

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 4 STATE PROCUREMENT
PART 8 USE OF COMPETITIVE SEALED PROPOSALS FOR CONSTRUCTION AND
FACILITY MAINTENANCE, SERVICES AND REPAIRS

1.4.8.1 ISSUING AGENCY: General Services Department State Purchasing Division.
 [1.4.8.1 NMAC - N, 09-30-05]

1.4.8.2 SCOPE: All executive branch state agencies.
 [1.4.8.2 NMAC - N, 09-30-05]

1.4.8.3 STATUTORY AUTHORITY: Sections 13-1-67, 13-1-111 NMSA (2003 Amendments).
 [1.4.8.3 NMAC - N, 09-30-05]

1.4.8.4 DURATION: Permanent.
 [1.4.8.4 NMAC - N, 09-30-05]

1.4.8.5 EFFECTIVE DATE: September 30, 2005, unless a later date is cited at the end of a section.
 [1.4.8.5 NMAC - N, 09-30-05]

1.4.8.6 OBJECTIVE: The purpose of this rule is to establish uniform procedures for the use of competitive sealed proposals that will promote the delivery of high quality projects in a timely, safe and cost-effective manner.
 [1.4.8.6 NMAC - N, 09-30-05]

1.4.8.7 DEFINITIONS: Most of the terms in this rule are defined in the Procurement Code and prior Procurement Code regulations. In 1.4.8 NMAC, the following definitions apply:

A. "firm" means the company or other business entity referenced under 1.4.8 NMAC for the purpose of identifying, individually or collectively: a general contractor, a prime contractor or a subcontractor, of any tier, whether basic trade subcontractor, specialty subcontractor or other;

B. "pre listed subcontractors" means the subcontractors, of any tier, that the offeror is required to list, pursuant to 1.4.8.13 NMAC of 1.4.8 NMAC, at the time it submits a proposal in response to a request for proposals;

C. "reckless" shall mean the submission or omission of a false or misleading material fact in connection with a request for proposals under 1.4.8 NMAC that the submitting firm and/or person knew or should have known was false or misleading;

D. "RFP" means requests for proposals;

E. "RFP documents" means any one or combination of the following request for proposal documents: technical proposal; price proposal; contractor qualification statement; subcontractor qualification statement.
 [1.4.8.7 NMAC - N, 09-30-05]

1.4.8.8 APPLICATION (COMPETITIVE SEALED PROPOSAL PROCEDURES FOR CONSTRUCTION AND FACILITY MAINTENANCE, SERVICE AND REPAIRS 1.4.8.1 -1.4.8.17 NMAC):

A. General. The provisions of 1.4.8.1 NMAC through 1.4.8.17 NMAC set forth specific procedures that shall apply to all procurements made by competitive sealed proposals for construction and facility maintenance, service and repair.

B. The regulations applicable to the use of competitive sealed proposals pursuant to 1.4.1.29 NMAC through 1.4.1.47 NMAC, as well other existing rules applicable to competitive sealed proposals and procurement generally, e.g., 1.4.1.65 NMAC through 1.4.1.92 NMAC, shall apply to procurements made by competitive sealed proposals for construction and facility maintenance, service and repair to the extent they do not conflict with the provisions of 1.4.8 NMAC.

C. A state agency with rule making authority may adopt its own regulations to supplement the provisions of 1.4.8 NMAC, provided that such regulations meet the requirements of 1.4.8 NMAC, do not otherwise conflict with 1.4.8 NMAC and the state agency receives prior written authorization from the general services department secretary.
 [1.4.8.8 NMAC - N, 09-30-05]

1.4.8.9 GENERAL DISCUSSION: The RFP competitive sealed proposal process is authorized to give using agencies flexibility to achieve the best overall value from a procurement contract. This is accomplished by permitting consideration of certain contractor qualification and performance factors that add value to a procurement contract, such as contractor past performance, technical expertise and experience, management capabilities and resources, subcontractor teams and craft personnel resources. It can also be achieved by permitting consideration of other technical or non-price factors that add value to a procurement contract, including schedule or contract warranty. Due to the inherently complex nature of most construction contracts and contracts for facility maintenance, service and repairs, the procurement of these services can often be accomplished more effectively through competitive sealed proposals, rather than competitive sealed bids, since the latter

process essentially makes price the sole determining factor. When the competitive sealed proposal process is used, however, it is critical that appropriate procedures, criteria and information-gathering techniques be utilized to ensure that the RFP process works efficiently and fairly and achieves optimal results. The following sections are designed to assist using agencies in meeting these goals.

[1.4.8.9 NMAC - N, 09-30-05]

1.4.8.10 RFP PLANNING PROCEDURES:

A. Information required in RFPs. In addition to the information specified in 1.4.1.29 NMAC through 1.4.1.47 NMAC, or otherwise required by 1.4.8 NMAC, an RFP issued pursuant to 1.4.8 NMAC shall include:

- (1) the core evaluation factors specified in Subsection A of 1.4.8.15 NMAC;
- (2) additional evaluation factors, if applicable, as provided by Subsection B. of 1.4.8.15. NMAC, and;
- (3) the numerical weight or points assigned to price and each of the technical evaluation factors specified in the RFP in accordance with the requirements of 1.4.8.14 NMAC.

B. RFP review by state purchasing agent. A using agency issuing an RFP pursuant to 1.4.8 NMAC may submit a draft RFP to the state purchasing agent for review, but must do so at least thirty (30) days prior to the proposed issue date of the RFP. The state purchasing agent shall advise the using agency of any revisions needed to comply with the requirements of 1.4.8 NMAC. If revisions are directed, they shall be made prior to the issuance of the RFP.

C. If a using agency elects to reserve its right to enter discussions or negotiations with offerors in the context of an RFP issued under 1.4.8 NMAC, it shall explicitly reserve such rights in the RFP. If a using agency elects to engage in discussions or negotiations in the context of an RFP issued under 1.4.8 NMAC, it shall comply with applicable requirements of NMAC 1.4.1.29-1.4.1.47 NMAC.

[1.4.8.10 NMAC - N, 09-30-05]

1.4.8.11 PUBLIC NOTICE: Procurements by the state purchasing agent. The state purchasing agent shall give public notice of the RFP in the same manner as provided in 1.4.1.17 NMAC.

[1.4.8.11 NMAC - N, 09-30-05]

1.4.8.12 PROPOSAL SUBMISSION REQUIREMENTS:

A. Two-part proposal submissions. In addition to any requirements imposed by 1.4.1.29 NMAC through 1.4.1.47 NMAC, or otherwise specified in the request for proposal document, RFPs issued under this rule shall instruct offers to submit two-part, two-volume written proposals. Each volume shall be submitted in a separate sealed envelope or package and offerors shall be instructed to clearly label each volume with their name, address and date of submittal and prominently identify each as: volume I: technical proposal and volume II: price proposal.

B. Restrictions regarding opening of proposals. Price proposals shall remain sealed until the using agency has completed its evaluation of the technical proposals for all offerors and has prepared final technical scores as required by this rule.

C. Representations in RFP process. All RFP documents executed in connection with an RFP issued pursuant to this rule shall contain an acknowledgement and certification section with the following provisions.

(1) All RFP documents shall be signed by a director, officer or manager of the submitting firm who has sufficient knowledge to fully address all matters and respond to all inquiries included in RFP documents.

(2) The submitting firm shall represent that the information provided in the RFP documents is truthful, accurate and complete and that the firm and individual responsible for the submission shall be fully responsible for and bound by all information, data, certifications, disclosures and attachments included in the RFP documents.

(3) The submitting firm further understands:

- (a) the information and data provided in connection with the RFP documents, as well as any other relevant information obtained from any other sources regarding the firm, may be reviewed to determine whether it qualifies as a responsible contractor pursuant to 1.4.1.47 NMAC and whether its offer represents the best value to using agency;

(b) a firm's failure to meet responsibility standards or provide requested information may render it ineligible to perform work on the prospective procurement contract;

(c) the submitting firm acknowledges its obligation to carefully review and complete, and, when applicable, update the RFP documents;

(d) the omission of any material fact concerning requested or submitted information, or the submission of any material false or misleading statement, or misrepresentation of a material fact concerning any requested or submitted information, may lead to the disqualification of the proposal.

(4) The submitting firm agrees that if it is awarded the contract, the RFP documents, and all terms and conditions specified therein, and all information, data, certifications and disclosures included in the RFP documents, shall be incorporated into the contract.

(5) The submitting firm further understands that if it is determined that it has intentionally or recklessly failed to disclose requested information, or has intentionally or recklessly made a false statement, misrepresentation, or omission regarding a material fact relating to the RFP documents, the firm may be declared in default of contract and any such conduct shall provide the using agency with grounds to terminate the contract and/or withhold full or partial payment and/or impose

any sanctions or penalties, as deemed appropriate and available under New Mexico law.

D. Contractor/Subcontractor Qualification Statements. A general contractor or other prime contractor submitting a proposal pursuant to an RFP issued under 1.4.8 NMAC shall be required to submit as part of its technical proposal a certified contractor qualification statement and certified subcontractor qualification statements in accordance with the requirements of 1.4.8.12 NMAC.

(1) **Use of Qualification Statements.** Contractor and subcontractor qualification statements shall be submitted on forms prepared by the general services department or the using agency. Information provided in these statements shall be considered by the using agency for evaluating and scoring contractors and subcontractors on technical proposals required under this rule. These statements shall also be considered in determining whether a contractor or subcontractor is a responsible contractor for purposes of 1.4.1.47 NMAC. RFPs should inform contractors and subcontractors, however, that in making such evaluations and determinations, the using agency is not restricted to the minimum information required for disclosure qualification statements and that any relevant information regarding performance from reliable sources may be considered.

(2) **Subcontractor Qualification Statements.** Subcontractor qualification statements shall be required for all subcontractors identified in the technical proposal pursuant to the subcontractor listing requirements 1.4.8.13 NMAC, where the value of the subcontract is fifty-thousand (\$50,000) or five percent, whichever is greater. A using agency may reserve the right to require subcontractor qualification statements from any other subcontractors, at whatever tier and regardless of the value of the subcontract.

(3) **Minimum Information Required.** Contractor and subcontractor qualification statements required pursuant to Subsection D of 1.4.8.12 NMAC shall include, at a minimum, the following information:

(a) a list of all projects the firm has performed work on in the five (5) years immediately preceding the submission of its proposal that are similar in size and scope, as specified by the using agency in the RFP, to the prospective procurement project; in the event that an offeror or a pre-listed subcontractor is a new business and does not have a performance record sufficient to evaluate the firm's past performance, the using agency may consider the past performance of the firm's officers, management and owners or partners;

(b) copies of any types of performance evaluations reports for the past five (5) years prepared in connection with the work identified in Subparagraph (a) of Paragraph (3) of Subsection D of 1.4.8.12 NMAC;

(c) the following representations, regarding the firm's present capabilities to perform the procurement contract and its prior history for the past three (3) years immediately preceding the date of this statement:

- (i) the firm has a current contractor registration, as required by Section 13-4-13.1 NMSA 2004;
- (ii) the firm has all applicable business and/or contractor licenses required by state or local law;
- (iii) the firm possesses the necessary equipment, financial resources, technical resources,

management, professional and craft personnel resources and other required capabilities to successfully perform the contract, or will achieve same through its prelisted subcontractors;

(iv) the firm has not had any business, trade or contracting license suspended or revoked;

(v) the firm has not been debarred by any government agency;

(vi) the firm has not defaulted on any project;

(vii) the firm has not committed willful or repeated violations of federal or state wage laws as determined by a final non-appealable decision of a court or government agency;

(viii) the firm has not committed serious or willful violations of federal or state safety laws as determined by a final non-appealable decision of a court or government agency;

(ix) disclosure by the firm of the following most recently available safety data: experience modification ratings; total lost workday incident rates (calculated by the number of lost time injuries and illnesses x 200,000 ÷ total hours worked); and recordable incident rates (calculated by the number of injuries x 200,000 ÷ total hours worked).

(4) **Additional Performance Related Information.** Using agencies may also require additional relevant information relating to a firm's past performance or present capability to perform the procurement contract. The extent of detail of such information may vary with the size and complexity of the project. Using agencies may require that additional information required from contractors and subcontractors be included in contractor and subcontractor qualification statements, or in other sections of the offeror's technical proposal. Types of additional information using agencies may wish to consider include, but are not limited to:

(a) information regarding the firm's financial status and financial resources;

(b) bonding information, including affirmative letters of bonding from certified bonding companies;

(c) past incidents involving denials of pre-qualification or findings of non-responsibility;

(d) past incidents of law violations in any area relating to contracting, including violations of environmental laws, antitrust laws, licensing laws;

(e) outstanding tax delinquencies to the state of New Mexico or its political subdivisions;

(f) disclosure of the names of any corporations, partnerships or other business entities the firm or its owners or officers have owned or operated in the past five (5) years;

(g) disclosure of the following information with regard to all projects identified in response to Subsection D (3)(a) of 1.4.8.12 NMAC:

(i) the original bid or proposal price of the projects and the final price of the projects and a brief

explanation of cost growth, if any, for such projects;

(ii) the originally scheduled completion date of the projects and the final completion dates of the projects and a brief explanation of schedule growth, if any, for such projects;

(iii) a list of any contract claims or cases in litigation or arbitration concerning the projects, a brief description of the reasons for such disputes and status of such cases.

[1.4.8.12 NMAC - N, 09-30-05]

1.4.8.13 PROCEDURES REGARDING SUBCONTRACTORS:

A. Evaluation of subcontractors. To ensure that an RFP secures the best value from a procurement contract, the role and impact of subcontractors proposed for a project may be evaluated in accordance with the requirements of 1.4.8.13 for any project in which subcontractors are used.

B. Objective of subcontractor evaluation. The objective of subcontractor evaluation is to identify the general/subcontractor team or prime contractor/subcontractor team that offers the most advantageous proposal and best overall value to the using agency. The qualifications and performance capabilities of subcontractors may be evaluated in conjunction with and in relation to the evaluation of the technical proposal of the offeror/general contractor, construction management firm or other prime contractor as specified in Paragraph (2) of Subsection B of 1.4.8.16 NMAC.

C. Subcontractor listing threshold. In preparing an RFP subject to this rule, the using agency shall prepare a subcontractor listing threshold, which shall establish a dollar threshold, stipulated in the RFP, above which subcontractors must be listed. All activities and issues concerning the listing of subcontractors in this regard shall be governed by the Subcontractor's Fair Practices Act NMSA 13-4-31, et. seq. and applicable regulations issued thereunder.

D. Subcontractor listing amount. The subcontractor listing threshold included in RFPs shall be five thousand dollars (\$5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, including alternatives, whichever is greater.

E. When submitting a proposal in response to an RFP issued pursuant to this rule, the offeror shall provide a list of all subcontractors that will perform work on the project above the subcontractor listing threshold. For each such prelisted contractor, the offeror shall include in its proposal the following information:

(1) the name of subcontractor that will perform work or labor or render service on the project identified in the RFP and the city or county of its principal place of business; and

(2) the category of the work that will be done by each subcontractor; only one subcontractor may be listed for each category of work as defined by the offeror in its proposal.

F. Firms identified in the subcontractor list shall not be substituted except as permitted under 13-4-36 NMAC of the Subcontractor Fair Practices Act NMSA, 14-4-36.
[1.4.8.13 NMAC - N, 09-30-05]

1.4.8.14 WEIGHT ASSIGNED TO PRICE AND RFP EVALUATION FACTORS:

A. Numerical ratings systems. Numerical ratings systems are required for procurements under 1.4.8 Use of Competitive Sealed Proposals for Construction and Facility Maintenance, Services and Repairs and shall comply with the requirements of 1.4.8.14 NMAC.

B. Total available points. The RFP shall specify the total points available for the procurement (for example, 1,000 total points for all price and non-price technical evaluation factors) and shall assign specific numerical weights or points to price and to each of the non-price evaluation factors identified in the RFP.

C. Numerical weight for price. The numerical weight assigned to price shall be no greater than seventy (70) percent of the total evaluation points available.

D. Numerical weight for core evaluation factors. The numerical weight assigned to the non-price evaluation factors shall be as follows:

(1) each of the four core evaluation factors specified in Subsection A of 1.4.8.15 NMAC shall be assigned at least twenty (20) percent of the available points for non-price technical evaluation factors;

(2) the weight assigned to any additional evaluation factors shall be determined by the using agency in accordance with the needs of the agency and the project.

[1.4.8.14 NMAC - N, 09-30-05]

1.4.8.15 RFP EVALUATION FACTORS:

A. Core evaluation factors. Each RFP issued pursuant to 1.4.8 NMAC shall include the following core evaluation factors, for both general and subcontractors for which qualification statements are required, with the sub-factors and criteria specified herein:

(1) Past performance:

(a) budget and schedule data;

(b) if available, performance quality and overall customer satisfaction;

(c) compliance with applicable laws and regulations;

(d) safety performance record.

(2) Management plan:

- (a) management team;
- (b) technical approach to project;
- (c) safety plan/programs;
- (d) project schedule.
- (3) Project staffing/craft labor capabilities:
 - (a) participation in skill training;
 - (b) reliable staffing sources/project staffing.
- (4) Health & Safety.

B. Additional evaluation factors:

(1) a using agency may include additional evaluation factors in an RFP issued pursuant to 1.4.8.15 of this NMAC 1.4.8 provided that any such factor is relevant to the successful completion of the contract or otherwise in the best interest of the state or using agency;

(2) examples of such additional factors may include, but are not limited to financial capabilities, project schedule, contract warranty or hiring of local construction or maintenance craft labor.
[1.4.8.15 NMAC - N, 09-30-05]

1.4.8.16 EVALUATION OF PROPOSALS:

A. Evaluation Committee ("EC"). Proposals submitted in response to RFPs issued under this regulation shall be evaluated by an evaluation committee ("EC") of at least three persons appointed by the procuring agency's management. The team should collectively possess expertise in the technical requirements of the project, construction design and contracting. A using agency may use independent consultants or agents to support source selection teams, provided appropriate precautions are taken to avoid potential conflicts of interest.

B. Scoring technical proposals. General procedures regarding technical proposal evaluation.

- (1) When rating the technical proposals, the EC shall consider only the evaluation factors stated in the RFP.
- (2) The EC may consider any relevant information or data, from any reliable source, relating to the RFP evaluation factors and the firm's ability to successfully perform the project. Such information may be obtained from the firm itself, prior customers of the firm, commercial and public databases and other reliable sources.

C. Scoring price proposals. Procedures for scoring price proposals under this rule shall be as follows:

- (1) price proposals shall be initially evaluated to ensure that the price(s) offered is responsive to the RFP requirements and instructions and is realistic in respect to the project plans and specifications;
- (2) price proposals shall be evaluated on the basis of the numerical weight assigned to price in the RFP and scored in accordance with the following process to permit the scoring of competing offerors' price proposals in relation to one another: the offeror with the lowest price shall receive the maximum price score, i.e., the maximum numerical weight assigned to price in the RFP (for example, 500 points out of a total 1,000 points);
- (3) the price score of each other offeror shall be determined by applying the following mathematical formula: price of lowest offeror divided by the price for this offeror multiplied by the maximum price score, i.e.,

$$\frac{\text{price of lowest offeror}}{\text{price of this offeror}} \times \text{maximum price score} = \text{price score of this offeror}$$

[1.4.8.16 NMAC - N, 09-30-05]

1.4.8.17 RESIDENT PREFERENCE: To effectuate the requirements of the state's resident contractor preference laws, 13-4-1 NMSA, et. seq., final cost scores of proposals under 1.4.8 NMAC shall be modified.
[1.4.8.17 NMAC - N, 09-30-05]

HISTORY OF 1.4.8 NMAC: [RESERVED].