

### Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 20  
“Procurement of Equipment, Materials, Supplies and Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)“j” and 8A.302(1)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 8A.302(1), 8A.311(20), 8A.514(3), 73.15 to 73.21, 307.12(1)“j” and 307.21

#### *Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 11, 2024  
10 to 10:30 a.m.

[Microsoft Teams link](#)  
Or dial: 515.817.6093  
Conference ID: 626 184 752

#### *Public Comment*

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Veronica Tolander  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [veronica.tolander@iowadot.us](mailto:veronica.tolander@iowadot.us)

#### *Purpose and Summary*

This proposed chapter establishes the procedure for the procurement of equipment, materials, supplies and services. The process requires competitive procurement with public advertising at a set threshold and defines exceptions.

#### *Analysis of Impact*

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed chapter does not create additional costs for any class of persons.

- Classes of persons that will benefit from the proposed rulemaking:

The proposed chapter streamlines the competitive bidding process, which has a positive impact on any and all potential bidders. By including “public mitigation banks” in the definition of “firm,” it clarifies that a public mitigation bank is an eligible bidder, thus enabling the Department to procure the operationally required mitigation credits.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The proposed chapter does not have a quantitative impact.

- Qualitative description of impact:

The proposed chapter expedites the competitive bidding process to enable qualified bidders to enter into an awarded contract sooner.

## 3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no additional implementation or enforcement costs.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

## 4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefit of the proposed chapter is consistency and transparency of the procurement process to ensure fair and open competition amongst all bidders.

The cost of inaction is a less streamlined process that would lead to a delay in capturing goods and services essential to Department operations.

There is no benefit of inaction.

## 5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules.

## 6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not consider alternatives to the proposed rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternatives to the proposed rules were considered.

*Small Business Impact*

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

By streamlining the process, there will be less delay due to the prescribed agency timeline. This in turn leads to less time and potential costs to businesses.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 761—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20

PROCUREMENT OF EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES

**761—20.1(307) General.**

**20.1(1) Scope.** This chapter pertains only to the procurement of equipment, materials, supplies and services by the Iowa department of transportation with funds from the department's operating

budget or from the materials and equipment revolving fund established in Iowa Code section 307.47 or other program funds authorized for department use.

**20.1(2) *Applicability.*** Rules 761—20.4(307) through 761—20.6(307) apply to professional and technical services procured using the general purchasing process where contracts are awarded competitively, and cost is a factor. Rule 761—20.9(307) applies to professional and technical services contracts that are awarded based on qualifications when the cost is negotiated after the vendor is selected.

**20.1(3) *Contact information.*** Questions regarding this chapter may be directed to the Resources and Acquisitions Bureau, Purchasing Section, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1170.

**761—20.2(307) Definitions.** As used in this chapter, unless the context otherwise specifies:

*“Bidder”* means a respondent to a solicitation as a bidder, offeror or contractor.

*“Competition”* means the efforts of three or more parties acting independently to secure a contract with the department to provide equipment, materials, supplies or services to the department by offering or being in a position to offer the most favorable terms. “Favorable terms” includes, but is not limited to: price, speed of execution, anticipated quality of the product to be provided judged according to the expertise and experience of the provider, or ability to produce a desired result or to provide a desired commodity.

*“Firm”* means any bona fide contracting entity, including individuals, public mitigation banks and educational institutions. Except for educational institutions, the term is not to include governmental agencies or political subdivisions.

*“Methods of procurement”* means formal solicitation, informal solicitation, or negotiation as follows:

1. *“Formal solicitation”* means procurement by competition through public advertising of bid documents stating departmental needs.

2. *“Informal solicitation”* means procurement by obtaining a sufficient number of quotations, bids or proposals from qualified sources.

3. *“Negotiation”* means any method of procurement other than formal solicitation or informal solicitation to seek the best and final offer that is most advantageous to the department.

*“Professional and technical services”* means services that are unique, technical, or infrequent functions performed by independent contractors whose occupation is the rendering of such services. Contracts may go to partnerships, firms, or corporations as procured through formal and informal solicitation or negotiation methods outlined in rules 761—20.3(307) through 761—20.6(307). Architectural, landscape architectural, surveying, general engineering consultant, construction inspection, or engineering services and other related professional and technical services are outlined in rule 761—20.9(307).

*“Response”* means the submittal of written documents by a prospective bidder, offeror or contractor as a response to any type of solicitation issued by the department for a quotation, bid or proposal.

*“Solicitation”* means the request by the department for a quotation, bid or proposal. This includes but is not limited to the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of responding to a solicitation.

**761—20.3(307) Procurement policy.** It is the policy of the department to procure equipment, materials, supplies and services in a way that is most advantageous to the department and competitive to the maximum practicable extent.

**20.3(1) *Formal solicitation.*** The formal solicitation method of procurement is to be used whenever feasible and practicable under the existing conditions and circumstances and the estimated, aggregate amount of the purchase equals or exceeds \$50,000.

**20.3(2) *Informal solicitation.*** The informal solicitation method of procurement may be used if formal solicitation is not feasible or practicable, or the estimated, aggregate amount of purchase is less than \$50,000. This method is to be used as deemed necessary to ensure that the procurement is fair to the department, considering the administrative costs of the procurement, and is to be consistent with the nature and needs of the particular procurement so that the procurement is competitive to the maximum practicable extent.

**20.3(3) *Negotiation.*** The negotiation method of procurement may be used if formal solicitation or informal solicitation is not feasible or practicable, or in any of the following instances:

*a.* Procurement by negotiation is determined to be necessary and in the public interest during a period of man-made or natural disaster or emergency.

*b.* The estimated, aggregate amount of the purchase is less than \$15,000.

*c.* The procurement is for architectural, landscape architectural, engineering, or related professional and technical services.

*d.* The procurement is for other professional and technical services.

*e.* When cost is only one of many factors considered to determine the award.

*f.* The procurement is for services to be rendered by an educational institution.

*g.* It is impracticable to secure competition through formal solicitation or informal solicitation, such as when:

(1) Equipment, materials, supplies or services can be obtained from only one source, as per rule 761—20.7(307).

(2) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw materials, or similar circumstances, as per rule 761—20.7(307).

(3) Solicitations have been made available to prospective bidders and no responses to the solicitation have been received.

(4) Solicitations have been made available and the submitted responses do not cover the quantity needed. In this case, negotiation is permitted for the remaining quantity needed.

(5) The procurement is for electrical power or energy, natural or manufactured gas, water or other utility services, or the procurement is for construction of a part of a utility system or railroad and it would not be practicable to allow a contractor other than the utility or railroad company to perform the work.

(6) The procurement is for professional and technical services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(7) The procurement involves maintenance, repair, alteration or inspection, and the exact nature or amount of work to be done is not known.

(8) The procurement is for commercial transportation.

(9) It is impossible to draft adequate specifications or any other adequately detailed description of the item or services to be procured.

(10) The procurement is for a part or component being procured as a replacement in support of equipment specially designed by the manufacturer, and the data available is not adequate to ensure that the part or component supplied by another manufacturer will perform the same function as the part or component it is to replace.

(11) The procurement involves construction where a contractor or group of contractors is already at work on the site, and either it would not be practicable to allow another contractor or an additional contractor to work on the same site or the amount of work involved is too small to interest other contractors to mobilize and demobilize.

*h.* The procurement is for experimental, developmental or research work or for the manufacture or furnishing of property for experimentation, development, research or testing.

*i.* It is determined that the responses received are not reasonable or have not been independently arrived at.

*j.* Procurement by negotiation is otherwise authorized by law including, but not limited to, Iowa Code section 73.19.

*k.* The manufacturer is willing to sell directly to the state at distributor cost.

**761—20.4(307) Formal solicitation procedures.**

**20.4(1) *Bidders list.*** The department's purchasing section will maintain current bidders lists by commodity classification.

*a.* These lists are generated from the department's electronic sourcing platform and will be actively managed to stay current with the relevant industry players and accurate commodity classifications to secure competition to the maximum practicable extent. Solicitations will be posted on the Iowa economic development authority's targeted small business website no later than 48 hours prior to the issuance of the solicitation.

*b.* Any firm legally doing business in Iowa may be placed on an appropriate bidders list or lists by registering as a vendor on the department's electronic sourcing platform.

*c.* Subject to concurrence of legal counsel, a bidder's name may be removed from a bidders list or lists for any of the following reasons:

(1) When the bidder has failed to meet prequalification as set forth in the bid solicitation.

(2) When the bidder has failed to meet the performance standards of a previous procurement.

(3) When the bidder has attempted to improperly influence the decision of any state employee involved in the procurement process.

(4) When there are reasonable grounds to believe that there is a collusive effort by bidders to restrain competition by any means.

(5) Where there is a determination by the civil rights commission that the bidder conducts discriminatory employment practices.

*d.* A bidder may protest removal from a bidders list or lists by submitting the appeal in writing as per instructions in paragraph 20.4(6) "d."

**20.4(2) *Solicitation documents.*** The department will prepare the solicitation documents complete with requirements, specifications and instructions, as applicable, to be publicly posted for the purpose of procuring goods or services.

*a.* In special situations (e.g., the procurement of new model equipment), the solicitation may be marked "preliminary" and sent to prospective bidders requesting their review of the solicitation to determine their ability to respond and meet the requirements of the procurement request. The "preliminary" solicitation process involves the following steps:

(1) A conference may be held to discuss the "preliminary" solicitation requirements with prospective bidders when the item in question is a new acquisition for the department.

(2) Written requests for variations, deviations or approved equal substitutions to the solicitation are to be accepted, evaluated and answered by the department.

(3) The solicitation requirements may be revised to incorporate approved changes.

(4) A final solicitation is to be sent to prospective bidders that participated in the preliminary process.

*b.* The solicitation is to be sent to a sufficient number of prospective bidders so as to promote adequate competition commensurate with the dollar value and nature of the procurement. The solicitation is to be furnished to others upon request.

*c.* The department will publicize the procurement by advertising in appropriate media, providing the date and time set for public opening of submitted responses, a general description of the item to be procured, and the name and address of the person to contact to obtain a copy of the solicitation.

**20.4(3) *Response instructions.*** Each bidder is to prepare the response to the solicitation in the manner prescribed and furnish all information and samples requested in the solicitation. All bidders are to adhere to the following when preparing and submitting responses:

*a. Response preparation.* Responses are to be submitted electronically in a secure authorized system as instructed in the solicitation. Telephonic, written, email or facsimile responses are not to be considered.

*b. Information to be provided by bidder.* In the space provided, the bidder is to denote brand name, manufacturer's name, model number and any other necessary information to assist in identifying each item the bidder proposes to supply.

*c. New merchandise.* Unless otherwise specified, all items offered are to be new, of the latest model or manufacture, and at least equal in quality to that specified.

*d. Response price.* Where requested, the unit and total price for each separate item, and the total price for all items, is to be provided in the bidder's response. Alternate prices for approved substitutions may be submitted by attaching a response marked as an alternate to the original response. In case of error, the unit price prevails. If unit price is not requested in the solicitation, the total price per item prevails.

*e. Discounts.* Bidders are to quote net discount price. No other discounts are to be considered in making the award.

*f. Time of acceptance.* The bidder is to hold the offered prices open for action by the department at least 30 days past the time set for public opening of submitted responses.

*g. Escalator clauses.* Unless specifically provided for in the solicitation, a response containing an escalator clause are not to be considered.

*h. Federal and state taxes.* Except for specific items that will be noted in the solicitation, the department is exempt from payment of federal and state taxes. These taxes are not to be included in the bidder's response. Exemption certificates are to be furnished to bidders upon request.

*i. Delivery dates.* In the space provided, the bidder is to show the earliest date on which delivery can be made. When the solicitation shows the acceptable delivery date for an item, the proposed delivery date may be used as a factor in determining the successful bidder.

*j. Ties and reservations.* No ties or reservations by the bidder are permitted. Any tie or reservation stipulated by the bidder shall be sufficient grounds to reject the submitted response.

*k. Changes and additions.* No changes in or additions to the solicitation are to be permitted unless a written request for a change or an addition is submitted to the department's purchasing section in sufficient time to allow an appropriate analysis and response to all bidders, and the change or addition is approved by the purchasing section. The purchasing section will notify all bidders of approved changes or additions by means of addenda. Any unauthorized change in or addition to the solicitation is to be sufficient grounds to reject the submitted response.

*l. Response submission.* All responses are to be submitted electronically prior to the time set for public opening of submitted responses. Responses received are to be dated and time-stamped electronically by the purchasing section showing the date and hour received. By submitting a response, the bidder:

(1) Agrees that the contents of the response will become part of the contract if the bidder receives the award.

(2) Certifies that the bidder has become familiar with the contents and requirements of the solicitation.

*m. Bid bond.* A bid bond may be necessary as security that the bidder will execute the contract if awarded. If necessary, each response is to be supported by a bid bond in the form and amount prescribed in the solicitation. Responses not so supported are not to be read.

*n. Withdrawal of responses prior to opening.* Responses may be withdrawn prior to the time set forth in the solicitation. Prior to opening, a bidder who withdraws the response to a solicitation may submit a new response if desired.

*o. Modification or withdrawal of responses after opening.* After opening, no response is to be modified. A response may be withdrawn after opening only if:

(1) The bidder submits, at least three days prior to award, a sworn statement asserting that the response contains a substantial inadvertent error and that the bidder would suffer a serious financial loss if the bidder were to perform under the response, and

(2) The purchasing director approves the withdrawal. The purchasing director may base the decision to approve or deny the withdrawal on any factors the purchasing director deems relevant, including but not limited to the best interests of the agency, possible prejudice to other bidders or the bidding process, and the extent of financial hardship on the bidder if withdrawal is not allowed.

**20.4(4)** *Public opening of responses.* Responses are to be opened publicly and read aloud at the time stipulated in the solicitation.

**20.4(5)** *Consideration of responses.* The department reserves the right to accept or reject any or all responses. Individual responses may be rejected for any of the following reasons:

- a. Noncompliance with the requirements of this rule or of the solicitation.
- b. Financial insolvency of the bidder.
- c. Evidence of unfair bidding practices.
- d. For any other reason stated in this rule.

**20.4(6)** *Recommendation of award.*

a. *Time frame.* Unless otherwise specified by the department in the solicitation, an award is to be made within 30 days after the date and time set for public opening of submitted responses if it is in the best interest of the state. If an award is not made within the applicable time frame, the procurement is to be canceled unless an extension of time is mutually agreed to by the department and the apparent successful bidder.

b. *Tied responses.* Responses that are equal in all respects and are tied in price are to be resolved among the tied bidders by giving first preference to an Iowa bidder and second preference to the bidder who satisfactorily performed a contract the previous year for the same item at the same location. If the tie involves bidders with equal standing, the award is to be determined by lot among these bidders. A tied bidder or the bidder's representative may witness the determination by lot.

c. *Tabulation of responses.* A tabulation of responses with an award recommendation is to be sent to all interested parties including bidders at least ten days prior to award.

d. *Protests.* Any protest of the recommended award is to be submitted in writing to: Director of the Purchasing Section, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. A written protest must be received by the director of purchasing within five days after the recommended award has been posted. The protest is to be considered by the authority making the award. This is not a contested case as defined in Iowa Code section 17A.2.

e. *Return of bid bond.* Unsuccessful bidders' bid bonds shall be promptly returned by the department after award is made. The bid bond of the successful bidder shall be returned in accordance with subrule 20.4(7).

**20.4(7)** *Contract execution and performance.*

a. *Execution.* The successful bidder is to make good effort to enter into (execute) a formal contract with the department within 14 days after award.

b. *Performance bond and certificate of insurance.* A performance bond or certificate of liability and property damage insurance, or both, may be needed for those contracts involving services or specially constructed equipment. If needed, the performance bond and certificate of insurance are to be filed with the department promptly after award and prior to contract execution.

c. *Return of awarded bidder's bid bond.* The bid bond of the successful bidder is to be returned following execution of the contract. However, if the successful bidder fails to execute the contract and file an acceptable performance bond and certificate of insurance (if needed) promptly after award and prior to contract execution, or fails to comply with Iowa Code chapter 490, the award may be annulled and the bid bond forfeited.

d. *Assignment of contract.* The contractor is not to assign the contract to another party without written authorization from the department's purchasing section.

*e. Strikes, lockouts or acts of God.* If the contractor's business or source of supply has been disrupted by a strike, lockout or act of God, the contractor is to promptly advise the department's purchasing section. The department may elect to cancel the contract without penalty to either the contractor or to the department.

*f. Payment.* Unless otherwise stated in the contract, payment terms shall be net following the department's receipt and acceptance of the item(s) procured and receipt of an original invoice, in accordance with Iowa Code section 8A.514(3).

*g. Liquidated damages.* The contract terms may provide for liquidated damages to be assessed if the contractor fails to complete the contract within the contract period or for any other reason as specified in the contract.

**20.4(8) Additional requirements.**

*a.* The department's standard specifications for highway and bridge construction, as available on the department's website at [www.iowadot.gov](http://www.iowadot.gov), where applicable and not in conflict with this rule or with the needs of a particular procurement, shall apply to formal solicitation procurement activities.

*b.* If there are federal funds involved in a particular procurement, and the federal procurement regulations conflict with this rule, then the federal procurement regulations shall apply.

*c.* Procurement of motor vehicles is to be in accordance with Iowa Code section 8A.311(20).

**761—20.5(307) Informal solicitation procedures.**

**20.5(1) Bidders lists.** The department will use its current bidders lists (more information can be found in subrule 20.4(1)) to the extent feasible and practicable. However, the solicitation will also be offered to any qualified bidder that has requested an opportunity to participate.

**20.5(2) Form of solicitation.** The solicitation is to be as detailed and complete as practicable for the time and resources available.

**20.5(3) Form of response.** Responses are to be submitted in writing or electronically when practicable. Written responses will prevail over oral responses in case of discrepancies, disputes or errors. Following is the order of preference:

1. Original, signed submitted response.
2. Electronically submitted response (facsimile, email, Internet).
3. Oral response (e.g., telephonic).

**20.5(4) Award.** The award is to be offered to that responsible bidder whose response meets the requirements of the solicitation and is the most advantageous to the department. An Iowa bidder will be given preference over an out-of-state bidder when responses are equal in all respects and are tied in price.

**761—20.6(307) Professional and technical services.** This rule applies to professional and technical services procured through the purchasing section using formal solicitation, informal solicitation or negotiation methods outlined in rules 761—20.3(307) to 761—20.6(307). The purchasing section will use the request for proposal (RFP) process, excluding cost evaluation, to ensure qualification-based selection for architectural, landscape architectural, and engineering services. Professional and technical services procured by the project management bureau are covered by rule 761—20.9(307).

**20.6(1) RFP.** A solicitation prepared by the department will include at least the minimum needs for the type of goods or services sought. The solicitation is sent to prospective offerors and is publicly posted on the department's website.

**20.6(2) Evaluation committee.** A committee is established for the purpose of reviewing and evaluating proposed responses based on a set of criteria as outlined in the RFP. "Evaluation criteria" will define categories with assigned weighted values to be used as a scoring measure to determine the best overall solution for the department based on technical expertise and price, including but not limited to:

- a.* Overall content of written submitted proposal information.
- b.* Business knowledge.



- c. Work experience in mandatory skill sets.
- d. Presentation or demonstration.
- e. Cost (will not be used for the selection of architectural, landscape architectural, or engineering services).

**20.6(3) Award.** The award is to be offered to a firm whose properly submitted compliant response best meets the needs of the solicitation and receives the highest overall score of the weighted criteria.

**761—20.7(307) Sole source or emergency selection.** Sole source or emergency selection applies to all services, including professional and technical services. The department will fully document and include in the contract file the justification for use of sole source or emergency selection, the basis on which a particular firm is selected and that appropriate approvals were obtained.

**20.7(1) Sole source selection.** The department may select a single firm qualified to perform the work with which to negotiate when one of the following conditions exists:

- a. Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more likely to most satisfactorily complete the work than another firm.
- b. The services involve work that is of such a specialized character or nature, or related to a specific geographical location, that only a single firm, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.

**20.7(2) Emergency selection.** The department may select a single firm qualified to perform the work when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:

- a. A condition that threatens the public health, welfare or safety.
- b. A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.
- c. A situation in which the department must act to preserve critical services or programs.

**761—20.8(307) Conflicts with federal requirements.** If any provision of this chapter would cause a denial of federal funds or services or would otherwise be inconsistent with federal law, federal law shall be adhered to, but only to the extent necessary to prevent denial of the federal funds or services or to eliminate the inconsistency with federal law.

**761—20.9(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services.** This rule prescribes procedures followed by the project management bureau for the procurement of architectural, landscape architectural, surveying, general engineering consultant, construction inspection, engineering and related professional and technical services by negotiation where selection is based on qualifications in compliance with 23 CFR Part 172. Contract costs are negotiated after a qualification-based selection.

**20.9(1) Registration of firms providing professional and technical services.**

a. A firm wishing to provide professional and technical services to the department as a consultant may register to receive information through the GovDelivery portal available at the department's website at [www.iowadot.gov](http://www.iowadot.gov). The firm is responsible for keeping the firm's information updated. For information, persons may contact the consultant coordinator at the Project Management Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at 515.239.1803.

b. The department will maintain a list of work categories, descriptions and requirements for each work category online.

**20.9(2) Request for professional and technical services.** Prior to selecting a firm with which to initiate negotiations under this rule, the department will document the need for outside services, a description of the needed services, the time frame within which the work must be performed, and the

method of selection to be used. One of the following methods are to be used to select a firm with which to initiate negotiations:

- a. Complete process. More information can be found in subrule 20.9(3).
- b. Small contract process. More information can be found in subrule 20.9(4).
- c. Sole source or emergency selection. More information can be found in rule 761—20.7(307).

**20.9(3) Complete process.** The complete process method will use the following process and will be used unless another selection method is justified.

a. *RFP.* The department will prepare an RFP that will include the scope of the work, duration of the contract, list of applicable work categories, evaluation criteria (excluding cost), any established disadvantaged business enterprise or targeted small business goal for the proposed work, type of contract anticipated, submission details including the point of contact for the RFP for any questions, the time by which the RFP should be received by the department and anticipated date of selection. The RFP will not request any cost information to be submitted by the proposing firms.

b. *Website.*

(1) The RFP will be posted on the department of administrative services' website no later than 48 hours prior to the issuance of the RFP.

(2) The RFP will be posted on the department's website. The notification of the RFP being posted will be sent to all users who have signed up to receive the notification via GovDelivery. The notification will include the link to the website where the RFP is posted. More information can be found in subrule 20.9(1).

(3) The department will post any questions received on the RFP and answers thereto on the website indicated in the GovDelivery notification.

c. *Selection committee.* The department will appoint a selection committee to become familiar with the RFP, review the firms that have responded to the RFP to determine if they meet the requirements of the work to be performed, and evaluate the firms that meet the qualifications per the evaluation criteria. The selection committee will, if necessary, interview the firms, score the firms, document the committee's decision and provide the scoring to the consultant steering committee.

d. *Evaluation criteria.* The selection committee is responsible for establishing criteria for evaluating each firm submitting a proposal, assigning weighted values to the criteria, and rating each firm on each criterion. Evaluation criteria are tailored to the needed services. Typical evaluation criteria are listed below. The list is intended as a guideline only; it is not exhaustive, nor is each criterion mandatory.

- (1) Staffing expertise consistent with special project needs.
- (2) Past experience with similar types of work.
- (3) Current workload and commitment of key personnel.
- (4) Specific qualifications of key staff who will be forming the firm's project team.
- (5) Resources the firm has available and proposes to use on the project, including the firm's use of equipment and automated technology and the firm's compatibility with equipment and technology used by the department.
- (6) Identification of proposed subconsultants and the work the subconsultants will perform.

e. *Consultant steering committee.* A consultant steering committee is responsible for reviewing the firms as scored by the selection committee, determining the order of preference for negotiations, and documenting its decision. The number of firms selected is to include at least two alternate firms. The committee is to document its reasoning when the number of selected firms is less than the minimum. The consultant steering committee is to consider not only the selection committee's scoring but other factors such as:

(1) A firm's ability to complete required tasks in the time allotted, taking into account other work currently under contract.

(2) The volume of work a firm has with the department, both existing and potential.

(3) The department's goal of having a breadth of experienced firms capable of providing quality services to the department.

(4) Other items unique to the particular contract.

*f. Completion of selection process.* After selection committee and consultant steering committee activities are complete, the department will determine whether negotiations may begin. If negotiations are approved, the department will proceed to negotiate with the firm that is first in order of preference.

*g. Notification to firms.* The department will post the results of the selection on the website identified in the GovDelivery notification. For firms not included on the ranked list of firms, the department will also provide a matrix showing the high, low and average scores for each item evaluated and that firm's score for each item.

**20.9(4) *Small contract process.*** The small contract process may be used to identify a single firm with which to negotiate when the estimated work under the contract can normally be completed within a 12-month period and the estimated cost of the contract will not exceed \$150,000.

*a. Selection committee.* The department will appoint a selection committee to identify at least three firms that meet the requirements of the work categories involved in performing the work; document the names of the firms considered, if necessary; interview the firms; select a firm with which to initiate negotiations; and document the committee's decision.

*b. Completion of selection process.* After selection committee activities are complete, the department will determine whether negotiations may begin. If negotiations are approved, the department will proceed to negotiate with the selected firm.

**20.9(5) *Selection dispute resolution.*** Any dispute of the recommended selection is to be submitted in writing to the consultant coordinator. A written notice of the dispute with supporting evidence must be received by the consultant coordinator within 15 calendar days from the date the selection is posted on the department's website. This is not a contested case as defined in Iowa Code section 17A.2. The department will inform the selected firm(s) of the dispute and inform the firm(s) that the department reserves the right to proceed with negotiations with the selected firm(s) pending resolution of the dispute or claim.

**20.9(6) *Negotiation of contract.*** The purpose of negotiations is to develop a contract that is mutually satisfactory to the department and the selected firm.

*a.* The firm must submit a detailed cost proposal, including a detailed cost proposal for each proposed subcontract. The department will prepare an independent estimate of the cost of the proposed services, including a detailed estimate of the firm's staff hours needed to complete the contract. Significant differences are to be evaluated and resolved to the satisfaction of both parties. If it is impractical to make an independent estimate, the department will evaluate the acceptability of the firm's cost proposal on the basis of the reasonableness of the individual elements of the price proposed.

*b.* The department may perform a preaudit. A preaudit typically includes:

(1) An analysis of the firm's cost proposal and financial records for the method of accounting in place to ensure that the firm has the ability to adequately segregate and accumulate reasonable and allowable costs to be charged against the contract.

(2) An analysis of the firm's proposed direct costing rates and indirect overhead factors to ensure the firm's propriety and allowability.

*c.* For contracts with federal funding, the department will verify federal suspension and debarment actions and eligibility status of firms prior to entering into an agreement or contract.

**20.9(7) *Unsuccessful negotiations.***

*a.* If a mutually satisfactory contract cannot be negotiated, the department will formally terminate the negotiations and notify the firm in writing. Termination of negotiations is without prejudice and at the department's discretion. The substance of terminated negotiations is confidential.

*b.* The department will then initiate negotiations with the firm given next preference, and this procedure may be continued until a mutually satisfactory contract has been negotiated. If a satisfactory contract cannot be negotiated with any of the selected firms, the department will either:

(1) Direct the selection committee to select one or more firms with which to continue negotiations, or

(2) Redefine the scope of the project or work and start over. More information can be found in subrule 20.9(2). Once negotiations are terminated, negotiations cannot be reopened with the same firm.

**20.9(8)** *Evaluation of performance.*

*a.* The department will evaluate all firms under this rule annually based on the contracts that were active during the fiscal year. Both the firm's performance and quality of the final product shall be evaluated. The evaluation considers:

- (1) The quality and adequacy of work performed.
- (2) The ability to meet established schedules and budgets.
- (3) General administration of the contract, including substantiation of cost billings, payments to subconsultants, and documentation of claims.
- (4) Cooperation shown by the firm in responding to requests for information and in revising procedures and products according to directions.
- (5) Coordination exhibited by the firm in communicating with the department, subconsultants, agencies and others to accomplish tasks and resolve problems.
- (6) Ingenuity displayed in solving unique and unusual design problems encountered during performance of contract objectives.
- (7) The ability to obtain an acceptable end product with appropriate department staff guidance.

*b.* The firm is to be given an opportunity to review, comment on and sign the evaluation.

These rules are intended to implement Iowa Code sections 8A.302(1), 8A.311(20), 8A.514(3), 73.15 to 73.21, 307.12(1) "j" and 307.21.