

**PERSONAL SERVICE CONTRACT PROCUREMENT REGULATIONS  
SUMMARY**

**CONTRACTING PROCEDURES**

Contracting for services may be accomplished by the following methods of source selection:

- Competitive Sealed Bids
- Competitive Sealed Proposals
- Small Purchases
- Sole-Source Procurement
- Emergency Procurements

The following regulations govern which method should be used:

**Competitive Sealed Bidding:**

*Invitation for Bids:* An Invitation for Bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

*Public Notice:* Public notice of Invitation for Bids when anticipated expenditure is more than \$100,000, shall be made in compliance with the regulations, provided herein.

*Bid Opening:* Bids shall be opened publicly in the presence of one or more witnesses.

*Bid Acceptance and Bid Evaluation:* Bids shall be unconditionally accepted without alteration or correction, except as authorized in these regulations.

*Correction or Withdrawal of Bids; Cancellation of Awards:* Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes shall be permitted in accordance with regulations promulgated by the Personal Services Contract Review Board.

*Award:* The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids.

*Multi-Step Sealed Bidding:* When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

**Competitive Sealed Proposals**

When the head of a purchasing agency, or designee, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive sealed proposals.

*Request for Proposals:* Proposals shall be solicited through a Request for Proposal.

*Public Notice.* Adequate public notice of the Request for Proposals shall be given.

*Receipt of Proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerers during the process of negotiation.

*Evaluation Factors.* The Request for Proposals shall state the relative importance of price and other evaluation factors.

*Discussion with Responsible Offerers and Revisions to Proposals.* As provided in the Request for Proposals, discussions may be conducted with responsible offerers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

*Award.* Award shall be made to the responsible offerer whose proposal is determined in writing to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the Request for Proposals.

### **Small Purchases**

This Regulation is established for procurements of \$100,000 or less for services. Procurement requirement shall not be artificially divided nor underestimated to avoid using the other source selection methods.

*Procedure:* Insofar as it is practical for purchases of services greater than \$50,000 and not exceeding \$100,000, no less than three sources shall be solicited to submit written quotations that are recorded and placed in the procurement file. Award shall be made to the source offering the lowest acceptable quotation.

*Small Purchases of \$50,000 or less:* The head of a Purchasing Agency shall adopt operational procedures for making small purchases of \$50,000 or less.

### **Sole-Source Procurement**

A contract may be awarded for contracts without competition when the head of a purchasing agency, or a designee determines in writing that there is only one source for the required service.

### **Emergency Procurements**

Notwithstanding any other provision of these Regulations, the head of a Purchasing Agency, or a designee may make or authorize others to make emergency procurements under emergency conditions as defined in the regulations. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

*The following are general provisions regarding personal service contracting:*

### **Cancellation of Invitations for Bids or Requests for Proposals:**

An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the State. The reasons, therefore, shall be made part of the contract file.

### **Responsibility of Bidders and Offerers**

*Determination of Non-responsibility:* A written determination of Non-responsibility of a bidder or offerer shall be made. The unreasonable failure of a bidder or offerer to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of Non-responsibility with respect to such bidder or offerer.

*Right of Nondisclosure:* Information furnished by a bidder or offerer shall not be disclosed outside of the Office of the Personal Service Contract Review Board or the purchasing agency if so requested by the bidder or offerer, except as provided in section 25-61-9 of the Mississippi Code.

### **Prequalification of Suppliers**

Prospective suppliers may be prequalified for particular types of services. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

### **Cost or Pricing Data**

A contractor shall when requested by the buying entity, submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually determined specified date.

### **Types of Contracts**

Any type of contract which will promote the best interests of the State may be used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is to be less costly to the State than any other type or that it is impracticable to obtain the services required except under such a contract.

### **Multi-Term Contracts**

*Specified Period:* Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one year, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

### **Multiple Source Contracting**

*Incremental Award:* An incremental award is an award of portions of a definite quantity requirement of more than one contractor. An incremental award may be used only when awards to more than one bidder or offerer for different amounts of the same time are necessary to obtain the total quantity or the required delivery.

*Multiple Award:* A multiple award is an award of an indefinite quantity contract for service to more than one bidder or offerer when the State is obligated to order all of its actual requirements for the specified supplies or services from those contractors. A multiple award may be made when award to two or more bidders or offerers for similar services is necessary for adequate delivery.

### **Right to Inspect Facility**

The State may, at reasonable times, inspect the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the State.

### **Right to Audit Records**

*Audit of Cost or Pricing Data:* The State may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data.

*Contract Audit:* The State shall be entitled to audit the books and records of a contract or any subcontractor under any negotiated contract or subcontract to the extent that such books and records related to the performance of such contract or subcontract.

### **Finality of Determinations**

The determinations required by these regulations are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary by law.

### **Reporting of Anticompetitive Practices**

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerers, a notice of the relevant facts shall be transmitted to the Attorney General.

## **STANDARD CONTRACTING CLAUSES**

- Chapter V: contains standard contract clauses for modification and terminations of contracts.
- Appendix D: contains contract clauses which are mandatory in contracts requiring Personal Service Contract Approval.
- Appendix E: contains clauses which are required in Solicitations for Bids or Proposals.
- Appendix F: contains various other standard contract clauses which are available for use at the discretion of the agency head.
- Appendix G: contains standard clauses which are available for use in Solicitations for Bids or Proposals.

### **Authority to Debar or Suspend**

- ◆ *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Personal Service Contract Review Board, after consultation with the using agency and the Special Assistant Attorney General assigned to the Contract Review Board, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of two years. The same Board, after consultation with the using agency and the Special Assistant Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.
- ◆ *Causes for Debarment or Suspension.* The causes for debarment or suspension include the following:
  - (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - (b) conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Mississippi contractor;

- (c) conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;
- (d) violation of contract provisions, as set forth below, of a character which is regarded by the Personal Service Contract Review Board to be so serious as to justify debarment action:
  - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (e) any other cause the Personal Service Contract Review Board determines to be so serious and compelling as to affect responsibility as a Mississippi contractor, including debarment by another governmental entity for any cause listed herein; and
- (f) for violation of the ethical standards set forth in Chapter VII (Ethics in Public Contracting).
- ◆ *Decision.* The Personal Service Contract Review Board shall issue a written decision to debar or suspend. The decision shall:
  - (a) state the reasons for the action taken; and
  - (b) inform the debarred or suspended person involved of its rights to administrative review as provided in this chapter.
- ◆ *Notice of Decision.* A copy of the decision under subsection (3) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- ◆ *Finality of Decision.* A decision shall be final and conclusive, unless fraudulent, or the debarred or suspended person commences an action in court.

#### **Determination that Solicitation or Award Violates Law**

- ◆ A solicitation or award may be in violation of the law due to actions of state employees, bidders, offerers, contractors, or other persons. After consultation with the Special Assistant Attorney General, the Personal Service Contract Review Board or the head of a purchasing agency may determine that a solicitation or contract award is in violation of the provisions of the Mississippi Personal Service Contract Regulations. After consultation with the Special Assistant Attorney General, the Ethics Commission may determine that a solicitation or award violates Ethics in Public Contracting of the Mississippi Personal Service Contract Regulations. Any such determination shall be made in writing after an opportunity to be heard is given, and such determination is subject to appropriate appeal. [The Personal Service Contract Review Board may determine that a solicitation or contract award is in violation of the provisions of the Personal Service Contract Regulations.]

#### **Remedies Prior to an Award**

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled or revised to comply with the law.

#### **Remedies After an Award**

Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the State, except as may be approved or ratified by the Personal Service Contract Review Board in compliance with State law.

**Appeal and Review of Personal Service Contract Review Board Decisions:**

- ◆ *Appeal:* Any person receiving an adverse decision, the State, or both may appeal from a decision by the Personal Service Contract Review Board to the designated court or courts of the State.
- ◆ *Authorization of Appeal by the State:* No such appeal shall be made by the State unless recommended by the Personal Service Contract Review Board or the head of the purchasing agency involved.

**Discontinuance of Contractor's Appeal**

After notice of an appeal to the Personal Service Contract Review Board has been filed with the Personal Service Contract Review Board, a contractor may not discontinue such appeal without prejudice, except as authorized by the Board.

**CONTRACT ADMINISTRATION**

The agency head shall ensure that contracts are monitored at least monthly to confirm acceptable performance, timely fulfillment of deliverables and compliance with terms of the agreement.

**ETHICS IN PUBLIC CONTRACTING FOR PERSONAL AND PROFESSIONAL SERVICES**

**General Standards of Ethical Conduct**

- ◆ *General Ethical Standards for Employees:* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.
- ◆ *General Ethical Standards for Non-Employees:* Any effort to influence any public employee, or contractor with the State, to breach the standards of ethical conduct is also a breach of ethical standards.

**Employee Conflict of Interest:**

- ◆ *Conflict of Interest:* It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:
  - (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
  - (b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - (c) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

**Gratuities:** It shall be a breach of this regulation for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or proposal therefor.

**Prohibition Against Contingent Fees:**

- ◆ *Contingent Fees.* It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, unless such an arrangement is fully disclosed in writing.
- ◆ *Representation of Contractor.* Every person, before being awarded a state contract, shall represent, in writing, that such person has not retained anyone in violation of subsection (1) of this section. Failure to do so constitutes a breach of ethical standards.
- ◆ *Contract Clause.* The representation prescribed in subsection (2) of this section shall be conspicuously set forth in every contract and solicitation therefor.

**Restriction on Employment of Present Employees:**

- ◆ Except as may be permitted by regulations or rulings of the Ethics Commission, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Additionally, section 25-4-105 (3) (a) of the Mississippi Code states that "no public servant shall be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment; or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent."

**Restriction on Employees Purchasing Under Terms of a State Contract:**

- ◆ Section 25-4-105 of the Mississippi Code states, "No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated."

**Use of Confidential Information:**

- ◆ It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.