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**Title 7—MISSOURI DEPARTMENT OF TRANSPORTATION  
Division 10—Missouri Highways and Transportation Commission  
Chapter 11—Procurement of Supplies**

SECRETARY OF STATE  
ADMINISTRATIVE RULES

**PROPOSED AMENDMENT**

**7 CSR 10-11.020 Procedures for Solicitation, Receipt of Bids, and Award and Administration of Contracts.** The Missouri Highways and Transportation Commission is amending sections (4), (10), subsections (1)(B), (5)(B), (5)(C), and (10)(A), and adding a new subsection (10)(B).

*PURPOSE: This amendment will add clarity to subsection (5)(B)(2) of this rule, add the word Business to specify days in subsection (5)(C) of this rule, as well as align the dollar amounts to current bid limits and to provide instruction in the event of a bid protest in subsection (10)(B) of this rule.*

(1) Informal Procurement Methods. When the procurement is estimated to be less than twenty-five thousand dollars (\$25,000), an informal method of solicitation may be utilized. Informal methods of procurement may include invitation for quotation (IFQ), telephone quotes, etc.

(A) The division will establish a target date and time for submission of quotations.

(B) The division may proceed with the evaluation and award *[anytime]***any time** after the expiration of the target date and time. Quotations received after the target date and time, but before the award of a contract, may be included in the evaluation at the discretion of the division.

(4) Indefinite Delivery Contracts (**IDC**). IDC *[contracts]* may be utilized for facility maintenance, construction, repair, rehabilitation, renovation, or alteration services of a recurring nature when the delivery times and quantities are indefinite with a total cost of less than twenty-five thousand dollars (\$25,000).

(5) Single Feasible Source. The division may waive the requirement of competitive bids or proposals for supplies when the division has determined in writing that there is only a single feasible source for the supplies. Immediately upon discovering that other feasible sources exist, the division shall rescind the waiver and proceed to procure the supplies through the competitive processes as described in this rule.

(A) A single feasible source exists when—

1. Supplies are proprietary and only available from the manufacturer or a single distributor; or
2. Based on past procurement experience, it is determined that only one (1) distributor services the region in which the supplies are needed; or
3. Supplies are available at a discount from a single distributor for a limited period of time.

(B) When the Single Feasible Source procurement method is utilized, the following guidelines will be used:

1. The following guidelines may be utilized to determine if supplies can be purchased as a single feasible source due to being proprietary:

- A. The parts are required to maintain validity of a warranty;
- B. Additions to a system must be compatible with original equipment;
- C. Only one (1) type of computer software exists for a specific application;
- D. Factory authorized maintenance must be utilized to maintain validity of a warranty;

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**By JCAR at 10:29 am, Mar 03, 2022**



E. The materials are copyrighted and are only available from the publisher or a single distributor; or

F. The services of a particular provider are unique, e.g., entertainers, authors, etc.;

2. *[The following guidelines may be utilized if]* **If** past procurement activity indicates only one (1) bid has been submitted in a particular region, a single feasible source procurement may be authorized. In these situations, the division will monitor the market for developing competition; *[and]*

3. The following guidelines may be utilized to determine if supplies may be purchased as a single feasible source due to being available at a discount for a limited period of time:

A. The discounted price is compared to a price established through a reasonable market analysis; and

B. The discounted price should normally be at least ten percent (10%) less than the current contract or other comparable price. A discount of less than ten percent (10%) may be acceptable under appropriate market conditions. The discount should be compared to a price which, where feasible, is within the most recent twelve (12) months.

(C) The division shall post any proposed single feasible source purchase with an estimated expenditure of *[five]* **ten** thousand dollars (\$*[5]* **10,000**) or more. *[If the estimated expenditure is twenty-five thousand dollars (\$25,000) or more, the intent to make such purchase will be advertised in such places as are most likely to reach prospective bidders or offerors and may provide such information through an electronic medium available to the general public]* **The proposed purchase will be advertised through an electronic medium available to prospective bidders or offerors and the general public** at least five (5) business days before the contract is to be awarded. *[Other methods of advertisement, however, may be used by the division when such other methods are deemed more advantageous for the supplies to be purchased.]* Advertising may be waived, if not feasible, due to the supplies being available at a discount for only a limited period of time.

(10) Bid Protest. A bid or proposal award protest must be **submitted** in writing to the **director or designee** and received by the division within ten (10) **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-) **business-day** period shall not be considered.

(A) The written protest should include the following information:

*[(A)]* **1.** Name, address, and phone number of the protester;

*[(B)]* **2.** Signature of the protester or the protester's representative;

*[(C)]* **3.** Solicitation number;

*[(D)]* **4.** Detailed statement describing the grounds for the protest; and

*[(E)]* **5.** Supporting exhibits, evidence, or documents to substantiate claim.

(B) **A protest which fails to contain the information listed above may be denied solely on that basis. All protests filed in a timely manner will be reviewed by the director or designee. The director or designee will only issue a determination on the issues asserted in the protest. A protest, which is untimely or fails to establish standing to protest, will be summarily denied. In other cases, the determination will contain findings of fact, an analysis of the protest, and a conclusion that the protest will either be sustained or denied. If the protest is sustained, remedies include canceling the award. If the protest is denied, no further action will be taken by the division.**

*AUTHORITY: sections 226.020, 226.130, 227.030, and 227.210, RSMo 2016. \* Original rule filed April 5, 1993, effective Oct. 10, 1993. Rescinded and readopted: Filed June 5, 2009, effective Jan. 30, 2010. Amended: Filed May 4, 2018, effective Dec. 30, 2018. Amended: Filed March 3, 2022.*

*\*Original authority: 226.020, RSMo 1939; 226.130, RSMo 1939, amended 1993, 1995; 227.030, RSMo 1939; and 227.210, RSMo 1939.*

*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 Missouri Highways and Transportation Commission, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or [Pamela.Harlan@modot.mo.gov](mailto:Pamela.Harlan@modot.mo.gov). 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.*