## Rules of
### Department of Mental Health
#### Division 25—Fiscal Management
##### Chapter 2—Purchase of Service Contracting

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Title 9—DEPARTMENT OF MENTAL HEALTH
Division 25—Fiscal Management
Chapter 2—Purchase of Service Contracting

9 CSR 25-2.005 Definitions

PURPOSE: This rule defines the terms used in this chapter.

Editor’s Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) The terms defined in section 630.008, RSMo, are incorporated by reference for use in this chapter as though set out in this rule unless those terms have been redefined under section (2) as for purposes of this rule.

(2) Unless the context clearly requires otherwise, the following terms used in this chapter shall mean:

(A) Affiliated community service provider, an entity so designated by the Department of Mental Health to provide, directly or by contract or agreement, any services for clients of the Division of Mental Health and Developmental Disabilities.

(B) Competitive negotiation, the process set out in this chapter where the department evaluates proposals or existing arrangements in an area to determine the best proposal(s) or arrangements.

(C) Comparative negotiation, the process set out in this chapter where the department evaluates a completed proposal from a responsive offeror with other proposals or existing arrangements in an area to determine the most desirable aspects of proposals submitted.

(D) Comparative negotiation, the process set out in this chapter where the department evaluates completed proposals from responsive offerors to determine the best proposal(s) for the Department of Mental Health. Multiple contracts may be awarded in the best interest of the department.

(E) Competitive negotiation, the process set out in this chapter where the department evaluates a completed proposal from a responsive offeror with other proposals or existing arrangements in an area to determine the best proposal(s).

(F) Comprehensive array of services, for the Division of Mental Health, the capacity of an agency to provide a comprehensive array of services or for a comprehensive array of services for clients of the Division of Mental Health.

(G) Community support program, an array of services for clients of the Division of Mental Health and Developmental Disabilities.

(H) Department, the Department of Mental Health and its Divisions of Comprehensive Psychiatric Services, Mental Retardation and Developmental Disabilities, Alcohol and Drug Abuse and the department’s designated staff.

(I) Early intervention services, developmental services provided by qualified personnel to meet infant’s or toddler’s developmental needs in one or more of the following areas: physical development, including vision and hearing; cognitive development; social or emotional development; social or emotional development or adaptive development. Early intervention services must be provided in conformity with an individualized family service plan (P.L. 102-119, Part H).

(J) Evaluation of proposal, the examination of proposals after the proposal closing time and date to determine whether an offeror is responsible and responsive to the criteria stated in the RFP.

(K) First Steps, an interagency program which provides coordinated, early intervention services and assistance for eligible children, birth to age three (0-3), who have delayed development or who have diagnosed conditions that are associated with developmental disabilities and their families. First Steps is the Missouri program in response to Part H of the Individuals With Disabilities Education Act Amendments of 1991 (P.L. 102-119).

(L) Fiscal year, July 1 of one (1) year to June 30 of the following year for the department.

(M) General provisions, standard clauses of a contractual agreement.

(N) Multiple award, contractual agreements awarded to more than one (1) offeror for comparable services at various prices if the award to a single provider would be impracticable to serve clients in a particular area.

(O) Noncompetitive negotiation, the process set out in this chapter where the Divisions of Comprehensive Psychiatric Services and Mental Retardation and Developmental Disabilities negotiate with eligible service providers. A contract(s) is awarded in accordance with the fiscal and programmatic interests of the department.

(P) Nonresponsive proposal, an offeror’s proposal which does not conform to the mandatory or essential requirements of an RFP.

(Q) Offeror, a provider or potential provider submitting a proposal in response to an RFP.

(R) Preproposal conference, a meeting called by the department and held with prospective offerors after issuance of an RFP for explanation and clarification purposes.

(S) RFP, a request for a proposal developed and issued by the department for solicitation of prospective offerors to provide certain services to clients according to certain criteria, terms and conditions specified by the department.

(T) Responsive offeror, an offeror whose proposal complies with the criteria, specifications and terms set out in an RFP.

(U) Service, any type of evaluation, transportation, prevention, care, treatment, habilitation or rehabilitation work for clients specified and purchased by the department from a provider as set out in this chapter.

(V) Solicitation, the process of notifying prospective offerors that the department seeks proposals to purchase certain services for clients in a certain area.

(W) Successful offeror, an offeror who receives an award after an evaluation of proposal.

(X) Unit price, the price of providing any service for a specific unit of measurement (for example, one (1) hour, one (1) mile).

(Y) Unsuccessful offeror, an offeror not selected by the department to receive an award for specified reasons.

(Z) Weighted average unit price, the price of providing services, including mental health evaluation and assessment services, individual and group therapies, day treatment, medical services, administrative coordination, case management, information and education services and general access to or provision of inpatient care on both a scheduled and twenty-four (24)-hour basis.
9 CSR 25-2.105 Purchasing Client Services

PURPOSE: This rule prescribes the procurement system for purchasing certain departmental services (other than in the department’s community placement programs) for departmental clients. As set out in sections 34.100 and 630.405, RSMo, the commissioner of administration shall have the power to delegate his/her authority to purchase services for clients from providers to the department. The delegation of authority requires the department to comply with the basic intent of public procurement procedures to purchase the services.

1. As set out in sections 34.100 and 630.405, RSMo, the commissioner of administration has delegated his/her authority to the department to purchase services for department clients from providers directly rather than through the division of purchasing of the Office of Administration. The commissioner delegates the authority by letter to the department director on a year-to-year basis. The department shall make immediately available to any interested person upon application a copy of any letter of delegation of authority at a cost not to exceed the actual cost of reproduction from the central office of the department, P.O. Box 687, Jefferson City, MO 65102.

2. The director may designate entities to be known as affiliated community service providers to provide psychiatric and developmental disabilities services as defined by Chapters 632 and 633, RSMo, in a service area or region where no state-operated facility exists in that region to provide these services. In so designating entities, the director may take into account, but shall not be limited to, the following: the ability of the entity to provide, subcontract or develop the necessary array of services, the stability of the entity as indicated by its historical service provision, the community-based nature of the service, the ability of the entity to utilize funding to maximize division-identified services to the greatest number of clients with quality and effective service.

3. The noncompetitive negotiation procedure shall be used when the department director designates an affiliated community service provider or when the service provider is providing early intervention services for children from birth through age four (0-4), including children eligible for First Steps.

4. The department shall contract with designated affiliated community service providers after negotiating terms, for a period of one (1) year, with option for renewal at the department’s discretion. Termination of the contract shall be for any cause defined in the contract or without cause upon ninety (90) days’ notice.

5. The department shall use comparative evaluation, comparative negotiation and noncompetitive negotiation procedures as set out in this chapter to purchase services from private and public providers for its clients with funds appropriated to the department for this purpose as set out in section 630.405, RSMo.

6. The department shall develop and issue a request for a proposal (RFP) as set out in this chapter to solicit and select the providers to provide services to department clients under duly executed contractual agreements.

7. Providers shall meet applicable licensure, accreditation or certification requirements under state and federal law. Providers shall also comply with other applicable department rules and state and federal laws.

8. The department shall issue contractual agreements after awards are made to offerors for a term corresponding to a current or the new fiscal year subject to service need, appropriations and available funds as determined by the department.


9 CSR 25-2.205 Request for Proposal Development

PURPOSE: This rule prescribes procedures for developing requests for proposals from providers to provide services to department clients.

(1) A request for a proposal (RFP) shall include at least the following:

(A) The procurement method to be used (comparative evaluation, comparative negotiation or noncompetitive negotiation);

(B) Requirements, instructions and information to offerors about the RFP submission including the proposal closing time and date for receipt of proposals and the address of the department office to which the proposals are to be delivered;

(C) The service descriptions and definitions determined by the divisions or department facilities involved, quantity of services requested, minimum qualifications of providers and their staff and any applicable licensure, accreditation or certification requirements not included in the service description;

(D) Geographic area where the service must be provided and target population for the services;

(E) Any applicable unit price limitations;

(F) Contractual agreement, general provisions;

(G) The scope of work and any other contractual approach requirements to be met by the offeror;
(H) Method of payment by the department to the provider.
(I) Procedures for amending the contractual agreements once an award has been made;
(J) A department form for insertion of the unit price quotation and signature by the offeror in the proposal returned in response to the RFP;
(K) Notice of how the RFP is amended;
(L) Requirement of acknowledgement by the offeror of the receipt of any amendments issued by the department to the RFP;
(M) Factors to be considered when determining whether a prospective provider has met the standard of responsibility;
(N) Any special evaluation criteria or method of evaluation; and
(O) When necessary, the time, date and place of a preproposal conference.

(2) The department may incorporate documents by reference in the RFP if the department specifies where the documents can be obtained or reviewed.


*Original authority: 34.100, RSMo (1945), amended 1958; 630.050, RSMo (1980); and 630.405, RSMo (1986).

9 CSR 25-2.305 Solicitation Procedures

PURPOSE: This rule prescribes department procedures for soliciting offerors in response to requests for a proposal.

(1) The department shall specify in each request for a proposal (RFP) the proposal closing time, date and place to provide offerors a reasonable time to prepare their proposals.

(2) The department shall post notices of the availability of the RFPs in the purchase of service bureau in the department's central office. The department shall mail or otherwise distribute the RFPs to all interested providers and recognized competitive bidders in a geographic area to secure comparative evaluation or comparative negotiation between more than one (1) offeror if possible (that is, in some areas only one (1) offeror can be found). Notices of availability shall indicate where, when and for how long the RFPs may be obtained and shall generally describe the services to be purchased.

(A) If a purchase involves the estimated expenditure of more than ten thousand dollars ($10,000), the department shall advertise the notice of availability of the RFP in two (2) newspapers of general circulation. It may also advertise in a newspaper of local circulation in the geographic area where the services are to be provided or in places as are most likely to reach prospective sources.

(B) If a purchase involves the estimated expenditure of ten thousand dollars ($10,000) or less, the department may distribute the RFPs without advertising.

(C) The department shall make a copy of each RFP available for public inspection at the office of purchase of service bureau.

(3) The department may conduct a preproposal conference as it deems necessary to clarify any terms and conditions of an RFP, explain any criteria in the RFP or otherwise to respond to questions from prospective offerors who have received the RFPs. The department shall schedule the conference between the RFP issuance date and the proposal closing date, but as close to the original date of mailing as possible, to allow offerors time to consider any information presented in the preparation of their proposal. If the department decides to change the RFP as a result of a preproposal conference, the change shall not become official until the RFP is amended and communicated in writing. The department shall notify prospective offerors known to have received an RFP of any such amendments.

(4) The department shall plainly mark any RFP amendment as such and shall reference the portions of the RFP it amends. The department may issue amendments for any minor modification(s) of the RFP; however, the department shall rescind the RFP and reissue it for any major modification(s) as determined by the department. The offeror shall acknowledge receipt of any amendments issued in its RFP. The department shall distribute amendments within a reasonable time so that the prospective offeror might consider them in preparing its proposal. If the department determines that the proposal closing time and date would not permit adequate preparation, the department shall extend the proposal closing time and date in the amendment and, if necessary, by telephone or other means of communication with confirmation in the amendment notice.

(5) Offerors may modify or withdraw proposals in writing in a notice to the department at the location designated in the RFP before the proposal closing time and date. The department shall keep any modification or withdrawal documentation in the RFP file.

(6) Any proposal received after the proposal closing time and date is nonresponsive and shall not be considered. No proposal may be withdrawn or modified after the proposal closing time and date. No late proposal, late modification(s) or late withdrawal will be considered unless received before contract award and the proposal, modification(s) or withdrawal would have been timely except for the action or inaction of the department.

(A) The department shall notify offerors submitting late proposals that they may not be considered for award and shall return their proposals unopened.

(B) The department shall keep records of each late proposal, modification(s) or withdrawal in the RFP file.

(7) The department shall electrically time-stamp each proposal, modification(s) or withdrawal indicating the time and date received. The department shall store each proposal unopened in a secure place until the proposal closing time and date.

(8) The department shall open proposals and modifications publicly, in the presence of one (1) or more witnesses besides the responsible department staff at the proposal closing time, date and place designated in the RFP. The department shall read aloud the name of each offeror, the unit price for each service and other information as is deemed appropriate. The department shall record a proposal abstract at the time of proposal closing and the names and addresses of witnesses in attendance at the opening.

(9) The department shall keep any proposals timely received available for public inspection except to the extent the offeror designates any proprietary data to be confidential information as described in section 610.025, RSMo. The offeror shall specifically identify and make the confidential information readily separable in the proposal. The department shall maintain confidential information separately to facilitate public inspection of the nonconfidential portion. The unit price of any service offered and the terms of payment shall be publicly available at the time of proposal opening regardless of any designation to the contrary that this information is confidential.

(10) The department may allow a correction or withdrawal of a proposal because of a mistake in an RFP if the integrity of the comparative negotiation or comparative evaluation process is protected and the correction or withdrawal would not give an offeror an unfair advantage as determined by the department. An offeror may correct mistakes discovered before the proposal closing time and date by withdrawing or modifying the proposal.
(11) If mistakes in proposals are discovered after the proposal closing time and date but before award, the following procedures shall apply:

(A) As to minor informalities which are matters of form rather than substance or insignificant mistakes correctable without unfair advantage to the offeror, the department shall waive or allow the offeror to correct the mistake if considered by the department to be in its best interest. A minor informality can only result if the effect of correcting it is negligible on offeror responsiveness. Examples of minor informalities include failures of offerors:

1. To return the number of signed proposals required by the RFP;
2. To sign the proposals but only if the unsigned proposals are accompanied by materials otherwise indicating the offeror's intent to be bound; and
3. To acknowledge receipt of amendments to the RFPs, but only if either clear from the proposal that the offeror received the amendment and intended to be bound by its terms or the amendment had only a negligible effect on price, quantity, quality or delivery;
4. As to any mistake obvious on the face of the proposal, the department shall correct the mistake if the intention is clearly evident on the face of the proposal document as determined by the department. These types of mistakes include typographical errors, errors in extending unit prices, transposition errors and calculation errors; and
(C) As to mistakes for which the intended correct proposal is not evident, the department may permit the offeror to withdraw a proposal if the department determines either of the following:
1. The mistake is clearly evident to the department on the face of the proposal document but the intended proposal is not similarly evident; and
2. The offeror submits evidence which clearly and convincingly determines that a mistake has been made.

(12) The department shall not allow mistakes to be corrected after award unless the department determines in writing that it would be unconscionable not to allow the mistake to be corrected.

(13) The department shall issue a determination in writing granting or denying requests to correct or withdraw proposals because of a mistake.


*Original authority: 34.100, RSMo (1945), amended 1983; 630.050, RSMo (1980); and 630.405, RSMo (1986).
made a part of the procurement file.

(8) The evaluation committee or individual designated to evaluate the proposals shall recommend award to the contracts' coordinator for review and recommendation to the director of the division, or designee, for which the services are to be purchased. If the division approves the award, the purchase of service unit shall forward the contract to the deputy director of administration (mental health) for signature. Upon signature by the deputy director of administration (mental health), the contract is final.

(9) The department shall make the notice of award available to the public.

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\text{Auth: sections 34.100, 630.050 and} \\
630.405, \text{RSMo(1986).} \text{Original rule filed} \\
\text{Oct. 16, 1986, effective July 15, 1987.} \\
\text{Emergency amendment filed May 15,} \\
1990, \text{effective May 25, 1990, expired} \\
\text{Sept. 21, 1990. Amended: Filed Aug. 14,} \\
1990, \text{effective March 14, 1991.} \\
\text{Emergency amendment filed July 7, 1992,} \\
\text{effective July 17, 1992, expired Nov. 13,} \\
1992. \text{Amended: Filed July 7, 1992,} \\
\text{effective Feb. 26, 1993.} \\
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\*Original authority: 34.100, RSMo (1945), \\
amended 1983; 630.050, RSMo (1980); and \\
630.405, RSMo (1986).

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9 \text{ CSR 25-2.505 Protest and Appeal Procedures} \\
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PURPOSE: This rule prescribes procedures for offerors to protest or appeal departmental actions taken under this chapter.

(1) An aggrieved offeror or provider may protest the solicitation process used in issuing a request for a proposal (RFP), appeal an award of a contractual agreement with a provider, or protest or appeal any other decision of the department. The aggrieved offeror or provider shall protest or appeal, in writing, to the director of the division for which the services are to be purchased (that is, directors of the Division of Mental Retardation and Developmental Disabilities, Division of Comprehensive Psychiatric Services or Division of Alcohol and Drug Abuse) within ten (10) working days of receipt of the protest or appeal.

(2) Upon receipt of a protest prior to award, the decision to award shall be suspended until the protest is resolved. If an appeal of an award decision is received by the department and the appeal results in a cancellation of the prior award decision and the issuance of a new award, the department shall give notice of cancellation to the holder of the original award by the terms of the contract and the new award shall be effective upon the termination of the original award contract.

(3) The division director shall consult with the deputy director of administration (mental health) within ten (10) working days of receipt of the protest or appeal and shall issue a decision, in writing, to the involved parties. Within five (5) working days of receipt of a protest or appeal of an alcohol and drug abuse services contract award, the department director shall issue a decision in writing to the involved parties which shall be final.

(4) Any offeror or provider protesting or appealing under this rule shall include the name and address of the provider or offeror aggrieved, the RFP number, the complaint of the department action and (if awarded) the number of the contractual agreement. The offeror or provider shall state the grounds for the protest or appeal, include any supporting documentation to substantiate any claims made and specify the relief requested from the division/department director. If the documentation has not been provided to the aggrieved provider or offeror in time to protest or appeal as set out in this rule, the aggrieved offeror or provider shall indicate the expected availability date for providing the documentation.

(5) Within ten (10) working days of receipt of the appeal of the division director's decision, the department director shall issue a decision which shall be final.

(6) If the provider or offeror finds the decision to be unacceptable, the provider or offeror may appeal the division director's decision to the department director within ten (10) working days after receiving the division director's decision.

(7) If an aggrieved offeror or provider appeals the division director's decision, the aggrieved offeror or provider shall state the reasons why the division director's decision was not acceptable and why the aggrieved offeror or provider is appealing the division director's decision to the department director.

(8) At each step of the protest or appeal procedure in this rule, the element of time shall be measured by date stamp (or date plus initials, if no stamp) for date of receipt and postmark on envelope for date of issuance.

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\text{Auth: sections 34.100, 630.050 and} \\
630.405, \text{RSMo(1986).} \text{Original rule filed} \\
\text{Oct. 16, 1986, effective July 13, 1987.} \\
\text{Emergency amendment filed May 15,} \\
1990, \text{effective May 25, 1990, expired} \\
\text{Sept. 21, 1990. Amended: Filed Aug. 14,} \\
1990, \text{effective March 14, 1991.} \\
\]

\*Original authority: 34.100, RSMo (1945), \\
amended 1983; 630.050, RSMo (1980); and \\
630.405, RSMo (1986).