least one responsive technical proposal package. Cost proposals (bids) will be submitted using MnDOT's Two Way Electronic Bidding or hard copy bidding processes.

This phase will be conducted per MnDOT standard bid procedures, except that only bids from responsive bidders will be opened.

A separate letting date removed from the MnDOT's regular schedule is required. Please contact the Special Provisions Engineer in the Office of Technical Support and the Letting Supervisor in the Office of Construction and Innovative Contracting for assistance in selecting a letting date.

4.9 Opening of Bids

Bids from all contractors that received a passing rating on the technical proposal will be opened. Bids received from bidders receiving a failing rating on the technical proposals will not be opened.

4.10 Selection and Award

Bids will be opened at the time indicated in the Advertisement for Bids. The project will be awarded to the responsible bidder submitting the lowest bid price of those receiving a passing rating on the technical proposal.

After award, all technical and cost proposals will be disclosed as follows:

- The technical proposals and the cost proposals will be both open to public inspection as required or permitted by the Minnesota Government Data Practices Act. These documents will be available for viewing and the results will be posted publicly per MnDOT standards.
- All technical proposals will be filed.

Appendix A: Minnesota Statute 16C.02, 16C.03 and 16C.28

16C.02 DEFINITIONS.

Subdivision 1. Applicability.

For purposes of this chapter, the following terms have the meanings given them, unless the context clearly indicates otherwise.

Subd. 2. Agency.

"Agency" means any state officer, employee, board, commission, authority, department, entity, or organization of the executive branch of state government.

Unless specifically provided elsewhere in this chapter, agency does not include the Minnesota State Colleges and Universities.

Subd. 3. Award.

"Award" means a commissioner's written acceptance of a bid or proposal to provide goods, services, or utilities.

Subd. 3a. Best and final offer.

"Best and final offer" means an optional step in the solicitation process in which responders are requested to improve their response by methods including, but not limited to, the reduction of cost, clarification or modification of the response, or the provision of additional information.

Subd. 4. Best value.

"Best value" describes a result intended in the acquisition of all goods and services. Price must be one of the evaluation criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to, environmental considerations, quality, and vendor performance. In achieving "best value" strategic sourcing tools, including but not limited to best and final offers, negotiations, contract consolidation, product standardization, and mandatory-use enterprise contracts shall be used at the commissioner's discretion.

Subd. 4a. Best value; construction.

For purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price and performance criteria, which may include, but are not limited to:

(1) the quality of the vendor's or contractor's performance on previous projects;

(2) the timeliness of the vendor's or contractor's performance on previous projects;

(3) the level of customer satisfaction with the vendor's or contractor's performance on previous projects;

(4) the vendor's or contractor's record of performing previous projects on budget and ability to minimize cost overruns;

(5) the vendor's or contractor's ability to minimize change orders;

(6) the vendor's or contractor's ability to prepare appropriate project plans;

(7) the vendor's or contractor's technical capacities;

(8) the individual qualifications of the contractor's key personnel; or

(9) the vendor's or contractor's ability to assess and minimize risks.

"Performance on previous projects" does not include the exercise or assertion of a person's legal rights. This definition does not apply to sections 16C.32, 16C.33, 16C.34, and 16C.35.

Subd. 5. Commissioner.

"Commissioner" means the commissioner of administration.

Subd. 6. Contract.

"Contract" means any written instrument or electronic document containing the elements of offer, acceptance, and consideration to which an agency is a party, including an amendment to or extension of a contract.

Subd. 6a. Enterprise procurement.

"Enterprise procurement" means the process undertaken by the commissioner to leverage economies of scale of multiple end users to achieve cost savings and other favorable terms in contracts for goods and services.

Subd. 7. Formal solicitation.

"Formal solicitation" means a solicitation which requires a sealed response.

Subd. 8. Goods.

"Goods" means all types of personal property including commodities, materials, supplies, and equipment.

Subd. 9. Informal solicitation.

"Informal solicitation" means a solicitation which does not require a sealed response.

Subd. 10. Lease.

"Lease" means a contract conveying from one entity to another the use of real or personal property for a designated period of time in return for payment or other consideration.

Subd. 10a. Organizational conflict of interest.

"Organizational conflict of interest" means that because of existing or planned activities or because of relationships with other persons:

(1) the vendor is unable or potentially unable to render impartial assistance or advice to the state;

(2) the vendor's objectivity in performing the contract work is or might be otherwise impaired; or

(3) the vendor has an unfair advantage.

Subd. 11. Request for bid or RFB.

"Request for bid" or "RFB" means a solicitation in which the terms, conditions, and specifications are described and responses are not subject to negotiation.

Subd. 12. Request for proposal or RFP.

"Request for proposal" or "RFP" means a solicitation in which it is not advantageous to set forth all the actual, detailed requirements at the time of solicitation and responses are negotiated to achieve best value for the state.

Subd. 13. Resident vendor.

"Resident vendor" means a person, firm, or corporation authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota.

Subd. 14. Response.

"Response" means the offer received from a vendor in response to a solicitation. A response includes submissions commonly referred to as "offers," "bids," "quotes," "proposals," "best and final offers," or "negotiated offers."

Subd. 15. Sealed.

"Sealed" means a method determined by the commissioner to prevent the contents being revealed or known before the deadline for submission of responses.

Subd. 16. Service contract.

"Service contract" means a contract for any nonprofessional or technical services.

Subd. 17. Services.

"Services" means, unless otherwise indicated, both professional or technical services and service performed under a service contract.

Subd. 18. Single source.

"Single source" means an acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service, or construction item.

Subd. 19. Solicitation.

"Solicitation" means the process used to communicate procurement requirements and to request responses from interested vendors. A solicitation may be, but is not limited to, a request for bid and request for proposal.

Subd. 20. Strategic sourcing.

"Strategic sourcing" means methods used to analyze and reduce spending on goods and services, including but not limited to spend analysis, product standardization, contract consolidation, negotiations, multiple jurisdiction purchasing alliances, reverse and forward auctions, life-cycle costing, and other techniques.

Subd. 21. Vendor.

"Vendor" means a business, including a construction contractor or a natural person, and includes both if the natural person is engaged in a business.

History:

1998 c 386 art 1 s 3; 1Sp2001 c 10 art 2 s 33; 1Sp2003 c 1 art 2 s 45; 2007 c 148 art 2 s 24-29; art 3 s 1,2

16C.03 COMMISSIONER'S AUTHORITY; POWERS AND DUTIES.

Subdivision 1. Scope.

The commissioner's authority in this section applies to an agency and is subject to other provisions of this chapter and chapter 16B. Unless otherwise provided, the provisions in this chapter and chapter 16B do not apply to the Minnesota State Colleges and Universities.

Subd. 2. Rulemaking authority.

Subject to chapter 14, the commissioner may adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

(1) procurement process including solicitations and responses to solicitations, bid security, vendor errors, opening of responses, award of contracts, tied bids, and award protest process;

(2) contract performance and failure to perform;

(3) authority to debar or suspend vendors, and reinstatement of vendors;

(4) contract cancellation;

(5) procurement from rehabilitation facilities;

(6) organizational conflicts of interest; and

(7) surplus property acquisition, distribution, and disposal.

Subd. 3. Acquisition authority.

The commissioner shall acquire all goods, services, and utilities needed by agencies. The commissioner shall acquire goods, services, and utilities by requests for bids, requests for proposals, reverse auctions as provided in section 16C.10, subdivision 7, or other methods provided by law, unless a section of law requires a particular method of acquisition to be used. The commissioner shall make all decisions regarding acquisition activities. The determination of the acquisition method and all decisions involved in the acquisition process, unless otherwise provided for by law, shall be based on best value which includes an evaluation of price and may include other considerations including, but not limited to, environmental considerations, quality, and vendor performance. A best value determination must be based on the evaluation criteria detailed in the solicitation document. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors. Any or all responses may be rejected. When using the request for bid process, the bid must be awarded to the lowest responsive and responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the request for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life-cycle costing, where appropriate, in determining the lowest

overall bid. The duties set forth in this subdivision are subject to delegation pursuant to this section.

Subd. 3a. Acquisition authority; construction contracts.

For all building and construction contracts, the commissioner shall award contracts pursuant to section 16C.28, and "best value" shall be defined and applied as set forth in sections 16C.02, subdivision 4a, and 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). The duties set forth in this subdivision are subject to delegation pursuant to this section. The commissioner shall establish procedures for developing and awarding best value requests for proposals for construction projects. The criteria to be used to evaluate the proposals must be included in the solicitation document and must be evaluated in an open and competitive manner.

Subd. 4. Contracting authority.

The commissioner shall conduct all contracting by, for, and between agencies and perform all contract management and review functions for contracts, except those functions specifically delegated to be performed by the contracting agency, the attorney general, or otherwise provided for by law. The commissioner may require that agency staff participate in the development of enterprise procurements including the development of product standards, specifications and other requirements.

Subd. 4a. Commissioner approval.

Notwithstanding any law to the contrary, after January 1, 2002, any contract entered into by the Department of Transportation must be approved by the commissioner, unless the commissioner has delegated approval authority to the Department of Transportation under subdivision 16.

Subd. 5. Amendments, cancellations, and appeals.

The commissioner shall, in addition to the duties set forth in subdivisions 3 and 4, make all decisions regarding amendments, cancellations, and appeals of all agency acquisition activities unless the duties are delegated pursuant to this section.

Subd. 6. Lease and installment purchases.

The commissioner is authorized to enter into lease purchases or installment purchases for periods not exceeding the anticipated useful life of the items acquired unless otherwise prohibited by law.

Subd. 7. Lease, rental, and installment agreements.

The commissioner is authorized to enter into lease, lease purchase, rental, or installment agreements for the use or acquisition, whichever is applicable, of real or personal property.

Subd. 8. Policy and procedures.

The commissioner is authorized to issue policies, procedures, and standards applicable to all acquisition activities by and for agencies. Consistent with the authority specified in this chapter, the commissioner shall develop and implement policies, procedures, and standards ensuring the optimal use of strategic sourcing techniques.

Subd. 9. Employee purchasing.

The commissioner is authorized to enter into contracts under which a vendor agrees to sell computer equipment and related products to state employees, for their own use related to work, at contract prices. Employees may make only one purchase under this subdivision. Under no circumstances shall the state be liable for purchases made under this subdivision. The provisions of section 43A.38, subdivisions 4 and 5, clause (a), do not apply to this subdivision.

Subd. 10. Cooperative purchasing.

The commissioner is authorized to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with one or more other states or governmental units, as described in section 471.59, subdivision 1; entities defined in section 16C.23, subdivision 1; a registered combined charitable organization and its affiliated agencies as defined by section 43A.50; a charitable organization defined in section 309.50, subdivision 4, that is also a recipient of a state grant or contract; or a nonprofit community health clinic defined in section 145.9268. The commissioner is authorized to enter into cooperative purchasing agreements for the purchase of goods, services, and utilities with health care facilities that are required to provide indigent care or any entity recognized by another state's statutes as authorized to use that state's commodity or service contracts.

Subd. 11. Surplus property.

The commissioner is authorized to purchase, accept, transfer, warehouse, sell, distribute, or dispose of surplus property in accordance with state and federal rules and regulations. The commissioner may charge a fee to cover any expenses incurred in connection with any of these acts.

Subd. 12. Central distribution center.

The commissioner is authorized to provide and manage a central distribution center for federal and state surplus personal property, as defined in section 16C.23, and may provide and manage a warehouse facility.

Subd. 13. Central stores.

The commissioner is authorized to provide agencies with supplies and equipment and operate all central stores and supply rooms serving more than one agency.

Subd. 14. Provision of goods, services, and utilities.

The commissioner has the authority to provide goods, services, and utilities under this chapter to state legislative and judicial branch agencies, political subdivisions, the Minnesota State Colleges and Universities, the University of Minnesota, and federal government agencies.

Subd. 15. Reimbursement for goods, services, and utilities.

The commissioner is authorized to charge a fee to cover costs and expenses associated with operating a revolving fund or an enterprise fund to acquire goods, services, and utilities. The fees are appropriated to the commissioner to administer and manage the programs and facilities covered under this section.

Subd. 16. Delegation of duties.

The commissioner may delegate duties imposed by this chapter to the head of an agency and to any subordinate of the agency head. Delegated duties shall be exercised in the name of the commissioner and under the commissioner's direct supervision and control. A delegation of duties may include, but is not limited to, allowing individuals within agencies to acquire goods, services, and utilities within dollar limitations and for designated types of acquisitions. Delegation of contract management and review functions must be filed with the secretary of state and may not, except with respect to delegations within the Department of Administration, exceed two years in duration. The commissioner may withdraw any delegation at the commissioner's sole discretion. The commissioner may require an agency head or subordinate to accept delegated responsibility to procure goods or services intended for the exclusive use of the agency receiving the delegation.

Subd. 17. Contract extension.

The term of a contract may be extended for a time longer than the time specified in this chapter, up to a total term of ten years, if the commissioner, in consultation with the commissioner of finance, determines that the contractor will incur upfront costs under the contract that cannot be recovered within a two-year period and that will provide cost savings to the state and that these costs will be amortized over the life of the contract.

Subd. 18. Contracts with foreign vendors.

(a) The commissioner and other agencies to which this section applies and the legislative branch of government shall, subject to paragraph (d), cancel a contract for goods or services from a vendor or an affiliate of a vendor or suspend or debar a vendor or an affiliate of a vendor from future contracts upon notification from the commissioner of revenue that the vendor or an affiliate of the vendor has not registered to collect the sales and use tax imposed under chapter 297A on its sales in Minnesota or to a destination in Minnesota. This subdivision shall not apply to state colleges and universities, the courts, and any agency in the judicial branch of government. For purposes of this subdivision, the term "affiliate" means any person or entity that is controlled by, or is under common control of, a vendor through stock ownership or other affiliation.

(b) Beginning January 1, 2006, each vendor or affiliate of a vendor selling goods or services, subject to tax under chapter 297A, to an agency or the legislature must provide its Minnesota sales and use tax business identification number, upon request, to show that the vendor is registered to collect Minnesota sales or use tax.

(c) The commissioner of revenue shall periodically provide to the commissioner and the legislative branch a list of vendors who have not registered to collect Minnesota sales and use tax and who are subject to being suspended or debarred as vendors or having their contracts canceled.

(d) The provisions of this subdivision may be waived by the commissioner or the legislative branch when the vendor is the single source of such goods or services, in the event of an emergency, or when it is in the best interests of the state as determined by the commissioner in consultation with the commissioner of revenue. Such consultation is not a disclosure violation under chapter 270B.

Subd. 19. Training.

Any personnel administering procurement procedures for a user of best value procurement or any consultant retained by a local unit of government to prepare or evaluate solicitation documents must be trained, either by the department or through other training, in the request for proposals process for best value contracting for construction projects. The commissioner may establish a training program for state and local officials, and vendors and contractors, on best value procurement for construction projects, including those governed by section 16C.28. If the commissioner establishes such a training program, the state may charge a fee for providing training.

History:

1998 c 386 art 1 s 4; 2000 c 420 s 1; 1Sp2001 c 10 art 2 s 34,35; 1Sp2003 c 1 art 2 s 46; 1Sp2005 c 3 art 5 s 1; 2007 c 67 s 1; 2007 c 83 s 1; 2007 c 139 s 1; 2007 c 148 art 2 s 30-33; art 3 s 3-5; 2008 c 277 art 1 s 2

16C.28 CONTRACTS; AWARD.

Subdivision 1. **Award requirements.**

(a) All state building and construction contracts entered into by or under the supervision of the commissioner or an agency for which competitive bids or proposals are required may be awarded to either of the following:

(1) the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract is intended, the status and capability of the vendor or contractor, other considerations imposed in the call for bids, and, where appropriate, principles of life-cycle costing; or

(2) the vendor or contractor offering the best value, taking into account the specifications of the request for proposals, the price and performance criteria as set forth in section 16C.02, subdivision 4a, and described in the solicitation document.

(b) The vendor or contractor must secure bonding, commercial general insurance coverage, and workers' compensation insurance coverage under paragraph (a), clause (1) or (2). The commissioner shall determine whether to use the procurement process described in paragraph (a), clause (1), or the procurement process described in paragraph (a), clause (2), and paragraph (c). If the commissioner uses the method in paragraph (a), clause (2), and paragraph (c), the head of the agency shall determine which vendor or contractor offers the best value, subject to the approval of the commissioner. Any or all bids or proposals may be rejected.

(c) When using the procurement process described in subdivision 1, paragraph (a), clause (2), the solicitation document must state the relative weight of price and other selection criteria. The award must be made to the vendor or contractor offering the best value applying the weighted selection criteria. If an interview of the vendor's or contractor's personnel is one of the selection criteria, the relative weight of the interview shall be stated in the solicitation document and applied accordingly.

Subd. 1a. **Establishment and purpose.**

(a) The state recognizes the importance of the inclusion of a best value contracting system for construction as an alternative to the current low-bid system of procurement. In order to accomplish that goal, state and local governmental entities shall be able to choose the best value system in different phases.

(b) "Best value" means the procurement method defined in section 16C.02, subdivision 4a.

(c) The following entities are eligible to participate in phase I:

(1) state agencies;

(2) counties;

(3) cities; and

(4) school districts with the highest 25 percent enrollment of students in the state.

Phase I begins on July 1, 2007.

(d) The following entities are eligible to participate in phase II:

(1) those entities included in phase I; and

(2) school districts with the highest 50 percent enrollment of students in the state.

Phase II begins two years from July 1, 2007.

(e) The following entities are eligible to participate in phase III:

(1) all entities included in phases I and II; and

(2) all other townships, school districts, and political subdivisions in the state.

Phase III begins three years from July 1, 2007.

(f) The commissioner or any agency for which competitive bids or proposals are required may not use best value contracting as defined in section 16C.02, subdivision 4a, for more than one project annually, or 20 percent of its projects, whichever is greater, in each of the first three fiscal years in which best value construction contracting is used.

Subd. 2. **Alterations and erasures.**

A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid must be rejected unless the alteration or erasure is corrected in a manner that is clear and authenticated by an authorized representative of the responder. An alteration or erasure may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed by an authorized representative of the responder.

Subd. 3. **Special circumstances.**

The commissioner may reject the bid or proposal of any vendor or contractor who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use negotiated procurement methods with the tied low bidders for that particular transaction so long as the price paid does not exceed the low tied bid price. The commissioner may award contracts to more than one vendor or contractor in accordance with subdivision 1, if doing so does not decrease the service level or diminish the effect of competition.

Subd. 4.**Record.**

A record must be kept of all bids or proposals, including names of bidders, amounts of bids or proposals, and each successful bid or proposal. This record is open to public inspection, subject to section 13.591 and other applicable law.

Subd. 5.**Preferences not cumulative.**

The preferences under sections 16B.121, 16C.06, subdivision 7, and 16C.16 apply, but are not cumulative. The total percentage of preference granted on a contract may not

exceed the highest percentage of preference allowed for that contract under any one of those sections.

History:

2002 c 254 s 4; *2005 c 78 s 5*; *2005 c 156 art 2 s 29*; *2007 c 148 art 3 s 8*

Appendix B: Best Value Specification Template

Note: Consult with Kevin Kosobud, Project Development Engineer, Office of Construction and Innovative Contracting, before incorporating this special provision.

S-1 (1301) CONSIDERATION OF PROPOSALS (BEST VALUE METHOD)

The Provisions of MnDOT 1301 are hereby supplemented as follows:

S-1.1 GENERAL

The process for consideration of proposals for the award of this Project will take into account the result of the Technical Proposal and total Price submitted by the Bidder.

S-1.2 DEFINITION OF TERMS

For this Project the following definitions apply:

- Two Phase Bidding Process – A two phase process consisting of a first phase in which bidders submit technical proposals to be evaluated by Minnesota Department of Transportation (MnDOT), and a second phase in which those bidders whose technical proposals are deemed responsive during the first phase have their sealed cost proposals considered. The submissions required in each "phase" will be deemed to constitute part of the bidder's "bid".

- Evaluation Committee – A panel of at least three individuals selected by MnDOT to review the contents of the Technical Proposal.

- Fail – Finding by the Evaluation Committee that a Technical Proposal does not include the required information or that the information supplied does not meet the requirements.

- Key Personnel – The individuals listed in the Technical Proposal to meet the proposal requirements.

- Non-Responsive Bidder – A bidder who fails to meet the proposal requirements, fails to submit the required elements of the technical proposal, fails to submit the technical proposal by the time technical proposals are due; or whose submittal fails to prove they meet the requirements of Section (1206) Preparation of Proposal. MnDOT, however, reserves the right to waive minor deficiencies or informalities in bids. A deficiency or informality is minor if, in the judgment of the department, it does not provide a material advantage to a bidder or prejudice the rights of other bidders.

- Pass – Finding by the Evaluation Committee that a Technical Proposal includes the required information and that the information supplied meets or exceeds the requirements.

- Responsive Bidder – A bidder who meets the proposal requirements, submits the required elements of the technical proposal and meets the pass/fail criteria for the work described.

- Price Proposal – The bidder's response to the cost component of the contract which contains the requirements of MnDOT 1206 (excluding Technical Proposal) and MnDOT 1208.

- Technical Proposal – A bidder's response to the qualification component of the Special Provisions.

S-1.3 TECHNICAL PROPOSAL

Technical Proposals must be submitted by the prime contractor and received by MnDOT **no later than 9:30 a.m. Central Time on Month, Day, Year.** Time of receipt by MnDOT will be determined by time that a complete submission was accepted by MnDOT's email server.

The Technical Proposal shall be delivered to MnDOT as set forth below:

1) shall be submitted as a single package
2) the cover page shall identify:
   The MnDOT project number
   The words "Technical Proposal"
   The date and time of the submittal deadline
   Proposer's name, contact information, and address
   Number of pages (including cover) in proposal

The Technical Proposal must be e-mailed to biddocsubmittal.dot@state.mn.us; place the State Project number in the subject line. Mailed or hand delivered Technical Proposals will not be accepted. The Technical Proposal must be less than 10 MB as submitted. Because MnDOT is using a two-phase bidding process, the phase one submission (the "Technical Proposal") will be considered an element of a bidder's bid, and therefore the Technical Proposal must be submitted **no later than** the time specified for delivery of technical proposals. Since phase one of the bid (the "Technical Proposal") requires delivery via email rather than via the electronic bidding system, the MnDOT email server may accept an emailed submission even after the deadline has passed. Any phase one bid ("Technical Proposal") received after the deadline will be considered non-responsive and will not be reviewed or considered. Bidders with an email system that supports "Request a Delivery Receipt" should utilize that function.

The Technical Proposal shall contain a short cover letter and the form(s) identified below. The Technical Proposal must not contain any appendices or price information of any kind.

The cover letter must contain sufficient information to familiarize reviewers with the Proposer's ability to satisfy the technical requirements of this Project. The cover letter shall also contain the name, address, phone number (office and cell), e-mail address and fax number of the Proposer's sole point of contact for the Project. This point of contact must be available to answer questions regarding the contents of the Technical Proposal and be responsible for transmitting and receiving information if necessary.

The Technical Proposal shall also include the following forms.

FORM A: Qualifications of Personnel
FORM B: Experience of Personnel
FORM C: Experience of Bidder
FORM D: Availability of Key Equipment or Materials

Do Not Submit elaborate binders, graphics, brochures, and/or illustrations. If submitted, these supplementary materials will be discarded prior to review of the bid forms. Legibility, completeness, and adherence to the prescribed format are essential. Failure to complete any of the required forms will be grounds for rejection of the technical proposal.

S-1.4 CONSIDERATION OF PROPOSALS

Upon receipt of the Technical Proposals, MnDOT will conduct an initial review of the Technical Proposals for responsiveness to the requirements set forth above. Technical Proposals that are deemed not responsive at this initial review will be excluded from further consideration and the bidder will be so advised. MnDOT will exclude from consideration any Technical Proposal that contains a material misrepresentation, as determined in MnDOT's sole discretion. MnDOT reserves the right to request clarification or supplemental information from bidders at any time during the review and evaluation process. These requests may be used to determine if a bidder is responsive or meets the qualifications for the project. MnDOT has no duty to request clarification or supplemental information. If a bidder fails to provide information sufficient to allow MnDOT to determine a "pass" rating, then MnDOT may assign a rating of "fail".

An Evaluation Committee will evaluate the contents of the Technical Proposals before the Price Proposals are submitted. The contents of the Technical Proposals will be evaluated on a Pass/Fail basis in response to the criteria shown above and contractor qualifications as indicated in Appendix X. If a bidder receives a Fail rating, the bidder will be excluded from any further consideration.

Upon completion of the Technical Proposal evaluation process, MnDOT will notify each bidder via e-mail at least seven days prior to the letting date if they

received a Pass or Fail score on the Technical Proposal. **MnDOT will only accept Price Proposals from bidders that receive a Pass score.**

Protests Concerning Contents of this Request for Bids and Determinations of Responsiveness

1. ***Exclusive Remedy.*** This section sets forth the exclusive protest remedies available with respect to evaluation of technical proposals and determinations of responsiveness of such proposals. Each responder, by submitting its technical proposal, expressly agrees (1) to accept the limitation on its rights of protest as contained herein, (2) to accept the department's decision on any protest as final and conclusive, unless wholly arbitrary, (3) to waive all other rights and remedies, and (4) to be responsible for any costs it incurs in preparing and prosecuting such protest .

2. ***Protests Regarding the Terms of this Request for Bids.*** A prospective responder may protest the terms of this Request for Bids (RFB) only on the grounds that (1) a material term of this RFB is ambiguous and that ambiguity has not been resolved through an addenda, or (2) the procurement process described herein is contrary to law, or (3) this procurement, or the process described herein, wholly or partially exceeds MnDOT's legal authority. Such protests must be submitted in writing, and received by the Protest Official no later than 5 business days before the technical proposal submission deadline. No protest will be considered unless it is set forth in writing and delivered within the time limits specified.

3. ***Protests Regarding Responsiveness Determination.*** A responder who wishes to challenge a determination that a particular technical proposal was responsive or non-responsive may protest that determination on the grounds that such determination was (1) arbitrary, capricious, or unreasonable, or (2) violated state or federal law, or (3) the evaluation process did not conform to the specifications of this RFB. Such protests must submitted in writing, and received by the Protest Official no later than 5 business days after the responder is notified of the selection results. No protest will be considered unless it is set forth in writing and delivered within the time limits specified.

4. ***Protest Official***. The Protest Official for this RFB is Kent Allin, Director, Materials Management Division, Minnesota Department of Administration (or his designee). Mr. Allin can be contacted at:

   Mr. Kent Allin
   Mn Department of Administration
   50 Sherburne Ave.
   St. Paul, MN 55155

5. ***Protest Process***. Protests must be submitted in writing. Only written protests will be considered. Written protests will only be considered if they are received by the

deadlines established. The written protest must set forth the detailed basis of the protest and include any supporting documentation. The MnDOT project manager may submit a written response. The Protest Official will make a decision based on the written submissions. The Protest Official will consider whether MnDOT's position is (1) reasonable, and (2) complies with applicable laws and the terms of this RFB. The Protest Official will, within 5 business days, make a determination in writing regarding the validity of the protest, what remedial action (if any) is required, and whether or not any submission deadlines should be delayed or extended.

The award of the Contract will be made in accordance with MnDOT 1302 to the lowest and responsible bidder that receives a Pass score on the Technical Proposal.

S-1.5 KEY PERSONNEL

Unless otherwise Approved, the Contractor will be assessed a monetary deduction for Key Personnel who cannot meet the defined commitments to the Project, except for extenuating circumstances, such as the disability, death, retirement, or resignation of the employee.

The Contractor may be assessed a monetary deduction up to $20,000 for each proposed person who does not remain on the Project for the completion of his or her particular function. Contractor may be in breach under the Contract if proposed personnel are removed from the Project and satisfactory replacements are not provided. Insufficient provision of proposed personnel may cause the Contractor to be considered in default as described in 1808 (Default and Termination of Contract)

For any changes in personnel, the Contractor shall submit the qualification summaries and resumes of the individual and obtain written Approval of the person's participation in the Project before his or her start of work.

The Contractor shall notify MnDOT in writing of any proposed changes to Key Personnel and shall include a detailed resume summarizing the items set forth above and elsewhere in the Contract Documents. No Key Personnel shall be replaced without the prior written Approval of MnDOT. The changes will only be Approved if the replacement Key Personnel are equally qualified or more qualified than the original Key Personnel.

MINNESOTA DEPARTMENT OF TRANSPORTATION
TECHNICAL COMPETENCY OF BIDDERS
FORM A: QUALIFICATIONS OF PERSONNEL
SP XXXX-XX

Letting Date

1. Contact Information:

FIRM NAME: _____

FIRM ADDRESS: _____

FIRM TELEPHONE NUMBER: _____

AUTHORIZED OFFICIAL: _____

(Note: authorized official must have authority to negotiate and contractually bind the company.)

TELEPHONE NUMBER: _____

DATE: _____

2. Personnel Qualification Requirements:
HIGHLIGHTED INFO SHOULD BE PROJECT SPECIFIC
[Name position] Qualifications: [List criteria here:]

Examples: The contractor shall assign an individual to [identify function] that has the following qualifications:
Certification Requirements:
MnDOT: Bit Street Level 2, Concrete Field Level 2, Bridge Inspection 2

Licensure:
Professional Engineer Licensed in MN

Education or Training:
The Certified Erosion Control Supervisor shall be certified to have completed and passed the examination for the two-day Erosion/Sediment Control Site Management Training course, provided by the University of Minnesota, Department of Biosystems and Agricultural Engineering.

EMPLOYEE NAME: _____

CERTIFICATION/LICENSE/TRAINING CERTIFICATE NUMBER:_____

COMPANY NAME: _____

PRIME CONTRACTOR __ SUBCONTRACTOR __ (Check one)

[Repeat the above for any additional required personnel and their required qualifications.]

FOR OFFICIAL USE ONLY

MINNESOTA DEPARTMENT OF TRANSPORTATION
TECHNICAL COMPETENCY OF BIDDERS
FORM B: EXPERIENCE OF PERSONNEL
SP XXXX-XX

Letting Date

1. Contact Information:

FIRM NAME: _____

FIRM ADDRESS: _____

FIRM TELEPHONE NUMBER: _____

AUTHORIZED OFFICIAL: _____

(Note: authorized official must have authority to negotiate and contractually bind the company.)

TELEPHONE NUMBER: _____

DATE: _____

2. Personnel Experience:

HIGHLIGHTED INFO SHOULD BE PROJECT SPECIFIC

Project Manager Experience: [List criteria here.]

Example: The contractor shall assign an individual to manage the project that meets the following requirements:

- Must have a minimum of (5) five years experience managing historic renovation projects. An historic renovation project is defined as a project that on a property that is on or is eligible for The National Register of Historic Places.
- Must identify representative projects by providing the name, address, date and client references for (3) three renovation or restoration projects performed in the last 10 years where the renovation or restoration work on the project had a completed dollar value of $100,000 or more.
- The proposed individual must have been directly responsible for management of the work for representative projects.
- Must be on-site for this project at least 50% of the time when historic renovation work is being performed.

PROJECT MANAGER NAME:_____

YEARS OF EXPERIENCE:_____

COMPANY NAME: _____

PRIME CONTRACTOR __ SUBCONTRACTOR __ (Check one)

PROJECT #1:

a. Name of Project: _____

b. Address of Project: _____

c. Type of Project: _____

d. Dollar Value of Project: _____

e. Dollar Value of Representative Work: _____

f. Client Reference: Name + Telephone Number: _____

(Note: Client reference should be the owner of the project)

PROJECT #2:

a. Name of Project: _____

b. Address of Project: _____

c. Type of Project: _____

d. Dollar Value of Project: _____

e. Dollar Value of Representative Work: _____

f. Client Reference: Name + Telephone Number: _____

(Note: Client reference should be the owner of the project)

PROJECT #3:

a. Name of Project: _____

b. Address of Project: _____

c. Type of Project: _____

d. Dollar Value of Project: _____

e. Dollar Value of Representative Work: _____

f. Client Reference: Name + Telephone Number: _____

(Note: Client reference should be the owner of the project)

[Repeat the above for any additional required personnel and their required demonstrated experience.]

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MINNESOTA DEPARTMENT OF TRANSPORTATION
TECHNICAL COMPETENCY OF BIDDERS
FORM C: EXPERIENCE OF BIDDER
SP XXXX-XX

Letting Date

1. Contact Information:

FIRM NAME: _____

FIRM ADDRESS: _____

FIRM TELEPHONE NUMBER: _____

AUTHORIZED OFFICIAL: _____

(Note: authorized official must have authority to negotiate and contractually bind the company.)

TELEPHONE NUMBER: _____

DATE: _____

2. Personnel Experience:

HIGHLIGHTED INFO SHOULD BE PROJECT SPECIFIC

Bidder Experience: [List criteria here.]

[Similar to experience of individuals (Form A), use Form C if the experience of the contractor entity is desired in place of or along with experience of the personnel]

Example: The contractor shall demonstrate project experience that meets the following requirements:

- Must identify representative projects by providing the name, address, date and client references for (3) three renovation or restoration projects performed in the last 10 years where the renovation or restoration work on the project had a completed dollar value of $100,000 or more.
- The contractor or designated subcontractor must have been directly responsible for performance of the work for representative projects.

PROJECT #1:

a. Name of Project: _____

b. Address of Project: _____

c. Type of Project: _____

d. Dollar Value of Project: _____

e. Dollar Value of Representative Work: _____

f. Work Performed by: (check one) ___Prime Contractor ____Subcontractor

If performed by subcontractor, name of subcontractor: _____

g. Client Reference: Name + Telephone Number: _____

(Note: Client reference should be the owner of the project)

PROJECT #2:

a. Name of Project: _____

b. Address of Project: _____

c. Type of Project: _____

d. Dollar Value of Project: _____

e. Dollar Value of Representative Work: _____

f. Work Performed by: (check one) ___Prime Contractor ____Subcontractor

If performed by subcontractor, name of subcontractor: _____

g. Client Reference: Name + Telephone Number: _____

(Note: Client reference should be the owner of the project)

PROJECT #3:

a. Name of Project: _____

b. Address of Project: _____

c. Type of Project: _____

d. Dollar Value of Project: _____

e. Dollar Value of Representative Work: _____

f. Work Performed by: (check one) ___Prime Contractor ____Subcontractor

If performed by subcontractor, name of subcontractor: _____

g. Client Reference: Name + Telephone Number: _____

(Note: Client reference should be the owner of the project)

FOR OFFICIAL USE ONLY

MINNESOTA DEPARTMENT OF TRANSPORTATION
TECHNICAL COMPETENCY OF BIDDERS
FORM D: AVAILABILITY OF KEY EQUIPMENT OR MATERIALS
SP XXXX-XX

Letting Date

1. Contact Information:

FIRM NAME: _____

FIRM ADDRESS: _____

FIRM TELEPHONE NUMBER: _____

AUTHORIZED OFFICIAL: _____

(Note: authorized official must have authority to negotiate and contractually bind the company.)

TELEPHONE NUMBER: _____

DATE: _____

2. Availability of Equipment or Materials:
HIGHLIGHTED INFO SHOULD BE PROJECT SPECIFIC

Required Equipment:
[list any required equipment]

Required Materials:
[list any required materials]

By submitting this Form, the Contractor certifies that it has or will have the required equipment and materials listed above and will use the required equipment and materials for the completion of the work.

Signature of Authorized Official:_____

FOR OFFICIAL USE ONLY

Appendix C: Future Best Value Techniques

- Alternative Technical Concepts (ATC)
  - An ATC is a process used during procurement which allows innovation and flexibility in the construction of a particular element of the project. Contractors can propose "equal or better" modifications to the contract during the bidding process.
  - MnDOT assembles a panel to evaluate each ATC proposal. MnDOT either accepts the ATC, accepts the ATC with conditions, or rejects the ATC. If a proposal is accepted, the contractor can include the ATC in his proposal and adjust the bid price to reflect any savings.
  - Each ATC is kept confidential during the bidding process (i.e., ideas are not shared between bidders), until contract approval. If a design-bid-build contractor submits an ATC, MnDOT then has rights to the ATC idea and MnDOT can share it with the winning team.
- Max Price Contracts
  - In an effort to control budget and costs on a project, the contract would be written so that there would be a maximum price and the bidder would determine how much work could be done, not to exceed the maximum price.
  - An example would be as follows: With a maximum budget on $1,000,000, how many feet of three-cable guardrail can be installed between RP xx and xx on TH XX.
  - Project could be bid as a lump sum with unit price breakdown, or be scored based on a technical proposal and the value provided.
- Different Award Algorithms
  - Many different algorithms are possible when a technical score is used in the evaluation process. The potential types:
    - Meets technical criteria—low bid
    - Adjusted bid
    - Adjusted score
    - Weighted criteria
    - Quantitative cost-technical tradeoff
    - Qualitative cost-technical tradeoff
    - Fixed price-best proposal
  - One example of an algorithm:
    - Best Value =A.x +B.x +P.x +Q.x +C.x
      - A = Cost
      - B = Time
      - P = Performance and Qualifications
      - Q = Quality Management
      - C = Construction Alternatives
      - X = weighting

Appendix D: Sample Proposal Evaluation Manual

MINNESOTA
DEPARTMENT OF TRANSPORTATION
District

Proposal Evaluation Manual

Project Description
BEST-VALUE PROJECT

S.P. xxxx-xx

Month, day, year

TABLE OF CONTENTS

1.0 INTRODUCTION AND PURPOSE OF THE PROCEDURE 1
2.0 NON-DISCLOSURE INFORMATION & SECURITY OF WORK AREA 1
3.0 RESPONSIBILITIES 2
3.1 Evaluation Process Organization 2
3.2 Technical Review Committee 2
3.3 Process Oversight Committee 2
3.4 Technical Advisors 3
3.5 POC Chair Responsibilities 3
4.0 EVALUATION PROCEDURE 4
4.1 Step 1 – Initial Responsiveness Review 4
4.2 Step 2 – Technical Proposal Material Distribution 4
4.3 Step 3 – Technical Proposal and Validation Review 4
4.4 Step 4 – Technical Proposal Responsiveness Review 5
4.5 Step 5 – Oversight Review 6
4.6 Step 6 – Responsiveness Notification 6
4.7 Step 7 – Price Proposal Opening 6

APPENDICES

Appendix A Proposal Pass/Fail Checklist
Appendix B Confidentiality and Non-Disclosure Agreement
Appendix C Responsiveness Summary
Appendix D Responsiveness Determination

1.0 INTRODUCTION AND PURPOSE OF THE PROCEDURE

This document provides the methodology and criteria for evaluation of the Proposals received for S.P. xxxx-xx advertised by the Minnesota Department of Transportation (Mn/DOT) on mm-dd-yyyy

The purpose of this Proposal Evaluation Plan is to provide a fair and uniform basis for the evaluation of the Proposals in accordance with Mn/DOT's enabling legislation, Mn/DOT policies and the contract.

2.0 NON-DISCLOSURE INFORMATION & SECURITY OF WORK AREA

This Proposal Evaluation Plan, and the evaluation materials, are sensitive information and shall not be publicly disclosed unless otherwise provided by statute or regulation. It is particularly important that any information designated as "proprietary" by any respondent be carefully guarded to avoid release of information contained in such documents. Each person with access to the Proposals will be required to complete and sign a Non-Disclosure Agreement.

No information regarding the contents of the Proposals, the deliberations by the Technical Review Committee (TRC), recommendations, or other information relating to the evaluation process will be released or be publicly disclosed without the authorization of the POC Chair.

All requests made for information pertaining to this process shall be forwarded to the POC Chair. The POC Chair will be responsible for all communication outside the Proposal Evaluation and Technical Review Organization (TRO).

The POC Chair will obtain private meeting rooms for all discussions pertaining to evaluation of the Proposals. If a situation arises that requires an individual who is not on a member of the TRO, (unless otherwise allowed in this manual), all discussions will be discontinued and all paperwork either properly stored or otherwise safeguarded until such personnel have departed the room.

When working with the Technical Proposals and evaluation materials, each TRO member shall keep all of the materials under their direct control and secure from others not associated with the evaluation process. At all other times, the materials shall be locked in a secured area. At the conclusion of the evaluation process, all materials (including work papers) shall be returned to the POC Chair unless otherwise authorized by the POC Chair.

When using computers, files shall not be stored on non-removable hard disks or network file servers.

3.0 RESPONSIBILITIES

3.1 Evaluation Process Organization

The following chart represents the Technical Review Organization (TRO) for the Project.

Technical Advisors	**Technical Review Committee**	**Process Oversight Committee**
{NAME}	{NAME} {NAME} {NAME}	{NAME} {NAME}

The Process Oversight Committee (POC) must approve justifications for additions or changes to this Organization.

3.2 Technical Review Committee

The TRC will perform the Technical Proposal evaluation and determine if the Technical Proposals are responsive.

3.3 Process Oversight Committee

A non-voting group of observers will serve on a Process Oversight Committee.

- The POC will be charged with observing the process used by the TRC during the Proposal review process.
- The POC may, but is not required to, submit to the TRC a written report and/or specific questions to be used during any oral presentations.
- The POC may issue a report to the State Construction Engineer or designee stating the committee's observations relative to Mn/DOT's adherence to the evaluation methodology as stated in this document. The report shall note any specific instances of deviation from the proposed evaluation procedures.
- Department of Administration participants shall not be the Protest Official listed in the ITP.

3.4 Technical Advisors

- The Technical Advisors will serve as advisors to the TRC. Only the TRC will score the Proposals.

- The Technical Advisors will participate in meetings with the TRC, as needed, to provide input into the evaluation process.

3.5 POC Chair Responsibilities

The POC Chair or designee will:

- Be responsible for securing written Non-Disclosure Agreements from the TRO members prior to beginning the Proposal evaluation process.
- Serve as a point of contact in the event a TRO member has questions or encounters issues relative to the evaluation process.
- Verify that each Proposer's Price Proposal is separate from the Technical Proposal.
- Submit written requests for clarification to Proposers if the evaluation team determines that a Proposal contains unclear information or otherwise needs clarification.
- Be responsible for ensuring the timely progress of the evaluation, coordinating any consensus meeting(s) or re-evaluation(s), and ensuring that appropriate records of the evaluation are maintained.
- Recommend for approval by the State Construction Engineer, or designee, a substitution and/or supplementation of evaluation personnel if a TRC or TA member is unable to complete his/her responsibilities, or if additional Technical Advisors are necessary to evaluate the Proposals more thoroughly.
- With the concurrence of the Process Oversight Committee, the POC Chair may deviate from any procedure as prescribed herein as long as said deviations do not otherwise violate the applicable law. The change or modification should be documented by the POC Chair to the State Construction Engineer.
- Ensure that each TRO member reviews and assesses each Proposer's Technical Proposal using the overall criteria set forth in this Proposal Evaluation Plan.
- Document the TRC findings on the forms provided in this Proposal Evaluation Plan.
- Be responsible for securing the evaluation materials at the conclusion of the project evaluation.

4.0 EVALUATION PROCEDURE

The Proposals will arrive in two separate marked packages; the Technical Proposals will be received via email through the Office of Construction and Innovative Contracting

(OCIC). The Price Proposals will be received via traditional bidding methods utilized by the Department. The Price Proposals will remain unopened until the TRO process has been completed and all Technical Proposals have been evaluated by the TRC. The Technical and Price Proposals will remain separated until the Technical Proposal evaluation is submitted to the State Construction Engineer or designee prior to the Price Proposals opening.

The following presents a general framework for the organization of the TRC and the methodology for evaluating the Technical Proposals in relation to the information that was described in the proposal.

The following steps summarize the general procedures for the Technical Proposal evaluation:

4.1 Step 1 – Initial Responsiveness Review

- Upon receipt of the Technical Proposals, the POC Chair will perform an initial responsiveness review. The POC Chair will complete Appendix A, Part I for each proposer.

4.2 Step 2 – Technical Proposal Material Distribution

- Prior to distributing the technical proposals, the POC Chair will distribute this technical proposal evaluation manual to the TRO. The POC Chair will:
  - Hold a proposal evaluation kick-off meeting to review this manual with the TRO, or
  - Conduct one-on-one review this manual with TRO members. This can be done either via phone or face-to-face.
- Each TRO member must review the contents of this manual and sign and return the Confidentiality and Non-Disclosure Agreement to the POC Chair (Appendix B).
- The POC Chair will distribute the Technical Proposals to the TRO after they sign and return the Confidentiality and Non-Disclosure Agreement.

4.3 Step 3 – Technical Proposal and Validation Review

- TRO members and Technical Advisors will independently review the Proposal materials.
- No discussions regarding the Proposal contents shall occur during this initial review, unless authorized by the POC Chair.
- TRO members will be allowed to begin drafting comments on the forms in Appendix A, make notes in Proposals, or formulate clarification questions. TRO members may take notes on separate pieces of paper. However, all notes must be included with the Evaluation Manual at the conclusion of the Proposal review process.
- Validation Review includes:
  - The POC Chair and Technical Advisors collectively may validate

information contained in the Technical Proposals. This includes, but is not limited to, checking references and validating project descriptions contained within the Technical Proposals. This validation must be an objective review of this material and should not include personal comments.

- The POC will document the validation results for use by the TRC members.

4.4 Step 4 – Technical Proposal Responsiveness Review

- The POC Chair will hold a TRC Proposal Evaluation meeting that will include the TRO.
- The POC Chair and TA will provide the results of the Initial Responsiveness Review (Step 1) and Validation Review (Step 3) to the TRC. The TRC members will be allowed to ask the POC Chair and TA questions regarding their findings.
- The TRC members will discuss each Proposal at least once.
- The TRC members may request that a clarification question be sent to a Proposer. The POC Chair will draft the questions, send the clarification and receive the response from the Proposer.
- The POC Chair will complete Appendix A based upon the discussions of the TRC members.
- A Technical Proposal will be determined as Responsive unless:
  - The Proposer fails to meet the proposal requirements
  - The Proposer fails to submit the required elements of the technical proposal
  - The Proposer fails to prove they meet the requirements of Section 1206 Preparation of Proposals.
- All TRC members must agree that a technical proposal is responsive. If any TRC member refuses to sign the forms in Appendix A, the technical proposal will be deemed non-responsive.

4.5 Step 5 – Oversight Review

- The POC Chair POC will submit the results shown in Appendix C to the State Construction Engineer.
- The State Construction Engineer or designee will review the results. The results will be considered final if the State Construction Engineer or designee has no questions regarding the results.
- The State Construction Engineer or designee may meet with the TRC and request clarification on the results. The State Construction Engineer or designee may also

request that the TRC continue reviewing the proposals.

- TRC members may adjust their evaluation in Appendix A after further consideration. The POC Chair will document the changes in Appendix A by crossing out changed items.
- Each TRC member will initial and date the Form in Appendix A after the changes are incorporated.
- The POC Chair will submit the results along with a report of the results of the evaluation to the State Construction Engineer.

4.6 Step 6 – Responsiveness Notification

- At least seven days before the letting, the State Construction Engineer, or designee, will notify each proposer via e-mail if they received a Pass or Fail score on their Technical Proposal.
- The State Construction Engineer will use Appendix D as a template for this notice.

4.7 Step 7 – Price Proposal Opening

- The Commissioner or designee will publicly open the Price Proposals from bidders with responsive technical proposals and will determine the apparent low bidder.

APPENDIX A

SAMPLE
PROPOSAL PASS/FAIL CHECKLIST

PROPOSER: _____

PART I. INITIAL RESPONSIVENESS REVIEW			
Proposal Pass/Fail Task	**Pass**	**Fail**	**Notes**
Technical Proposal received via e-mail to biddoc.submittal@state.mn.us no later than 9:30 a.m. on May 13, 2011.	☐	☐	
Technical Proposal contains a cover letter which includes name, address, phone number (office and cell), e-mail address and fax numbers of the Proposer's sole point of contract.	☐	☐	
Technical Proposal contains Form B	☐	☐	
Technical Proposal contains Form C	☐	☐	
PART II. RESPONSIVENESS REVIEW (FORM B)			
1. Historic stone masonry construction project must have been completed in accordance with the Secretary of Interior's Standards and according to the plans and specifications signed by a project Historic Architect as defined in the Special Provisions (1103) definitions.	☐	☐	
2. Historic Stone Masonry Technicians shall have completed three (3) projects in the last eight (8) years that meet all of the following requirements:			
a) Qualifying historic stone masonry projects must be eligible for or listed on the National Historic Register of Places.	☐	☐	
b) Each qualifying historic stone masonry project must have a contract amount at or in excess of $60,000 for the historic stone masonry restoration work.	☐	☐	
c) The historic stone masonry work for one of the three qualifying projects must encompass at least 2,000 square feet.	☐	☐	
3. Projects will have included, at a minimum, the following:			
a) Use of custom mortar mix to match historic mortar in color, texture and material.	☐	☐	
b) Provision for new stone to match historic material in color, variety, texture, grain, veining, finishes, size and shape to match historic stone.	☐	☐	

4. Technician shall have a minimum of three (3) years full time experience working on historic stone masonry projects. Full time is defined as a minimum of five (5) month construction season per year, 40 hours per week.	☐	☐	
5. Technician shall have a minimum of one (1) years full time experience with bidder's firm (prime or sub). Full time is defined as a minimum of five (5) month construction season per year, 40 hours per week.	☐	☐	
6. Experience installing standard unit masonry, brick or new stone masonry work does not qualify as experience for this project.	☐	☐	
PART II. RESPONSIVENESS REVIEW (FORM C)			
1. Construction of qualifying historic masonry projects must be in accordance with the Secretary of Interior's Standards according to plans and specifications signed by a project Historic Architect as defined in Special Provision (1103) Definitions.	☐	☐	
2. Prime Contractor or Historic Masonry Restoration Specialist Subcontractor shall have completed thee (3) historic stone masonry projects in the last five (5) years that meet all the following requirements:			
a) Qualifying historic stone masonry projects must be eligible for or listed on the National Historic Register of Places.	☐	☐	
b) Each qualifying historic stone masonry project must have a contract amount at or in excess of $60,000 for the historic stone masonry restoration work.	☐	☐	
c) The historic stone masonry work for one of the three qualifying projects must encompass at least 2,000 square feet.	☐	☐	

3. Contractor shall submit three (3) color photographs for each historic stone masonry project. Label and number each photograph with the name of the project, year completed and extent of work. Photographs shall include the following: i. Labeling and disassembling of historic stone ii. Rebuilding/repointing of historic stone masonry iii. Completed portions of the work	☐ ☐ ☐	☐ ☐ ☐	
4. Qualifying historic stone masonry projects will have demonstrated the following: a) Use of Custom mortar mix to match historic mortar in color, texture and material b) Provisions for new stone to match historic material in color, variety, texture, grain, veining, finishes, size and shape to match historic stone c) At least one qualifying project must include rebuilding of historic stone masonry on new footings.	☐	☐	

Overall Responsive: ☐ ***Yes*** ☐ ***No*** ***(to be deemed responsive, all above boxes must be checked Pass).***

I concur:

_____
TRC Member #1

_____
TRC Member #2

_____
TRC Member #3

APPENDIX B

CONFIDENTIALITY AND NON-DISCLOSURE

AGREEMENT

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT, NO CONFLICT OF INTEREST

I, _____, as a participant in the technical proposal evaluation for S.P XXXX-XX, hereby agree and understand that, except as otherwise provided by law:

I will maintain the confidentiality of all evaluation and selection related information I gain access to as a result of my participation in the technical proposal evaluation process. This includes proprietary information and information designated confidential by the Minnesota Department of Transportation (Department), information from any of the firms submitting a response to the RFP, or any supporting firms, and all evaluation materials pertaining to the RFP which I have reviewed and/or have had in my possession (Confidential Information).

I will maintain security and control over all documents containing such Confidential Information in my custody during the RFP processes. I will not make copies of any documents, and will return all documents to POC Chair when my work with the documents is completed.

I will not divulge any Confidential Information regarding the RFP processes or any other information that may result in a potential firm receiving a competitive advantage to any representative of potential firms under consideration for the contract. I will not divulge any Confidential Information regarding the RFP processes to the media or any member of the public. Internal Confidential Information exchange shall be conducted only as necessary to conduct the RFP processes. If contacted by any representative of the firms under consideration for the contract or the media, or any member of the public regarding the RFP processes, I will not discuss the RFP process, and will promptly report every such case of such attempted communication to POC Chair.

Furthermore, I hereby certify that to the best of my knowledge, I do not have a conflict of interest, either real or apparent, as a result of a financial interest on my part or that of any member of my immediate family, nor of my partner(s), in any potential firm under consideration for a contract as part of this solicitation. I further certify that I am not employed and I have no arrangement for future employment with any of the firms under consideration for the contract. I agree not to solicit or accept gratuities, unwarranted privileges or exemptions, favors, or anything of substantial value from any of the firms under consideration for the contract or any additional firms which come into consideration as part of this process.

Signed: _____ Date: _____

Name and Title: _____

cc: Project File

APPENDIX C

RESPONSIVENESS SUMMARY

S.P. XXXX-XX

Description. Project Description

List of Responsive Technical Proposals

Proposer

List of Non-Responsive Proposals

Proposer	Comments

I Concur:

Signed: _____ Date: _____

Name and Title: _____

APPENDIX D

RESPONSIVENESS NOTIFICATION

SAMPLE RESPONSIVE LETTER

, 2011

{Insert Addresee here}

Re: State Project xxxx-xx
Project Description

Dear {}.

Mn/DOT would like to thank you for submitting a Technical Proposal for the above mentioned project.

We are happy to inform your Technical Proposal has been deemed responsive. You are eligible to submit a price proposal (bid) in accordance with the proposal documents.

Please note that responsiveness of your technical proposal does not waive Mn/DOT's right to evaluate the remaining bid requirements for responsible and responsiveness.

Sincerely,

Nancy Boeve

SAMPLE NON-RESPONSIVE LETTER

, 2011

{Insert Addresee here}

Re: State Project xxxx-xx
Project Description

Dear {}.

Mn/DOT would like to thank you for submitting a Technical Proposal for the above mentioned project.

We regret to inform you that your Technical Proposal has been deemed non-responsive to the requested requirements. Unfortunately, you are not eligible to submit a price proposal (bid) for this project.

We appreciate the time and effort to respond to the proposal. We look forward to working with you in the future.

Sincerely,

Nancy Boeve