

Chapter 9

SPECIAL REQUIREMENTS

9.1 EMPLOYEES, FORMER EMPLOYEES, OR RELATIVES AS INDEPENDENT CONTRACTORS

Procurement staff and other Department employees will strictly adhere to **Sections 112.313** and **112.3185, F.S.**, and the Department Ethics Policy (see **Policy No. 001-010-020, Ethics Policy**).

9.2 INSURANCE AND BONDS

9.2.1 General Liability Insurance - Based on the type of services provided, the Department may require the Contract Vendor to carry and keep in force a general liability insurance policy or policies with a company or companies authorized to do business in Florida. Minimum amounts which are typically utilized are combined bodily injury limits of at least \$ 200,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$ 200,000 each occurrence. The Project Manager or Procurement Unit may require higher amounts based on the type of service to be provided. Policies that include Self Insured Retention (SIR) will not be accepted.

All insurance policies shall be with insurers qualified and licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates of insurance showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Contract. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice, or notice as provided in accordance with Florida law, shall be given to the Department.

9.2.2 Professional Liability Insurance - In accordance with **Section 337.106, F.S.**, the Department will require any person or firm rendering legal, architectural, engineering, or other professional services, except for services of a research or training nature, to have and maintain during the period the services are rendered, a professional liability insurance policy or policies with a company or companies authorized to do business in Florida affording professional liability coverage for the services rendered in an amount deemed sufficient by the Department. The requirement for professional liability insurance may be waived by the Department if the person or firm providing services obtains and maintains an unexpired, irrevocable letter of credit, established pursuant to **Chapter 675, F.S.**, in an amount not less than the minimum

insurance coverage required by the contract with the Department.

9.2.3 Other Specialized Insurance - Based on the type of services being provided, the Project Manager or Procurement Unit may require the Contract Vendor to carry and keep in force other special insurance policies such as:

- Fidelity Insurance
- Pollution Control Insurance
- Full Value Protection Insurance

9.2.4 Performance Bonds - Based on the type of commodities and/or services provided, the Project Manager or Procurement Unit may require the Contract Vendor to supply to the Department and keep in force a bond provided by a surety insurer authorized to do business in Florida. Performance bonds should only be required when it is in the best interest of the State considering the cost of bond and the type of commodities and/or services required. See **Form No. 375-040-27, Performance Bond**.

NOTE: Since the performance bond is usually purchased after contract execution and must be received by the Department prior to the rendering of services by the Contract Vendor, the written agreement shall require a **"Notice to Proceed"**, which can be issued by the Department after receipt of the bond.

9.2.5 Retention of Bonds and Proof of Insurance

Bid Bonds and Performance bonds received will be processed in accordance with **Procedure No. 350-080-300, Receipt Processing**. Proof of Insurance should be maintained in the contract file.

9.3 PROCUREMENT WITH MBE UTILIZATION

The Department encourages minority, women, service-disabled veteran, and small businesses to compete for Department contracts, both as "Vendor" and as subcontractors. The Department, its Vendors, suppliers, and consultants should take all necessary and reasonable steps to ensure that minority, women, service-disabled veteran, and small businesses have the opportunity to compete for and perform contract work for the Department in a nondiscriminatory environment. However, use of MBE subcontractors is not mandatory and no preference may be given in the evaluation and selection process for MBE participation.

Section 287.09451, F.S., requires agencies to report their minority business expenditures to the Office of Supplier Diversity. The Procurement Office is responsible for preparing the reports each month by district, including payments to sub vendors.

If a vendor intends to utilize MBEs on their contract, they should submit the **MBE Planned Utilization, Form No. 375-040-24**, with their Bid Sheet or Price Proposal. The Contract Vendor will be asked to submit **Minority Business Enterprise Payment Certification, Form No. 375-030-31**, with each payment request to certify payments made to MBE subcontractors.

Procurement Units are responsible for notifying the Procurement Office Minority Programs Coordinator of any contract awards where the Vendor intends to use MBEs as subs.

Project Managers are required to forward the payment certification to the Procurement Office Minority Programs Coordinator for inclusion in the monthly report of minority business expenditures.

9.4 PROCUREMENT WITH DBE CONSIDERATIONS

DISADVANTAGED BUSINESS ENTERPRISES (DBEs) will be utilized in accordance with **Rule Chapter 14-78, F.A.C.**, Department **Policy No. 001-275-015, Disadvantaged Business Enterprise Utilization**, and the procurement considerations listed below.

REQUEST FOR PROPOSALS (RFP) & INVITATION TO NEGOTIATE (ITN) - The Department encourages DBE firms to compete for contractual services contracts and for non-DBE proposers to use DBE firms as subcontractors. However, use of DBE subcontractors is not mandatory and no preference points will be given in the evaluation and selection process for DBE participation. Proposers will be requested to indicate their intentions regarding DBE participation by submitting the following two (2) forms with their proposal/reply:

- (a) Anticipated DBE Participation Statement - Form 375-040-63.
- (b) Bid Opportunity List - Form 375-040-62.

9.4.1 DBE Reporting

Central Office and District Procurement Units/responsible offices are required to report DBE utilization to the Equal Opportunity Office.

9.5 CONTRACT RENEWAL

In accordance with **Section 287.057(13), F.S.**, and **Rule 60A-1.048, F.A.C.**, contracts for commodities/services may be renewed for a period that may not exceed three (3)

years or the term of the original contract, whichever is longer. Accordingly, renewals can be done on an annual basis, every six months, every 18 months, for two (2) years, or whatever combination works best as long as the total cumulative renewal period does not exceed the longer of three (3) years or the original contract period.

9.5.1 The cost center must provide documentation justifying that the renewal is in the best interest of the State and such justification will be maintained in the contract file. Renewals are contingent upon satisfactory performance evaluations, must be authorized by mutual agreement in writing, and are subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties. The execution process and distribution of the executed renewal agreements is the same as for the original agreement.

9.5.1.1 Contract renewals shall be renegotiated with the Contract Vendor in an effort to reduce contract payments by at least 3 percent without affecting the level and quality of service.

9.5.2 Renewal of an existing agreement will be accomplished in accordance with appropriate laws and rules and should retain the original contract document type. Change orders should be used to renew Purchase Orders and written agreements should be renewed by using the renewal option in the **Standard Written Agreement Modification, Form No. 375-040-07**. Contract renewals must address the related dollar amount(s), the fiscal year(s) to be encumbered, and budgetary issues for the renewal period, on the renewal document.

9.5.3 Contracts less than or equal to Threshold Category Two and exempt service contracts may be renewed.

9.5.4 Contracts procured formally and awarded based on a single bid response may be renewed if the original contract document or purchase order terms specifically provided for such renewal option.

9.5.5

In accordance with **Section 287.057(13), F.S.**, contracts initially procured as an Emergency or a Single Source may not be renewed.

9.5.6 Contracts for goods or services of \$1 million or more may not be renewed unless the contract contains a termination clause for false certification regarding the Scrutinized Companies Lists. If the original contract did not include such a termination clause, the contract must be amended to add the termination clause to the contract and a completed **Form 375-030-60, Vendor Certification Regarding Scrutinized Companies Lists**, must be obtained from the Contract Vendor prior to contract

renewal.

9.6 CONTRACT EXTENSION

In accordance with **Section 287.057(12), F.S.**, contracts for commodities and contractual services may be extended for a period not to exceed 6 months. The contract extension shall be in writing and subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties.

9.7 TERMINATION AND DEFAULT

Commodity and contractual services contracts may be terminated in accordance with the contract documents. The project manager shall document the circumstances related to the termination.

The default process for commodity and contractual services contracts will *be handled in accordance with Rule 60A-1.006(3), F.A.C.*

9.7.1 Notice of Non-Compliance: If a Contract Vendor is in breach of contractual terms and conditions or performance is unsatisfactory and is not legally excusable, and it is not in the best interest of the Department to immediately terminate the contract, the Contract Vendor shall be notified in writing of the occurrence(s) and given time limitations to remedy the situation. This time limit is usually ten (10) days but may be more or less based on the situation. The notification will also provide that, should it fail to perform within the time specified, the Contract Vendor will be found in default and removed from the agency's approved vendor list. If the Contract Vendor fails to remedy the situation, or if it is in the best interest of the Department to immediately terminate the contract, the Project Manager shall find the Contract Vendor in default and terminate the contract in writing.

9.7.2 Termination: When termination of the contract is necessary, the Requester/Project Manager or other applicable Department personnel shall initiate a termination letter. The Project Manager shall coordinate the termination letter and any further actions with the Procurement Unit and legal office. The letter must be reviewed by the Central Office General Counsel's Office before the letter is sent to the Contract Vendor. The termination letter should include at a minimum:

- (a) reason for termination,
- (b) the effective date of the termination,
- (c) the required disposition of Department property (equipment, works in progress, plans, data, reports, files, etc.),
- (d) that the Contract Vendor shall provide a final invoice for commodities delivered

- and accepted and/or a written quote for services satisfactorily performed,
- (e) that a Change Order or Termination Agreement, as appropriate, will be issued to finalize termination of the contract.

After termination of the services, and before final payment is made, a **Termination Agreement, Form No. 375-040-13**, should be executed with the Contract Vendor which defines the final compensation due the Contract Vendor or Department. However, if there is no longer any encumbered money remaining on the contract and nothing is owed, a **Termination Agreement** should not be prepared. If an encumbrance still exists, notification to remove the encumbrance should be sent to the individual(s) in the District Financial Services Office or the Central Office Disbursement Operations Office that have been granted the authority to update a contract's status in the CFM system. The notification must clearly state that the final invoice has been paid and to close the contract.

9.7.3 Declaration of Default: When a Contract Vendor fails to adhere to contract terms and conditions and does not correct its failure to perform within the time provided, and is not legally excusable, the Contract Vendor should be declared in default and notified of the declaration of default in the letter terminating the services. The Requester/Project Manager, Cost Center Manager, or other applicable Department personnel should initiate a default letter if notice has not been previously given to the Contract Vendor. Default letters must be reviewed by the Central Office General Counsel's Office before the letter is sent to the Contract Vendor. The default letter should include at a minimum:

- (a) the reason(s) the Contract Vendor is being found in default,
- (b) that the Department will re-procure or has re-procured the commodities/services, and the differential dollar amount of re-procurement if known,
- (c) that the defaulting Contract Vendor will not be eligible for award of any future contracts by the Department until such time as the Department is reimbursed by the defaulting Contract Vendor for all re-procurement costs and satisfies the Department that further instances will not occur through a corrective action plan addressing the grounds for default.

All termination or default letters should be mailed certified U.S. Mail Priority or other express delivery service, return receipt requested, or hand delivered, with confirmation of date and time received.

9.7.4 Removal from the Approved Vendor List: After the declaration of default has been issued and the contract has been terminated, the defaulted vendor should be sent a letter notifying them of their removal from the Department's approved vendor list. A copy of all default actions and notices to remove vendors from the Department's

approved vendor list shall be provided to the Central Office Procurement Office. The Central Office Procurement Office will remove the Contract Vendor from the Department's approved vendor list and provide a copy of the defaulting action to DMS State Purchasing.

9.7.5 Reprourement after Default: In accordance with **Rule 60A-1.006(3)(c), F.A.C.**, reprourement of substitute commodities or contractual services may be accomplished by first attempting to contract with the next eligible awardee under the original solicitation, when applicable. Alternatively, the Project Manager may elect to reprocure the commodity or contractual service.

9.8 TRAINING SERVICES

9.8.1 When a contractual services contract is requested to provide training services for use by the Department, the training services will be procured and contracted for in accordance with this Manual.

9.8.2 When training services are requested that are offered to the general public and for which fees (registration) have been collected that pay all expenses associated with the event or program, it is exempt from competitive bidding and the registration form may serve as the invoice and payment may be processed with the Pcard or may be processed for payment directly through the Disbursement Operations Office or the District Financial Services Office. A Purchase Order is not required.

9.9 CONTRACT EMPLOYEES DRIVING DEPARTMENT VEHICLES

The **Certification of Acceptable Driving Record, Form No. 375-040-39**, must be used with any procurement in which the scope of services involves driving Department owned vehicles by the Contract Vendor or its employees. The certification must be signed and returned by the Vendor and will become a part of the contract. Refusal by the Vendor to sign the certification may result in a non-responsive formal bid or proposal.

9.10 USE OF DEPARTMENT SPACE BY CONSULTANTS

The Department may allow consultants and other service providers to share Department office space and use available Department office equipment if done in accordance with the guidelines and objectives provided in **Policy No. 001-375-025, Use of Department Space and Equipment by Outside Providers**. The decision to provide Department space and use of available Department office equipment should be made prior to procurement and be defined in the scope of services, to allow the Department to realize maximum cost benefit in negotiated or bid prices.