

State Procurement Manual

DOA-3449 N(R06/94) Formerly AD-P-12

Section THE PROCUREMENT PROCESS		Agencies Affected ALL	Number PRO-C-5
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID			Effective 9-1-17
			Replaces 8-1-05
			Page 1 of 13

AUTHORITY:

Wis. Stats. 16.72(2)(a),(b),(4)(a)
16.75(1)(a),(b),(c)
16.75(1m),(4),(5)
16.754
19.85(1)(e)
985.01(1),(2),(3)
985.04(1)
985.07(2)

Wis. Adm. Code Chapter Adm 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 8.02, 8.03, 8.04, 8.07, 10.15

SCOPE:

- to define official sealed bid process
- to define authority for development and implementation of policy on the use of official sealed bids
- to define circumstances when official sealed bidding is used
- to establish processes for official sealed bid solicitations, submissions, and selections
- to establish the process for requesting purchasing approval on official sealed bid procurements
- to establish a communications process between agencies and the State Bureau of Procurement on processing official sealed bids
- to establish policy on fax bidding

DEFINITION: The "official sealed bid process" is the procedure used for soliciting bids from at least three (3) bidders (when available) when the procurement is expected to cost over \$50,000.

CONTENT:

I. The State Bureau of Procurement may solicit bids or may delegate responsibility to the purchasing agency.

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II. Specifications for materials or services to be procured through the bid process are developed by the State Bureau of Procurement or by authorized agencies.

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		Effective 9-1-17
Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 2 of 13

A. Guidelines for writing specifications include:

1. Write specifications so as to permit the lowest responsible bid to be the principal basis of award.
2. Use performance criteria that will not restrict competition or limit the number of sources bidding.
3. Use generic specifications with no trade names. If this is determined to be inappropriate, document the rationale for using trade names in the bid file.

III. Key elements to a solicitation:

- A. Provide potential bidders with adequate lead time for response.
- B. Develop clear specifications and define what is being bid.
- C. Include pricing requirements, method of award, special conditions, and standard terms and conditions of bid. See [PRO-E-7](#), Standard Terms and Conditions. Inform the bidders of any special requirements.
- D. State whether or not alternate bids are permitted. Each alternate bid is considered separately.
- E. Identify the forms required whenever special forms are necessary.
- F. Specify the enclosures to be submitted with the bid, any samples that will be needed, and how samples will be disposed of.
- G. Provide information on bonds and sureties. See [PRO-C-19](#), Bonds and Sureties.
- H. Include any provisions for renewal.

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		Number PRO-C-5
		Effective 9-1-17
Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 3 of 13

- I. Include form [DOA-3027](#), Designation of Confidential and Proprietary Information, in all bids for data processing commodities and services. The form may be included in other bids at the agency's discretion.
- J. Include form [DOA-3333](#), Vendor Agreement. See [PRO-D-30](#), Cooperative Purchasing: Wisconsin Municipalities.
- K. Include appeals language.
 - 1. For transactions for services over \$50,000, include the following language regarding appeals:

APPEALS PROCESS

The appeals procedure applies to only those requests for bids for services that are over \$50,000. Notices of intent to protest and protests must be made in writing. Protestors should make their protests as specific as possible and should identify statutes and Wisconsin Administrative Code provisions that are alleged to have been violated.

The written notice of intent to protest the intent to award a contract must be filed with (the head of the procuring agency or designee—to avoid the appearance of a conflict of interest, the designee must be a non-purchasing staff member), (address), (phone), and received in his/her office no later than (date), or five (5) working days after the notice of intent to award is issued, whichever is greater.

The written protest must be received in his/her office no later than (date), or ten (10) working days after the notice of intent to award is issued, whichever is greater.

The decision of the head of the procuring agency may be appealed to the Secretary of the Department of Administration within five (5) working days of issuance, with a copy of such appeal filed with the

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		Number PRO-C-5
		Effective 9-1-17
Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 4 of 13

procuring agency, provided the appeal alleges a violation of a statute or a provision of a Wisconsin Administrative Code.

L. Include the following minority business stipulation:

The State of Wisconsin is committed to the promotion of minority business in the state's purchasing program and a goal of placing 5% of its total purchasing dollars with certified minority businesses. Authority for this program is found in ss. 15.107(2), 16.75(4), 16.75(5) and 560.036(2), Wisconsin Statutes. The contracting agency is committed to the promotion of minority business in the state's purchasing program.

The State of Wisconsin policy provides that minority-owned business enterprises certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development should have the maximum opportunity to participate in the performance of its contracts. The supplier/contractor is strongly urged to use due diligence to further this policy by awarding subcontracts to minority-owned business enterprises or by using such enterprises to provide goods and services incidental to this agreement, with a goal of awarding at least 5% of the contract price to such enterprises.

For term contracts (as opposed to bids for one-time purchases), add the following language:

The supplier/contractor shall furnish appropriate quarterly information about its effort to achieve this goal, including the identities of such enterprises certified by the Wisconsin Department of Commerce and their contract amount.

A listing of certified minority businesses, as well as the services and commodities they provide, is available from the Department of Administration, Office of the Minority Business Program, 608/267-7806. The listing is published on the Internet at:
<https://wisdp.wi.gov/search.aspx>

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		Number PRO-C-5
		Effective 9-1-17
Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 5 of 13

- M. Include the following tax language. See [PRO-D-31](#), Certification for Collection of Sales and Use Tax.

The State of Wisconsin shall not enter into a contract with a vendor, and reserves the right to cancel any existing contract, if the vendor or contractor has not met or complied with the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax.

- N. When fax bidding is allowed, provide instructions to bidders. Include the following:
1. That all faxed bid responses will have a facsimile transmission cover letter. This letter will include:
 - a. Date
 - b. Agency fax number
 - c. Agency name
 - d. Agency contact person and telephone number
 - e. Bidder fax number (if available)
 - f. Bidder name
 - g. Bidder contact person and telephone number
 - h. Number of pages (including cover) being transmitted
 2. That faxed replies to bid requests will be signed. Each page will be initialed and numbered "page 1 of 5, page 2 of 5," etc.

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		Number PRO-C-5
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Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 6 of 13

3. That faxed bids will be rejected if they do not arrive on time, i.e., the last page of the fax transmission must be completed prior to the bid opening due date and time.

IV. Solicitation of bids:

- A. The bidding office mails bid packages to all bidders subscribed in the applicable commodity/service area that do not receive automatic notification through VendorNet. Packages remain available to other bidders on request, up until the specified due date and time. When sending a bid via fax, include a transmission cover letter with the information noted in IV. N. 1.
- B. Solicitations for official sealed bids will be advertised according to the requirements in [PRO-C-6](#), Legal/Public Notice.
- C. Trade, civic, or social publications may provide additional means of attracting small, veteran-owned, minority, or handicapped business bidders.

V. Delegated authority:

Agencies are delegated the authority to solicit official sealed bids without submitting a Request for Purchasing Approval/Authority to the State Bureau of Procurement.

- A. For official sealed bids for commodities, the agencies will send a copy of each bid to the State Bureau of Procurement when the bid packages are mailed to bidders and will include a copy of the bidders list with each bid package. Agencies that post their bids on VendorNet are exempt from this requirement, provided that they send e-mail notifications of their bid including the bid number, scope of the commodity or service, appropriate code(s) from the minority business enterprise (MBE) directory (<https://wisdp.wi.gov/search.aspx>) and a list of work centers to be solicited to the Bureau (i.e., to Domingo.Leguizamon@wisconsin.gov and nadine.malm@wisconsin.gov). Agencies will send the bid to all MBEs listed in the directory for the commodity code(s) relevant to the procurement.

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DOA-3449 N(R06/94) Formerly AD-P-12

		Number PRO-C-5
		Effective 9-1-17
Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 7 of 13

- B. For official sealed bids for services, the agencies will outline all anticipated bids in their procurement plans and submit the plans to the State Bureau of Procurement for approval. See [PRO-A-4](#), Procurement Plans.

VI. Addendums made by purchasing office to bids:

- A. After a solicitation has been made public and the purchasing office determines the need for changes to or clarification on a bid, the purchasing office issues a revision or addendum to the solicitation to all known recipients.
- B. A copy of the addendum will be kept in the bid file.

VII. Withdrawal or modification by bidders to bids:

- A. A bidder may withdraw a bid at any time prior to the bid opening. If the bidder requests to withdraw, the purchasing office simply considers that it did not receive that bid and returns it.
- B. A bidder may modify a bid at any time prior to the opening. Bidders may request that their bids be returned to them. They may change their bids and resubmit them.
- C. Generally, no bidder may withdraw or modify a bid after the opening. However,
 - 1. Bidders may correct minor omissions or miscalculations.

Example: The bid package does not contain a statement of ownership that is required, as announced. The bidder may be allowed twenty-four (24) hours to deliver that information.

In this case, the statement of ownership is a requirement that has no effect on the actual results of the bid.

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State Procurement Manual

DOA-3449 N(R06/94) Formerly AD-P-12

		Number PRO-C-5
		Effective 9-1-17
Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 8 of 13

2. Additions in form but not in substance are permitted.

Example: The purchasing office requested that items be bid in certain sequence. The bidder, however, has submitted them in the wrong sequence. In this case, the bidder may be allowed to change the order of the bid items, but only the order.

3. It is reasonable to permit a bidder to correct errors of addition, multiplication, or arithmetic mistakes.

Example: A bidder totals the bid prices: "5 x 5 equals 10". The bidder may be allowed to change the total from "10" to "25". Do not permit changes in quantity or in unit prices.

4. The bidder may be allowed to clarify a specific portion of a bid, i.e., upon request from the purchasing agent.
5. In the case of substantial errors, the bidder may be allowed to withdraw the bid after the opening.

Example: A \$1 million contract is erroneously bid for \$1,000. In this case, the bidder may be permitted to withdraw.

- D. No change is allowed that would impair the interests of the state or would be inequitable to other bidders.

VIII. Submission of bids:

- A. The bidder submits a written bid, using the forms provided by the state, in a sealed envelope, and carrying the bidder's name and address. Provide instructions to bidders to include the following information on the outside of the bid envelope or package:

1. Request for bid number
2. Date of opening

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		Number PRO-C-5
		Effective 9-1-17
Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 9 of 13

3. Time of opening
 4. Description of commodity or service for which the bid is submitted
- B. Bids should be submitted separately from samples.
- C. If the bid arrives prior to the due date and time, the purchasing office stamps or writes on the bid envelope the accurate date and time of receipt. The purchasing office keeps all bids secure from access until the time of opening.
- D. If the bid arrives after the due date and time, the purchasing office stamps or writes on the bid envelope the date and time of receipt and retains it in the bid file unopened, or returns it unopened to the bidder. It cannot be accepted, but a record is kept in the bid file of its late receipt and its disposition.
- E. In fairness to all bidders, submission times will be strictly adhered to, to the minute.
- F. Receipt of a bid by the state mail system does not constitute receipt of a bid by the purchasing office.
- G. If submitted by telephone, the bid will be received by the purchasing office prior to the due date and time, at the place shown on the request for bid, and then confirmed fully in writing within a specified period of time. In receiving notice of a forthcoming bid by telephone, the purchasing agent will take notes of the key elements of the bid, including price. Written confirmation of telephone bids that vary with the purchasing agent's notes of the telephone bid will be rejected.

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		Number PRO-C-5
		Effective 9-1-17
Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 10 of 13

H. If submitted by fax machine, the bid will be received by the purchasing office prior to the due date and time, at the place shown on the request for bid. Time of receipt of a fax transmission is when the fax transmission ends. Agencies will provide for security of incoming bid prices. Fax machines used for bidding should be in a secure area, preferably in the purchasing office and should not be in areas commonly open to the public. Prices may be stored in fax machines having mailbox capabilities until the time of the bid opening. In the case of official sealed bids, faxed bids will be sealed in an envelope with the bidder's name, bid number, due date, time received and initials of the receiver noted on the outside of the envelope. Fax transmissions on thermal paper will be photocopied to preserve information for recordkeeping purposes.

IX. Public opening and reading of bids:

- A. Bid openings are public actions and are open to attendance by interested bidders and the public. No activity on the part of bidders at an opening of a bid, other than attendance and note taking, is permitted. Any attempt to qualify or change any bid by any bidder in attendance may result in the rejection of that bidder's bid.
- B. The purchasing agent who invited the submission of bids, or someone designated by that purchasing agent, opens and orally reads the bids immediately after the date and time shown on the request for bid at the place designated. Telephone or facsimile machine bids that have been received are so noted.
- C. Reading, only, is required at a public opening and the bid need not be analyzed or indication given as to successful award, unless the purchasing agent deems it appropriate to do so.
- D. When the length of a bid makes it impractical to read aloud, the public reading may be bypassed and only the names of bidders announced. The public should be given the opportunity to review a complete abstract at a later date.

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Section THE PROCUREMENT PROCESS	Agencies Affected ALL	Replaces 8-1-05
Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 11 of 13

- E. A summary of information disclosed at the bid opening is made available to the public upon request as soon as practical after the opening.
- F. An abstract is prepared which includes who bid, what was bid, and who was the successful bidder and why.
- G. For official sealed bids for services, a notice of intent to contract is issued.
- H. To provide for analysis and abstracting, official sealed bid records may not be available for public inspection before the notice of intent to award is issued or, in the case of requests for bids for commodities, before the contract is awarded. Bids, and other information pertinent to the bids, are made available to the public after the notice of intent to award has been issued or, in the case of requests for bids for commodities, after the award has been made. See [PRO-D-23](#), Public Records Access.
- X. Procurements that result from the official sealed bid process are executed by means of either a single transaction or through a contract for purchases over a period of time.
- XI. Recordkeeping:
 - A. The following information is retained for each bid:
 - 1. The name of the individual responsible for the transaction
 - 2. The original bid document
 - 3. A copy of any addendum
 - 4. A copy of any notice published to advertise bid solicitation or a specific cross-reference to a legal notice file, or a hard copy of a posting on the Internet
 - 5. A list of bidders with small, veteran-owned, minority businesses and work centers identified

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Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 12 of 13

6. Justification for use of any bond or surety
7. An abstract of the bids received
8. Original bids submitted by bidders and evidence, such as a date and time stamp, that bids, including those submitted by fax, were received on time. The original package (e.g., envelope, box) will be kept until after resolution of an appeal or until the end of the appeal period, whichever is later. After such time, a photocopy of the package may be retained in place of any bulky packaging.
9. Unopened late bids or a listing of any late bids returned to bidders
10. Reason(s) for rejection of any bids
11. Justification for any lower bids rejected
12. In the case of tied bids, basis for award
13. An indication of the name(s) of successful bidder(s)
14. A statement of the application of life cycle costing options, reciprocity, minority bidder preference, and "Buy American" preference, where pertinent
15. A copy of the notice of intent for bids for services over \$50,000
16. Any complaints or appeals filed
17. Contract
18. Other pertinent records as dictated by the transaction

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Title BIDDING POLICY AND PROCEDURE, OFFICIAL SEALED BID		Page 13 of 13

- XII. See [PRO-B-4](#), State Procurement Operational Questionnaires; [PRO-B-6](#), Specifications; [PRO-C-8](#), Simplified Bidding; [PRO-C-15](#), Basis for Awards; [PRO-C-16](#), Lowest Responsible Bidder; [PRO-C-17](#), Bidders Lists; [PRO-C-20](#), Reciprocity Law; [PRO-C-27](#), Serial Contracting; [PRO-C-35](#), VendorNet; [PRO-C-37](#), World Trade Organization Government Procurement Agreement; [PRO-D-1](#), Minority Business Enterprise Policy; [PRO-D-30](#), Cooperative Purchasing: Wisconsin Municipalities; [PRO-I-13](#), Appeals Process—Contractual Services; and [PRO-I-14](#), Notice of Intent—Contractual Services.

[Sample RFB Outline](#)

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Rick S. Hughes, Director
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