

Volume 47, Number 8  
Pages 539–616  
April 15, 2022

SALUS POPULI SUPREMA LEX ESTO

*“The welfare of the people shall be the supreme law.”*



JOHN R. ASHCROFT  
SECRETARY OF STATE

MISSOURI  
REGISTER

**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbolology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

wise, the following terms are defined as:

(I) Multiple award. A purchase order or contract awarded to two (2) or more bidders in order to meet the needs of agencies, or an award to the next lowest and best vendor where a contract is cancelled for breach or the contract award is rescinded;

(N) Shortlisting. The process of narrowing down and selecting, from the offerors who responded to the solicitation, those offerors that are eligible for negotiations, further negotiations, or for demonstrations or testing, based upon the criteria specified in the solicitation;

[(N)](O) Solicitation. The process of notifying prospective bidders that the state wishes to receive bids or proposals to provide supplies. The term includes request for proposal (RFP), request for quotation (RFQ), invitation for bid (IFB), single feasible source (SFS), and any other appropriate procurement method;

[(O)](P) State. The state of Missouri;

[(P)](Q) Suspension. An exclusion from contracting with the state for a temporary period of time; *[and]*

(R) Vendor, bidder, offeror, or supplier. Unless specifically defined in a solicitation, the entity or person who may, or who has, submitted a bid or proposal in response to a solicitation; and

[(Q)](S) Women's business enterprise (WBE). The definition in section 37.020.1(6), RSMo, will be applied.

All other terms will follow their relevant statutory or regulatory definitions.

(3) When the procurement is estimated to be less than *[twenty-five thousand dollars (\$25,000)]* one hundred thousand dollars (\$100,000), an informal method of solicitation may be utilized. Informal methods of procurement may include Request for Quotation (RFQ), telephone quotes, etc.

(4) When the procurement is estimated to be *[twenty-five thousand dollars (\$25,000)]* one hundred thousand dollars (\$100,000), or more, a formal method of solicitation must be utilized. Formal competitive bidding may be accomplished by utilizing an Invitation for Bid (IFB). Pursuant to section 34.047, RSMo, information technology purchases estimated not to exceed *[seventy-five thousand dollars (\$75,000)]* one hundred and fifty thousand dollars (\$150,000) may be completed under an informal process provided the procurement does not exceed twelve (12) months and it is posted on the division online bidding/vendor registration system website.

(6) Submission of bids or proposals. Formal bids/proposals should be received in the division or a secured electronic database in a sealed format by the time set for the opening of the bids/proposals.

(C) Under extraordinary circumstances, the director or designee may authorize the opening of a late proposal. In such cases, the proposal must have been turned over to the physical control of an independent postal or courier service with promised delivery time prior to the time set for the opening of proposal, or late delivery of the proposal must be attributable to an issue with the state's electronic bid system that was out of the control of the submitting vendor. All such decisions are at the sole discretion of the director or designee. The following guidelines may be utilized to determine the criteria for an extraordinary circumstance:

1. State offices were closed due to inclement weather conditions;

2. Postal or courier services were delayed due to labor strikes or unforeseen "Acts of God"; *[or]*

3. Postal or courier service did not meet delivery time promised to the bidder/offeror. In such a case, the bidder/offeror must provide written proof from the delivery service that promised delivery time was prior to the time set for the opening of bids/proposals./.;

4. Evidence that the bid/proposal was in the division's post office box or physical possession before the time of bid opening; or

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

**Title 1—OFFICE OF ADMINISTRATION  
Division 40—Purchasing and Materials Management  
Chapter 1—Procurement**

**PROPOSED AMENDMENT**

**1 CSR 40-1.050 Procedures for Solicitation, Receipt of Bids, and Award and Administration of Contracts.** The division is amending sections (2), (3), (4), (6), (12), (14), and (22) of this rule and adding section (26) to comply with changes in the applicable statutes.

*PURPOSE: This rule is amended to reflect the changes in the statutes in Senate Substitute for House Committee Substitute for House Bill 1088 of the 100th General Assembly, which was signed into law by the Governor. This rule fulfills the statutory requirement of section 536.023(3), RSMo.*

(2) As used in this chapter unless the content clearly indicates other-

## 5. Any other evidence relevant to the specific situation.

(12) A bid or proposal award protest must be submitted in writing to the director or designee and received by the division within ten (10) state business days after the date of award. *[If the tenth day falls on a Saturday, Sunday, or state holiday, the period will extend to the next state business day.]* A protest submitted after the ten (10) state business-day period shall not be considered. The written protest should include the following information:

(14) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by Missouri Service-Disabled Veteran Business Enterprises (SDVEs). Programs/procedures designed to accomplish these objectives may include: inclusion of SDVE subcontractor goals in solicitation documents; close review of requirements for bonding; notice of procurement opportunities on the division's website; access to bid history and pricing abstracts on the division's website; access to the division's procurement staff; utilization of service-disabled personnel on evaluation committees, if available; etc.

(A) The *[division]* Office of Administration will compile, maintain, and make available a listing of SDVEs to all bidders/offerors and contractors on *[the division's]* an Office of Administration website. The listing may include the following: name; address; contact information of SDVE; the general area of commodities or services it provides; etc. The *[division]* Office of Administration will also maintain statistics and issue periodic reports about SDVE participation.

(D) The following standards are used by the *[division]* Office of Administration in determining whether an individual, business, or organization is eligible to be listed as a Service-Disabled Veteran Business Enterprise (SDVE):

1. Doing business as a Missouri firm, corporation, or individual or maintaining a Missouri office or place of business, not including an office of a registered agent;

2. Having not less than fifty-one percent (51%) of the business owned by one (1) or more service-disabled veterans (SDVs) or, in the case of any publicly-owned business, not less than fifty-one percent (51%) of the stock of which is owned by one (1) or more SDVs;

3. Having the management and daily business operations controlled by one (1) or more SDVs;

4. Having a copy of the SDV's Certificate of Release or Discharge from Active Duty (DD Form 214), and a disability rating letter issued by the Department of Veterans Affairs establishing a service connected disability rating, or a Department of Defense determination of service connected disability, unless the SDVE is listed with the *[division]* Office of Administration on its website as previously certified in which case said documentation is not required;

5. The SDV(s) possesses the power to make day-to-day as well as major decisions on matters of management, policy, and operation;

6. All SDVE listings and renewals are effective for a period not to exceed three (3) years, unless otherwise found inapplicable; and

7. If it has been determined that the SDVE at any time no longer meets the requirements stated above, it is removed from the listing.

(H) If a bidder/offeror is proposing SDVE vendor participation, it must provide to the division all documents specified by the solicitation including:

1. Complete information as specified by the solicitation document including a list of each proposed SDVE vendor, the committed percentage of participation for each SDVE with the corresponding dollar amount of the participation of each SDVE, and the commercially useful supplies to be provided by each listed SDVE. If the bidder/offeror is a listed SDVE vendor, then the bidder/offeror must also list itself;

2. A copy of the SDVE's certification as a SDVE unless the SDVE is listed with the *[division]* Office of Administration on its website as previously certified in which case said documentation is not required; and

3. Written documentation as specified in the solicitation from

each listed SDVE that it is willing to participate in the contract in the kind and amount of work provided in the bidder/offeror's response.

(22) With regard to competitive negotiation procurements, the basic steps of the evaluation should generally include the following:

(B) Unless shortlisting of proposals has been determined to be appropriate, when competitive negotiations are necessary regarding the Request for Proposal, the division will request a written best and final offer (BAFO) from each potentially acceptable offeror. Although not required, the BAFO letter should identify all proposal deficiencies that may make the proposal unacceptable. The BAFO request letter should provide the offeror the opportunity to reconsider any other aspect of its proposal, including pricing. All offerors will be given the same amount of time to respond to the BAFO request, but the issuance of a request letter does not necessarily have to be simultaneous;].

1. Negotiations may be conducted with only a shortlist of offerors who have submitted proposals if the solicitation permits shortlisting and if the solicitation identifies the method by which the shortlist of offerors will be determined. Shortlisting may also be used to limit the number of offerors demonstrating their products or solutions, or having their products or solutions examined or tested by the agency. Even if shortlisting is permitted, negotiations may still be conducted with all potentially acceptable offerors;

(26) Reverse Auctions. A procurement involving a reverse auction process shall include:

(A) The qualifications, if any, for the prospective vendors;

(B) The process to be followed for the reverse auction, including that of the vendors;

(C) The merchandise, supplies, raw materials, or finished goods to be procured; and

(D) The evaluation criteria to determine the winning vendor, with price as the primary factor in evaluating bids. A reverse auction shall not be used for supplies covered by section 34.047, RSMo.

*AUTHORITY: sections 34.050, 34.074, and 630.405.5, RSMo 2016. Original rule filed Oct. 15, 1992, effective June 7, 1993. For intervening history, please consult the Code of State Regulations. Amended: Filed March 15, 2022.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Purchasing, Attn: Karen Boeger, Division of Purchasing, 301 W. High Street, Room 430, PO Box 809, Jefferson City, MO 65102-0809. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

## Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

### Division 20—Division of Learning Services Chapter 100—Office of Quality Schools

#### PROPOSED AMENDMENT

5 CSR 20-100.210 Persistently Dangerous Schools. The Department of Elementary and Secondary Education is amending sections (1)-(4).