

Chapter 5

PROCUREMENT METHODS

5.0 The following should be considered by the Requester/Procurement Unit/cardholder to determine the procurement method used for the acquisition of the needed commodities/services:

- the cost and whether the procurement will be for a commodity or service.
- whether the commodity is available in a Department District warehouse.
- whether the commodity or service is available from another state agency.
- whether the commodity or service is available from RESPECT or PRIDE.
- whether the commodity or service is available on a DMS State Term Contract.
- whether the commodity or service is available on a Department term contract.
- whether the needed services could and should be acquired as EXEMPT services.

5.1 DEPARTMENT DISTRICT WAREHOUSE ITEMS

The Requester, Procurement Unit, or Cardholder shall first determine if the exact or similar commodities are available from the Department's Material Supply & Inventory (MSI) warehouse system before purchasing from another source. Commodities stocked in a Department District warehouse should be used prior to purchasing from an outside source.

5.2 OTHER STATE AGENCY

The Requester, Procurement Unit, or Cardholder will determine if the needed commodities or services are available from any agency of the state and if procurement from that agency is required under the provision of any law currently in effect.

5.3 RESPECT

In accordance with **Sections 413.032-.037, F.S.**, and **Rule 60E-1, F.A.C.**, it shall be the Department's policy to procure commodities or services through RESPECT if the product or service is available within a reasonable delivery time and the product or service meets the comparable performance specifications and comparable price and quality requirements as determined by the Department. When RESPECT is not used,

justification must be documented on **Form No. 375-040-66, Reasonable Determination for Items Not Purchased from RESPECT or PRIDE** and maintained in the purchasing file.

Visit the RESPECT web site at <http://secure.imarcsgroup.com/respect/>

5.4 PRIDE

Section 946.515, F.S., requires each state agency to purchase from PRIDE if the price and quality are comparable to other sources. When PRIDE is not used, a justification (Reasonable Determination) in accordance with **Rule 60A-7.005(2), F.A.C.**, must be documented on **Form No. 375-040-66, Reasonable Determination for Items Not Purchased from RESPECT or PRIDE** and maintained in the procurement file. When purchasing from PRIDE, competitive solicitation is not required with the exception of printing, as stated in **Section 283.33(4), F.S.**

Visit the PRIDE web site at <http://www.pride-enterprises.org>

5.5 DEPARTMENT OF MANAGEMENT SERVICES (DMS) STATE TERM CONTRACTS

5.5.1 For Commodities: In accordance with **Section 287.056(1), F.S.**, all agencies are required to use these contracts unless the contract specifically states that it is optional (or non-exclusive). When procuring commodities from a DMS State Term Contract, Procurement Agents, Requesters, and Pcard holders must consult the Florida Climate-Friendly Preferred Products List and procure the needed products from the list if the price is comparable. (see **Section 286.29(1), F.S.**) The available products on the Climate-Friendly list have been identified on the price sheet(s) of each DMS State Term Contract, when applicable.

5.5.2 For Services: In accordance with **Section 287.056(1), F.S.**, all agencies are required to use these contracts unless the contract specifically states that it is optional (or non-exclusive). When a contractual service being requested is covered under a DMS State Term Contract, the Requester or the Procurement Unit may contract those services with an MFMP contract document or by Pcard in accordance with **Section 7.1** of this **Manual** and **Procedure No. 350-030-010, Purchasing Card**. The unit rates are typically upper limit rates and are negotiable for each project based on volume of work, complexity, and the market. The time frame to complete an authorized service on an MFMP Purchase Order may not extend beyond the end date of the DMS State Term Contract. The MFMP Purchase Order or Pcard documentation shall provide a scope of work or description of the services required that clearly establishes all tasks that the Contract Vendor is required to perform, beginning and ending dates, method of compensation in accordance with the DMS State Term Contract Vendor's price schedule

or a negotiated unit rate(s), and a provision dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the Project Manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. Documentation of negotiations, cost analysis, etc., shall be maintained in the procurement file.

5.5.3 Requesters may use a **Request for Quotes (RFQ)** with the DMS State Term Contract Vendor(s) to obtain written pricing or services information for commodities or contractual services available on DMS State Term Contracts. The MFMP eQuote tool may be used to solicit price quotes for the RFQ process on state term contracts. The RFQ process must be utilized if directed to in the DMS State Term Contract. The purpose of a request for quote from the DMS State Term Contract Vendor is to determine whether a price, term, or condition is available from that Vendor that would be more favorable to the Department than that provided in the DMS State Term Contract. For DMS State Term Contracts that have multiple Vendors, the RFQ is a tool to provide a current, competitive price and at least two (2) quotes should be solicited unless the term contract specifically contains other RFQ requirements. If less than two (2) quotes are solicited, the Requester shall include justification to document the procurement file accordingly. The use of the RFQ process involving Contract Vendors from DMS State Term Contracts do not constitute a decision that has to be posted in accordance with **Section 120.57(3), F.S.** The MFMP contract document or Pcard documentation shall provide a description of the services required, beginning and ending dates, and method of compensation that is in accordance with the DMS State Term Contract or a negotiated unit rate(s). Documentation should demonstrate that the DMS State Term Contract or negotiated unit rates and allowable expenses were utilized to arrive at the total dollar amount. Special procurement approvals, such as Information Resource Request (IRR) or Custom Network Solution (ARR) are required; however, single source approval is not required.

5.5.4 For Information Technology (IT) services that are procured from a DMS State Term Contract, the Requester must solicit quotes or proposals in accordance with the RFQ Requirements of the DMS State Term Contract. The MFMP eQuote tool may be used to solicit price quotes for the RFQ process on state term contracts.

5.5.5 Listings of DMS State Term Contracts can be found on the MyFlorida.com website at <http://dms.myflorida.com/purchasing>.

5.6 EXCEPTIONS TO DMS STATE TERM CONTRACTS

The exceptions to DMS State Term Contracts previously provided in **Rule 60A-1.044(3), F.A.C.**, have been repealed and purchasing from those contracts is therefore mandatory

unless the Requester documents the reason(s) why the DMS State Term Contract item will not meet the Department's need. Such determination may be due to factors such as, but not limited to: 1) the unavailability of the contract item within agency schedule or delivery requirements, 2) the need for compatibility with existing equipment or systems, or 3) the contract item fails to meet agency required specification, quality level, or technical requirements.

Procurements of commodities/services from sources other than the DMS State Term Contract Vendor shall be documented by the Department and properly procured. The Procurement Unit or Cardholder should prepare **Form No. 375-040-02, Documentation for Items Not Purchased From State Contract** to document the procurement. All documentation shall be attached to the Pcard file or the MFMP Requisition.

5.7 AGENCY (DEPARTMENT) TERM CONTRACTS

Commodities/services that are on contract with the Department of Transportation. Agency term contracts are initiated by the Requestor submitting **Form No. 375-040-28, Request for Procurement Action**, and can be statewide, districtwide, area wide, or project wide and may be optional, depending on the contract language.

5.8 ALTERNATE CONTRACT SOURCES

The Procurement Office must request permission and receive approval from DMS State Purchasing to purchase commodities or services from term contracts competitively established by other governmental entities. **DMS Form PUR 7102, "Agency Request for Review of Alternate Contract Source"** must be utilized for the request and authorization. See **Section 287.042(16), F.S.**, and **Rule 60A-1.047, F.A.C.**, for more details.

On the DMS State Purchasing website there is a listing of Alternate Contract Sources that have been pre-approved by DMS and are available for use by all state agencies.

5.9 EXEMPT PROCUREMENTS

Procurements in excess of Category Two for certain contractual services and commodities are exempt from and not subject to competitive solicitations under **Section 287.057, F.S.**, and **Rule 60A-1.002, F.A.C.** For the following procurements, competitive quotes/proposals are not required but should be obtained whenever practical.

- Artistic services (does not include advertising or typesetting).
- Continuing Education Programs/Events offered to the general public.

- Services or commodities provided by governmental agencies.
- Health services.
- Lectures by individuals.
- Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services (does not include court reporter services).
- PRIDE.
- Regulated utilities and government franchised services.
- RESPECT.

5.9.1 Procurements made from other governmental entities are exempt from the competitive requirements of the law (**Chapter 287, F.S.**).

5.9.2 Agreements with Vendors, State University System and Florida Community College Systems should be requested on **Form No. 375-040-28, Request for Procurement Action**, and must be procured in a manner that ensures a fair and reasonable price to the State and compliance with applicable laws, rules, and regulations.

5.9.3 When the requested contractual service or commodity is exempt from competitive requirements, a contract may be negotiated with one (1) Vendor of choice. However, in keeping with legislative intent, the Procurement Unit should acquire artistic and health services by utilizing the modified RFP process defined below. The Procurement Unit may consider utilizing the modified RFP process or modified ITN process defined below for services provided by state universities, community colleges, and eligible vocational schools.

5.9.3.1 Modified RFP Process - The Procurement Unit and/or Project Manager will:

- (a) Notify two (2) or more Vendors or advertise as needed. (Advertising is optional.)
- (b) Request informal proposals from two (2) or more Vendors, with due date as deemed necessary by the Project Manager. The MFMP eQuote tool may be used to request the informal proposals.
- (c) Evaluate proposals and document selection. For public meeting issues see **Section 5.12.9**.

5.9.3.2 Modified ITN process – The Procurement Unit and/or Project Manager will:

- (a) Notify two (2) or more Vendors or advertise as needed. (Advertising is optional.)
- (b) Request informal Letters of Interest from two (2) or more Vendors, with due date(s) as deemed necessary by the Project Manager.
- (c) Review Letters of Interest received and determine a short-list of respondents.
- (d) The respondents selected for the short-list will each be scheduled to meet with the Technical Review Committee (TRC) to provide an oral technical presentation of their capabilities and approach to the Scope of Services. The TRC will participate in all oral technical presentations and will complete a written summary evaluation of each respondent's technical approach, capabilities, and prior relevant experience.
- (e) Following oral technical presentations by all short-listed respondents, the TRC will review the summary evaluations, discuss, and come to consensus about ranking the respondents in order of preference.
- (f) The Department will negotiate and award a contract to the highest ranked respondent that reaches an acceptable agreement with the Department.

5.9.4 In accordance with **Section 287.057(4), F.S.**, the purchase of contractual services in excess of Category Two from non-competitive procurements must be supported by a detailed price and cost analysis that meets the requirements of **Section 216.3475, F.S.** The Requester/Project Manager must complete and provide a copy of the "**Cost Analysis for Non-Competitively Procured Agreements in Excess of Category II**" form from **CFO Memorandum No. 03 (2009-2010)** to the Procurement Unit to evidence their review of the individual cost elements to determine allowability, reasonableness, and necessity. The CFO Memo can be viewed at the following link: <http://www.myfloridacfo.com/aadir/docs/CFOM091003.pdf>

5.10 SINGLE SOURCES – in accordance with Section 287.057(3)(c), F.S., and Rule 60A-1.045, F.A.C.

5.10.1 Occasionally, a special requirement can be met only with a commodity or service available from one (1) Vendor, with no known competitors capable of satisfying the requirements. This situation must be documented by the Requester, and documentation submitted as a comment or attachment to the MFMP Requisition or Pcard file. The Requester and/or Procurement Unit shall request a quote and/or negotiate a price with the Vendor based on the ensuing scope of services/specifications, method of compensation, time frame, and all the terms and conditions of the contracting document. The Requester is responsible for preparing a memorandum justifying use of a Vendor as a single source and submitting the justification with a copy of the quote/negotiated price as an attachment to the MFMP Requisition. Procurements of Category Two or less that are made from a single source provider should be handled as Discretionary Purchases in accordance with **Section 5.11** of this **Manual**.

5.10.2 All procurements in excess of Category Two, that are available only from a single source, should be requested on **Form No. 375-040-28, Request for Procurement Action**, and must be electronically posted/advertised on the Florida Vendor Bid System (VBS) with a description of the needed commodities/contractual services for a period of at least seven (7) business days (which excludes Saturdays, Sundays, and state holidays). **Form 375-040-53, FDOT Description of Intended Single Source Purchase (PUR 7776)** shall be used for this purpose and must be approved by the Central Office Deputy General Counsel prior to posting. The description must include a request that prospective Vendors contact the Procurement Unit to provide information regarding their ability to supply the described commodities/services, and should include the business name of the known single source provider. If the Procurement Unit, after reviewing any information received from prospective Vendors during the posting/advertising period, determines in writing that the commodities/services are available only from a single source, the Procurement Unit will proceed as outlined below. The written determination must address each prospective Vendor's submission and explain why such submission does not meet the Department's requirement(s).

5.10.2.1 In accordance with **Section 287.057(4), F.S.**, the purchase of contractual services in excess of Category Two from single source procurements must be supported by a detailed price and cost analysis that meets the requirements of **Section 216.3475, F.S.** The Requester/Project Manager must complete and provide the **"Cost Analysis for Non-Competitively Procured Agreements in Excess of Category II"** form from **CFO Memorandum No. 02 (2012-2013)** to the procurement unit to evidence their review of the individual cost elements to determine allowability, reasonableness, and necessity. The CFO Memo can be viewed at the following link:
<http://www.myfloridacfo.com/aadir/cm0/CFOM121302.pdf>

5.10.3 When the single source procurement is greater than Category Two, and the requirements of **Section 5.10.2**, above, have been met, the Procurement Unit must then electronically post notice of its intended decision on **Form 375-040-54, FDOT Notice of Intended Decision to Enter Into a Single Source Contract (PUR7778)**, for seventy-two (72) hours (excluding Saturday, Sunday, and state holidays) in accordance with **Section 120.57(3), F.S.** When posting is complete, the MFMP Purchase Order or written agreement may be approved and submitted to the Contract Vendor. Contracts for single source procurements must be executed within six (6) months of the completion of the posting period. All required single source documentation and evidence of posting shall be attached to the related Requisition(s) in MFMP.

No Conflict of Interest NOTE: In accordance with **Section 287.057(19), F.S.**, procurement of commodities/services without competition and in excess of Category Two requires individuals involved in the development or selection of criteria for evaluation, the evaluation process and the award process to attest in writing that they are independent of, and have no conflict of interest in the entities evaluated and

selected. Those individuals must sign the ***Conflict of Interest Certification, Form No. 375-030-50***, and provide it to the Procurement Unit for attachment to the procurement file.

5.11 DISCRETIONARY PURCHASES OF CATEGORY TWO OR LESS

When the requested commodities/services are less than or equal to Category Two, and will not be procured under any of the procurement methods listed above, the commodities/services may be acquired in accordance with ***Rule 60A-1.002, F.A.C.***, as Discretionary Purchases. The requirements of that section allow the agency to use discretion and to exercise professional judgment in making procurement decisions.

5.11.1 Informal bids or proposals are documented verbal quotations or written vendor price quotations obtained for procurements with a dollar value of Category Two or less. The ***Request for Quotation, Form No. 375-040-38***, available on the Procurement Office Infonet website, or the MFMP eQuote tool may be used to obtain price quotes. Competitive price quotes should be obtained from Minority Business Enterprises whenever possible. (Informal Bid and Informal Proposal samples are available on the Procurement Office Web page, under "Procurement Samples").

5.11.2 Below \$2,500: For procurements with a value less than \$2,500, competitive price quotes are not required but should be obtained whenever practical. Use good purchasing practices* which may include but not be limited to two (2) or more quotes/proposals. Written evidence of all price quotations/proposals received shall be attached to the Requisition in MFMP, maintained in the procurement file, or maintained in the Pcard file. The purchase may also be made directly from an MBE.

5.11.3 \$2,500 to Category Two: Use good purchasing practices* which must include, but not be limited to, two (2) or more price quotes or a statement as to why they were not received. If the commodities or services are only available from one Vendor, or if conditions warrant negotiation on the best terms and conditions, documentation of the conditions and circumstances shall be provided. Written evidence of all quotes/proposals received and documentation of conditions and circumstances to support a non-competitive award (single source or single quote) shall be attached to the Requisition in MFMP, maintained in the procurement file or maintained in the Pcard file. An explanation or justification should be provided if the low quote is not selected.

Offices requiring equipment maintenance service or repairs are encouraged to acquire such services from an authorized service representative and may forego soliciting the minimum number of informal price quotes, if there is only one authorized service dealer in the area. A statement to that effect must be included in the procurement file or in the Pcard file.

*Good purchasing practices may also include:

- (a) Providing Vendors with specifications or scope of services, quantity(ies), time requirements, and potential terms and conditions.
- (b) Providing Vendors with potential method of compensation and payment method (Maximum Amount or Budgetary Ceiling at Unit Rates, Lump Sum with or without partial progress payments, Advance Pay, etc., and Journal Transfer, or standard warrant) as these could impact quoted pricing.
- (c) Providing the same information to all Vendors.
- (d) Being fair and equitable in analysis of quotes/proposals and awards.
- (e) Notifying all Vendors of selection after award.

Special Note: Contracts less than or equal to Category Two may be renewed, as defined in **Section 9.5** of this *Manual*, as long as they are not coded, in MFMP or FLAIR, as single source or emergency procurements.

5.12 COMPETITIVE SOLICITATIONS GREATER THAN CATEGORY TWO

There are three (3) competitive solicitation processes authorized by Florida law: the invitation to bid (ITB), request for proposals (RFP), and invitation to negotiate (ITN). Refer to **Section 287.057(1)(a), F.S.**, for ITB requirements and guidelines, **Section 287.057 (1)(b), F.S.**, for RFP requirements and guidelines, and **Section 287.057 (1)(c), F.S.**, for requirements and guidelines unique to the ITN.

Procurements greater than the threshold amount of Category Two shall be advertised in the DMS Vendor Bid System (VBS) at http://vbs.dms.state.fl.us/vbs/vbs_main_menu . These procurements shall comply with the requirements of **Chapter 287, F.S.**, and **Rule Chapter 60A-1, F.A.C.**, as discussed in this section with the following exception:

Section 337.02(1), F.S., allows the Department to purchase parts and repairs valued at up to threshold Category Two for the repair of mobile road maintenance equipment, marine vessels, permanent vehicle scales, and mechanical and electrical equipment for movable bridges, toll facilities, and purchases up to the threshold amount of Category Three for parts and repairs for treatment plants and lift stations for water and sewage, and major heating and cooling systems, without receiving competitive bids.

5.12.1 Preliminary Activities

- (a) The Procurement Unit will secure a completed **Form No. 375-040-28, Request for Procurement Action** from the Requester, as well as the specifications or scope of services, the quantities, special conditions or requirements, time frames, estimated

cost(s), pricing information, budget authority and evaluation criteria, as applicable. The Procurement Unit will verify or obtain the ***Conflict of Interest Certification or Attestation of No Conflict*** forms, in accordance with ***Section 2.2*** of this ***Manual***. The Procurement Unit will determine the DMS Commodity Code(s) which best represents the commodities and/or services being sought. If the Procurement Unit is acquiring a commodity or service that is not shown in the DMS listing, contact the Central Office Procurement Office for proper classification.

(b) **Written Justification for RFP:** Before issuing an RFP, the Department must determine and specify in writing the reasons that procurement by ITB is not practicable. The written justification for not using an ITB shall be maintained in the RFP procurement file. In the event a Department procedure establishes the RFP process as the acquisition method for the services to be sought, the written justification shall identify the procedure and state that the RFP process was utilized in conformance with Department procedure.

(c) **Written Justification for ITN:** Before issuing an Invitation to Negotiate, the agency head must determine and specify in writing the reasons that procurement by an Invitation to Bid and a Request for Proposals is not practicable. (see ***Section 287.057(1)(c)1., F.S.***) The written justification shall be documented on the ***Determination to Use an Invitation to Negotiate (ITN) Method of Procurement, Form No. 375-040-67***, and shall be maintained in the ITN procurement file.

The ITN must describe the questions being explored, the facts being sought, and the specific goals or problems that are the subject of the solicitation. The ITN must also specify the criteria that will be used for determining the acceptability of the reply and guiding the selection of the Vendors with which the Department will negotiate. There are two general negotiation methods used:

1) Competitive Method A - Vendors are ranked based on technical qualifications and negotiations are conducted commencing with the first ranked Vendor.

2) Competitive Method B - Vendor qualifications are evaluated and Vendors may be short-listed. Negotiations of scope and price will be conducted with short-listed or all Vendors. An award is made to the Vendor with the best combination of proposal, qualifications, and price.

(d) Based on the information gathered above, the Procurement Unit and Requester will determine the proper procurement method for acquiring the commodities and/or services and initiate procurement in accordance with ***Section 287.057, F.S.*** (procurement of commodities or contractual services), ***Rule Chapter 60A-1, F.A.C.***, and this ***Department Manual***.

(e) All formal bids that exceed the threshold dollar amount for Category Two should be discussed with the Central Office Procurement Office to prevent duplication. This can be accomplished through E-mail.

(f) **Procurement Number:** All competitive solicitations will be assigned an identification number. The number will represent the type of procurement method, the agency designation for the Department, the fiscal year, and a district-unique 4-digit sequential number related to the number of that type of solicitation that has been issued by that office for that fiscal year. The Procurement Agent's initials should be added at the end of the number to indicate which agent was responsible for the solicitation. For example: RFP-DOT-15/16-9005-BB would represent an RFP issued by the Department during fiscal year 2015/2016, that is the fifth RFP issued by the 9th District (a.k.a., Central Office) during that fiscal year, and the Procurement Agent is identified by the initials BB.

5.12.2 Competitive Solicitation (ITB, RFP, ITN) Packages

The Procurement Unit is responsible for development of the ITB/RFP/ITN package in compliance with **Section 287.057(1), F.S.**, and the coordination of the procurement process. A sample ITB, RFP, and ITN package is available on the Procurement Office Web site under Procurement Samples.

Competitive solicitations shall include the following sections, forms and statements, as applicable and as provided in the procurement samples found on the Procurement Office Web site: <http://www.dot.state.fl.us/procurement/>

- (a) Introduction Section, including a Timeline.
- (b) Special Conditions Section.
- (c) Technical Specification or Statement of Work (Scope of Services) Section.
- (d) Public Entity Crime Statement.
- (e) Bid Preference Statement regarding Identical Tie Bids and the Drug Free Workplace (applicable to ITB packages).
- (f) In-state Price Preference (only applicable to commodity ITB packages).
- (g) Certification of Recycled Content (only applicable to commodity ITB packages).
- (h) Special Accommodations.
- (i) Non-Discrimination clause.
- (j) Unauthorized Alien Workers.
- (k) DMS Form PUR 1000, General Contract Conditions.
- (l) DMS Form PUR 1001, General Instructions to Respondents.
- (m) Notice of public meeting(s) in the Timeline / Schedule of Events and/or Posting of

Intended Award.

- (n) Scrutinized Companies Lists and **Form No. 375-030-60, Vendor Certification Regarding Scrutinized Companies Lists.**
- (o) Evaluation Criteria and relative importance, including price and prior relevant experience (for RFPs and ITNs).
- (p) Agenda(s) for all public meetings with a specified period of time designated for public comment/input.
- (q) Notice of prohibition of contact with employees between the release of solicitation and the end of the 72 hour posting period.
- (r) MBE or DBE Utilization statement
- (s) Inspector General provision requiring compliance with **Section 20.055(5), F.S.**

It is recommended that a checklist be prepared for the competitive solicitation package and completed to ensure all steps have been taken. See the Procurement Office Web site on the INFONET for a sample.

5.12.3 Advertisement Requirements: Competitive solicitations for commodities/services in excess of the dollar amount for Category Two must be advertised by electronic posting in the *DMS Vendor Bid System (VBS)* at http://vbs.dms.state.fl.us/vbs/vbs_main_menu, for no less than ten (10) calendar days prior to the submittal due date unless the Department determines in writing that a shorter period of time is necessary to avoid harming the interests of the state.

The Advertisement posted on the VBS must include the following:

- Procurement Number.
- Location where commodities/services are required (city, county, statewide).
- Brief description of commodities and/or services sought.
- Special requirements or licenses required.
- Notice that companies that are on either of the Scrutinized Companies Lists may not bid on, submit a proposal for, or enter into or renew a contract for goods or services of \$1 million or more.
- How and where ITB/RFP/ITN packages may be obtained.
- Date, time, and place bids/proposals/ replies are due.
- Date, time, and place of pre-bid/proposal/reply meeting (If applicable).
- Date, time, and place bids/proposals/replies will be opened.
- Right to reject any or all bids/proposals/replies.
- Title VI of the Civil Rights Act of 1964 provision

- Public Meeting Notices and Meeting Agendas statement
- Inspector General provision requiring compliance with s.20.055(5), F.S.

The Procurement Unit is responsible for the preparation of the advertisement to be posted on the VBS, the competitive solicitation package, and the subsequent installation of both in the VBS on the Internet.

Advertising in the VBS is a minimum requirement and does not limit further notice. To ensure receipt of multiple bids/proposals/replies, the Procurement Unit may notify vendors by other methods, such as:

- (a) Sending a copy of Advertisement to two or more appropriate vendors as requested by Project Manager.
- (b) Sending a copy of the Advertisement to vendors listed with the DMS for a particular catalog classification, group classifications, or geographic area. (Registered vendors with E-mail addresses on file with DMS are automatically notified if they have registered for Electronic Notification).
- (c) Placing the Advertisement in newspapers of general circulation.

5.12.4 Uploading to the Vendor Bid System (VBS): Competitive solicitation packages will be prepared and uploaded to the *DMS Vendor Bid System* at http://vbs.dms.state.fl.us/vbs/vbs_main_menu, unless justified in writing, and approved by the Procurement Office, as to the circumstances and conditions that prevented uploading the procurement package to the VBS. The VBS provides automatic electronic (Internet E-mail) notification to Vendors registered with corresponding class/group codes that the Bid, Proposal, Negotiation document is available to download. The FLAIR/MFMP Vendor files may also be researched to identify Vendors who are not registered for Electronic Notification, and those Vendors can be provided with a solicitation advertisement through the mail. For instructions to upload onto the VBS, see the Procurement Office Web site for Uploading Advertisements/Bids, under **Reference Guides**.

Competitive solicitation packages that are uploaded to the VBS must include a "Registration" page (see Procurement samples on the Procurement Office Web site) which advises Vendors of the Web site address for the **Vendor Bid System** and notifies Vendors that it is the Vendor's responsibility to monitor the VBS for any changing information about a particular ITB, RFP, or ITN.

5.12.5 Questions from Vendors: In accordance with **Section 287.057(23), F.S.**, each solicitation for the procurement of commodities or contractual services shall include the following provision: "Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72 hour

period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response."

5.12.6 Changes after Distribution: Changes that need to be made to the ITB, RFP, or ITN after it has been made available to Vendors shall be made by issuing an **Addendum** (sample on Procurement Office Web site, "**Reference Guides**").

The Procurement Unit will ensure that all recipients of an ITB/RFP/ITN are advised of any changes to the ITB/RFP/ITN. This is accomplished in the form of an Addendum, which must be posted on the VBS under the appropriate ITB/RFP/ITN number. The Addendum will require the Vendor to acknowledge receipt of the Addendum in their bid/proposal/reply, when so stated in the Addendum. If the Addendum should impact the opening or posting date, the Addendum will state the revised dates or how the Vendor will be notified of the new dates when determined. Addenda must be sequentially numbered. All addenda must inform Vendors of their protest rights by containing the following statement: "Failure to file a protest within the time prescribed in **Section 120.57(3), F.S.**, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under **Chapter 120, F.S.**"

The Procurement Unit will also ensure that all recipients of an ITB/RFP/ITN are provided written responses to written Vendor questions that are timely submitted. The Department's written response(s), with related question(s), will be posted on the VBS under the appropriate ITB/RFP/ITN number. This practice will prevent any one Vendor from gaining an advantage or benefit not enjoyed by other Vendors. The Requester/Project Manager and/or Procurement Unit will make a determination whether the Department's answer is only a matter of clarification of the information contained in the ITB/RFP/ITN or if the answer would provide an unfair advantage or benefit not enjoyed by others.

All addenda and questions/answers will be provided by posting on the VBS. Posting to the VBS is a minimum requirement. The Procurement Unit may as a courtesy, if deemed appropriate, notify potential Vendors by other means such as fax (with telephone confirmation), certified mail, or express delivery services. The Procurement Unit shall maintain documentation of all notifications in the file.

5.12.7 Pre-Bid/Proposal/Reply Meetings: At the option of the Requester/Project Manager or Procurement Unit, a pre-bid/proposal/reply meeting may be held to explain the terms and conditions of the proposed contract, so Vendors will have a full understanding of any responsibility they may assume under a contract. No information

or instructions that change any ITB/RFP/ITN requirements will be given unless an Addendum is also issued. Attendance at a pre-bid/proposal/reply meeting is not a prerequisite for submitting a bid/proposal/reply unless specifically stated in the advertisement and ITB/RFP/ITN package. When a mandatory pre-bid/proposal/reply meeting is held, only bids, proposals, or replies of those vendors represented at the pre-bid/proposal meeting will be considered. All attendees will be required to sign an attendance record and indicate the firm(s)/individual(s) they represent. The attendance record must be maintained in the original project file.

5.12.8 Receipt and Opening of Bids/Proposals/Replies

(a) It is the vendor's responsibility to assure that the bid/proposal/reply submitted in response to a solicitation is delivered on or before the due date and time specified, and at the location specified in the solicitation. Submittals which, for any reason, are not delivered accordingly will not be considered, but will remain in the care and custody of the Department. Documentation of the date and time that submittals are received by the Department must be maintained in the solicitation file. It is recommended that a separate log be maintained for each competitive solicitation indicating the solicitation title, date/time submittal received, and vendor (**sample "Log of Bids Received"** on Procurement Office Web site under **Reference Guides**). All submittals shall be date and time stamped with a time and date machine, or hand written note. All submittals in the care and custody of the appropriate District or Central Office at the specified time and due date will be opened and evaluated for award. Since these are SEALED bids/proposals/replies, offers by telephone, telegraph, or fax are not acceptable.

(b) Sealed Bids/Proposals/Replies received by the Department will be maintained, unopened, in a secure location until the scheduled Bid/Proposal/Reply Opening. The Opening will be public on the date, at the time and place specified in the solicitation. For RFPs, separate public openings may be conducted for opening of the technical proposals and price proposals, if the RFP so provided. For ITNs, the initial sealed reply must be received on time and requires a public opening. Subsequent submittals received during the ITN process should be received as requested, but do not require a public opening. The opening will be conducted by an employee of the Department and witnessed by at least one other employee of the Department. The **"Public Bid Opening Statement"** (see Procurement Office Web site, **Reference Guides**) should be posted, distributed, or read at the beginning of bid openings when visitors are present. All Vendors present at the opening will be listed on a Vendor sign-in sheet and will be advised that the reading of the prices received does not imply or constitute an award. A bid/proposal/reply tabulation form (**Bid Tabulation, Form No. 375-040-2A; Proposal Tabulation, Form No. 375-040-2B; or Negotiation Tabulation, Form No. 375-040-2C**, as applicable) will be completed simultaneously with the public reading of the prices and will be made accessible for inspection by any interested party.

(c) PUBLIC RECORD - Sealed bids/proposals are to remain under the supervision of

an employee of the Department. In accordance with **Section 119.071(1)(b)2., F.S.**, they are not public records until the Department provides notice of a decision or intended decision pursuant to **Section 120.57(3), F.S.**, or until thirty (30) days after opening the bids, proposals, or final replies, whichever occurs earlier. For RFPs, if there is a second opening for price proposals, the thirty (30) days are based on the second opening.

Exceptions to the public record laws and rules for:

ITBs, RFPs, and ITNs - If an agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from the public records law until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or withdraws the reissued competitive solicitation (**Section 119.071, F.S.**). A bid, proposal, or reply is not exempt from the public records law for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(d) PUBLIC RECORDS REQUESTS – Requests for public records will be handled in accordance with **Section 119.07, F.S.**

(e) COPYRIGHTED MATERIAL – Copyrighted material submitted as part of a technical proposal or as a contract deliverable is not exempt from the **Public Records Law, Chapter 119, F.S.**, but would be made available “for viewing only” in response to a Public Records request. These copyrighted documents cannot be copied or scanned into an electronic data base unless accompanied by a waiver allowing the Department to make copies as necessary to review and evaluate the submittal and to scan the document into an electronic data base.

It is recommended that the competitive solicitation package includes language requiring any copyrighted material submitted in response to be accompanied by a waiver that would allow the Department to make copies as necessary for the evaluation process and to scan the document into an electronic data base. The competitive solicitation samples on the Procurement Office Web Site include this language.

(f) CONFIDENTIAL MATERIAL - It is recommended that the Vendors are advised in the procurement solicitation that they must include any materials they assert to be exempt from public disclosure under **Chapter 119, F.S.**, in a separate bound document labeled "Attachment to (Procurement Number #) - Confidential Material". The Vendor must identify the specific statute that authorizes the exemption from the public records law. The competitive solicitation samples on the Procurement Office Web Site include this language.

5.12.9 Public Meetings and Oral Presentations

PUBLIC MEETINGS: In accordance with **Section 286.0114, F.S.**, and **Policy No. 001-010-025, Participation at Public Meetings**, public meetings must be included in the "Timeline" or "Schedule of Events", and agenda(s) allowing a designated period of time for public comment/input, must also be included in the procurement package. The Procurement Samples that are available on the Procurement Office website have been set-up accordingly.

NOTE: The Procurement Unit should emphasize to the Project Manager, the importance of complying with the meeting schedule and agenda(s) provided on the VBS. Reasonable notice must be given at the earliest practicable time for any changes determined necessary and documented by the Project Manager. The schedule of events may need to be adjusted accordingly.

5.12.10 Evaluations, Selections, and Negotiations

ITBs: Bid openings are open to the public and an individual from the Procurement Unit shall review bids to ensure that the bids submitted are responsive to the mandatory requirements stated in the bid solicitation. The Requester will review the bid responses to determine if they are accurate and provided by a responsible and qualified Vendor. Award shall be made to the responsible Vendor that submits the lowest responsive bid. If there is no committee or team, no public meeting is required. The Procurement Unit is responsible for tabulating the bid prices and completing the **Bid Tabulation, 375-040-2A**.

RFPs: A Technical Review Committee (TRC) of at least three (3) persons, who collectively have experience and knowledge in the program area(s) for which commodities or contractual services are sought, shall be appointed by the agency head or designee to evaluate proposals for contracts in excess of the threshold amount provided in **Section 287.017, F.S.**, for Category Four. The authority to appoint these persons is delegated to Senior Management Level Directors and above, who may delegate such authority to other office heads in writing. For contracts of Category Four or less, at least two (2) persons shall participate in the evaluation. All meetings of these persons to discuss or evaluate proposals will be conducted as public meetings (see **Section 5.12.9**).

(a) The TRC is responsible for establishing the basis for award and the criteria for evaluation of the technical proposals and price proposals. (Typically, the evaluation criteria and their relative importance are determined by the Project Manager and/or TRC with assistance from the Procurement Unit and must include consideration of prior relevant experience of the Vendor.) The Project Manager, prior to the technical reviews, is encouraged to meet with the TRC as a group so that project requirements and major emphasis points can be discussed. The general evaluation criteria, including their relative importance, will be provided in the RFP.

- (b) The TRC is responsible for determining if Vendors are responsible and qualified to perform the requested services.
- (c) The TRC is responsible for rating all technical proposals: TRC members will strive to provide objective evaluations based on the evaluation criteria established in the RFP, so that value uniformity can be established. TRC members will conduct ratings individually, not in a meeting type environment where a consensus is determined. When each evaluator has completed his/her evaluation of each proposal, the raw scores will be transmitted to the procurement unit or Project Manager, who will calculate the average score for each proposal. All individual evaluations should be signed and dated by the evaluator and retained in the procurement file.
- (d) The Project Manager is responsible for assisting in the rating of all Price Proposals.
- (e) Public meeting notice(s) with agendas allowing a designated period of time for public comment/input, must be included in the RFP solicitation as part of the timeline schedule of events for the following (if applicable):
- 1) Short Listing.
 - 2) Opening of Price Proposals.
 - 3) Reading a summary of the technical scores. It is recommended that this "meeting" could be conducted during the opening of the price proposals. If possible, the pricing scores could be calculated right after opening all the price proposals and the final scores/ranking could be given at the same meeting to announce either the recommended award or the intended award decision.
 - 4) If the price evaluation will be too complex and/or time consuming to allow the final selection to be made during the previous meeting, another public meeting may be necessary if more than one person will be involved in the price analysis and selection of the intended award.
 - 5) The Procurement Unit is responsible for tabulating the scores and completing the **Proposal Tabulation, Form No. 375-040-2B**. The contract shall be awarded to the Vendor whose proposal is determined in writing to be the most advantageous to the state and the procurement file shall contain documentation supporting the basis on which the award is made.

ITNs: The Procurement Unit and/or Project Manager shall review all information submitted to the Department to ensure that the Vendors were responsive to the ITN and are responsible and qualified. Evaluations/reviews/negotiations should be conducted by at least three (3) persons for contracts of the threshold amount provided in **Section 287.017, F.S.**, for Category Four or less. For contracts in excess of Category Four, the agency head or designee shall appoint at least three (3) persons to evaluate replies and at least three (3) persons to conduct negotiations (can be the same) who collectively have experience and knowledge in negotiating contracts, contract procurement, and the

program areas and service requirements for which commodities or contractual services are sought. For any procurement which may exceed \$1,000,000 in any fiscal year, at least one committee member must be certified as a Contract Negotiator, certified by DMS. For any procurement which may exceed \$10,000,000 in any fiscal year, at least one committee member must be certified as a Project Management Professional as certified by the Project Management Institute. The authority to appoint these persons is delegated to Senior Management Level Directors and above, who may delegate such authority to other office heads in writing. The Procurement Unit is responsible for tabulating the scores and completing the ***Negotiation Tabulation, Form No. 375-040-2C***.

The Department shall evaluate replies against the criteria set forth in the ITN in order to establish a competitive range of replies to proceed in the negotiation process. The evaluation criteria must include consideration of prior relevant experience of the Vendor. One or more Vendors within the competitive range may be selected for negotiations. After negotiations are conducted, the award will be made to the responsive and responsible Vendor that the Department determines will provide the best value to the state based on the evaluation criteria. The procurement file for an ITN must contain a short, plain statement that explains the basis for the selection of the Vendor and that sets forth the Vendor's deliverables and price with an explanation of how these deliverables and price will provide the best value to the state.

Public meeting notice(s) with agendas allowing a designated period of time for public comment/input must be included in the ITN solicitation as part of the timeline/ schedule of events for the following (if applicable):

- (a) Meeting to Rank or Short List.
- (b) Ranking/Scoring (summary of evaluations and recommendation) for selection of the Intended Award.
- (c) Any meeting of the Technical Review Committee (TRC) to discuss replies.

5.12.11 Single Bid/Proposal/Reply or No Bids/Proposals/Replies

The Procurement Unit will follow the process detailed in ***Section 287.057(5), F.S.***, when less than two responsive bids, proposals, or replies are received.

5.12.12 Tie Bids/Evaluations

When evaluating Vendor responses to an ITB/ RFP/ ITN and there is identical pricing or scoring, the Procurement Unit will determine the intended award in accordance with ***Section 295.187(4), F.S.*** and ***Rule 60A-1.011, F.A.C.***

5.12.13 Posting of Intended Award

The Procurement Agent is responsible for the accuracy of the information on the Bid/Proposal/Negotiation Tabulation sheet(s).

(a) The Department's intended award will be indicated on the ***Bid Tabulation, Proposal Tabulation, or Negotiation Tabulation***, as appropriate, and shall be electronically posted on the myflorida.com website (VBS) no later than the date and time indicated in the ITB/RFP/ITN, for seventy-two (72) hours (excluding weekends and state holidays) for review by interested parties in accordance with ***Section 120.57(3), F.S.*** The posting time and date (beginning and ending) shall be noted on the tabulation sheet. If there is a short listing and/or ranking in the ITN process, the short listed Vendors and/or ranking of Vendors shall be posted accordingly.

(b) If a bid or proposal is rejected, the tabulation shall be noted and include a brief explanation as to why the bid/proposal was disqualified. Documentation shall be retained in the bid/proposal file with an adequate explanation for the rejection. The bid/proposal tabulation shall reflect all rejected bids/proposals.

(c) In the event of a timely notice of intent to protest or formal protest, no further postings should occur until the protest is resolved. If the intended award remains, no further posting is necessary.

NOTE: The notice of intended award shall also inform Vendors of their protest rights by containing the following statement: "Failure to file a protest within the time prescribed in ***Section 120.57(3), F.S.***, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under ***Chapter 120, F.S.*** If the notice advises of the bond requirement and a bond or statutorily authorized alternate is not posted when required, the agency shall summarily dismiss the petition."

(d) In the event that the award or intended award decision changes (tabulation error, Vendor withdraws bid, etc.), the notice of intended award must be posted again, as explained above, noting the change in the previous award and the new intended award decision. If an intended decision has to be reposted, or the anticipated posting date indicated in the ITB/RFP/ITN changes, all Vendors that are affected shall be notified by fax (with confirmation) or E-mail (with confirmation) of the future electronic posting date and time.

5.12.14 Vendors Withdrawing Bids/Proposals

(a) Upon notice of intended award or opening, bids/proposals may only be withdrawn upon demonstration of circumstances justifying withdrawal.

(b) If notice of request to withdraw a bid/proposal is submitted by the intended award Vendor and accepted by the Department, the Department may elect to contract with the next lowest responsive bidder for ITB or the next highest responsive proposer for RFP or ITN or re-solicit the project.

5.12.15 Handling Protests By Bidders/Proposers

(a) All protests shall be in accordance with **Rule Chapter 28-110, F.A.C., Bid Protests** and **Section 120.57(3), F.S.**

(b) Any person, as defined in **Section 1.01(3), F.S.**, who is adversely affected by a Department decision or intended decision concerning a bid/proposal solicitation or a contract award, may protest the decision or intended decision as provided by **Chapter 120, F.S.** To protest the terms, conditions, and/or specifications/scope of services contained in a competitive solicitation package, the notice of intent to protest must be filed in writing within 72 hours after the procurement package is posted and available on the VBS. In the event of a timely formal protest, the Department will not proceed with the solicitation or with the award of a contract in issue, until such dispute is resolved in accordance with the requirements of **Chapter 120, F.S.**, unless approved by the Department Secretary in accordance with **Section 120.57(3), F.S.** After receipt of a timely formal protest, no other actions, including printing of the Purchase Order, shall be conducted until the protest is resolved.

(c) Vendors shall be advised to send all protests to:

Florida Department of Transportation
Office of General Counsel, Clerk of Agency Proceedings
M.S. 58, Haydon Burns Building,
605 Suwannee Street
Tallahassee, Florida 32399-0450

(d) In the event that a notice of protest is received by any office other than the Clerk, the receiving office shall stamp the notice with the time and date received, and immediately contact the Office of General Counsel, Clerk of Agency Proceedings, in Tallahassee. Copies of the notice are to be given to the Clerk of Agency Proceedings in Tallahassee at the above address, and to the procurement unit involved.