

Professional Services Process - House Bill 1260

1. What is House Bill 1260?

House Bill 1260 was passed during the 2009 Legislative session and became law on July 1, 2009 (SDCL 5-18-55 through 5-18-62). The new law requires an RFP process for professional service contracts exceeding \$50,000 when the contract involves specialized knowledge, labor or skill and the labor or skill is predominately mental or intellectual rather than physical or manual. This bill was passed in order to provide fairness to vendors and provide more competition for the State's business.

2. What is the RFP process?

The Request for Proposal (RFP) process is used to solicit competitive proposals from multiple sources. The RFP must include information such as the scope of work, and evaluation criteria including the following:

- a. Specialized expertise, capabilities and technical competence
- b. Resources available to perform the work within a specified period of time
- c. Record of past performance including price and cost data from previous projects
- d. Availability to the project locale
- e. Familiarity with the project locale
- f. Proposed management techniques
- g. Ability and proven history in handling special project restraints

3. Who will prepare and solicit vendors with the RFP process?

Each Institution shall determine the appropriate office to prepare and distribute RFPs and to award a contract from the RFP. This office shall also be responsible for maintaining accurate records for all RFPs issued according to the records retention policy. All RFPs shall be listed on the electronic procurement system maintained by the Bureau of Administration through the Office of Procurement Management (OPM) and may also be distributed in any manner the institution deems appropriate.

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4. How long will it take to process an RFP before a contract can be entered into?

The RFP process needs to allow sufficient time for vendors to provide a legitimate response. Plan to allow at least one month for the RFP to be written and proposals solicited. Complex projects could take longer.

5. What types of services are subject to these new processes?

While it is up to interpretation of the Institution or legal counsel, following are examples of services most likely affected by this law:

- a. Advertising & Marketing contracts
- b. Software maintenance agreements
- c. Contracts to provide background check services
- d. Web site development
- e. Architectural contracts

6. What types of services may be exempt from the law?

- a. Services of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required;
- b. Emergency services necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk
- c. Services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor
- d. Services for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings
- e. Services involving state or federal financial assistance passed through by a state agency to a political subdivision
- f. Medical services and home and community-based services
- g. Services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public
- h. Services to be provided by entertainers for the state fair and other events

7. Are we required to accept the lowest cost proposal?

No, the vendors must be rated according to their response to the RFP. Negotiations must be made with the highest ranked vendor, if negotiations fail, the next highest ranked vendor shall be contacted.

8. Evaluation Criteria –

SDCL 5-18-58 provides a minimum list of criteria to be included in the RFP. Agencies may include additional evaluation criteria as is necessary.

9. Does House this new law affect contracts in place prior to July 1, 2009?

No, contracts currently in place before July 1, 2009 will not be affected as long as contract terms are not changed.

10. Can we extend a contract currently in place?

Only if the original contract provided renewal terms. Renewal terms cannot be added after the fact.

11. Can we add renewal terms to new contracts processed through an RFP?

Yes, renewal terms are still an option that may be used in the RFP process.

12. What if we do not know what the cost of the contract will be?

If there is doubt to what the total amount of the contract will be, it should be processed through an RFP.

13. What information will become public information?

The resulting contract and the successful vendor's response to the RFP shall become public information. RFPs submitted by unsuccessful vendors and all proprietary information from the successful vendor shall not become public information.

14. If we set up a contract that crosses the FY (from FY09 to FY10), will we need to redo the contract and do an RFP?

No, existing contracts will be honored.

15. How will BOR Institutions comply with the requirement to maintain a log of all RFPs issued pursuant to this new law?

BOR institutions will use the same tool as does the State of South Dakota. The person referenced in question 3 above shall be responsible for entering the data on the State's open record system (SDAS). Instructions will be provided to these individuals.

