

Draft Findings and Recommendations Report

Addendum 1



Ikaso Consulting

March 24th, 2025

Summary of Changes

Deletions are indicated via ~~striketrough~~ and additions are indicated via underline.

The following updates should be made in the Recommendation Roster

Section III – Procurement Method Selection	
III-1	R2: 19-11-230.1 should be updated to speak to the fact that statute 19-11-229(b)(1) requires formal justification for the use of Competitive Sealed Proposals, where Competitive Sealed Bidding must be used unless a determination is made in writing that this method is not practicable and advantageous.
III-2	Guidance should be developed on when to use the MAP process and when to use traditional RFPs, based on the unique characteristics of each method, and how they best fit different solicitation needs.
III-3	~~Pending a legislative action~~ <u>To</u> clarify a likely typographic error in 19-11-802(c)(2), the statute ~~may~~ <u>should</u> be ~~clarified~~ <u>updated</u> to state ~~through a new rule stating~~ "A political subdivision <u>may elect to</u> ~~shall~~ not use competitive bidding for the procurement of other professional services ~~without~~ a two-thirds (2/3) vote of its governing body."
III-4	R1: 19-11-249 should be updated to clarify how the economic justification should be calculated per statutory guidance in 19-11-249(a)(2)(B)(ii).

The following updates should be made in Section III “Procurement Method Selection”

Section Summary:

In this section, we make four recommendations pertaining to procurement method selection. These recommendations cover a variety of topics, including the justification needed to use the Competitive Sealed Proposals procurement method, guidance for when to use the traditional RFP process or the MAP RFP process, and ~~two~~ opportunities to clarify statute and add rules. Together, they provide guidance to help agency procurement teams pick the procurement method that best fits the needs of their specific solicitation.

Findings and Observations:

Rule Review

Our review of procurement rules yielded three discrete recommendations specific to procurement method selection – recommendations III-1, III-3, and III-4.

Recommendation III-1 derived from the observation that, per statute 19-11-229(b)(1), Competitive Sealed Bidding must be used unless a determination is made in writing that this method is not practicable and advantageous. Therefore, use of Competitive Sealed Proposals requires official justification. An update to R2: 19-11-230.1 poses the opportunity to clarify this expectation.

Recommendation III-3 addresses a potential typographic error in statute 19-11-802(c)(2). As currently drafted, the language may not align with statutory intent, stating “A political subdivision shall not use competitive bidding for the procurement of other professional services with a two-thirds (2/3) vote of its governing body.” In the context of ~~the section, including 19-11-802(c)(1), 19-11-801(c),~~ “For purposes of this subchapter, a political subdivision of the state may elect to not use competitive bidding for other professional services not listed in subsection (b) of this section with a two-thirds (2/3) vote of the political subdivision’s governing body.”, it is likely the strict requirement indicated by the word “shall” is intended to be a permissive statement – “may elect to”. Alternatively, the word “with” could be replaced with “without” to clarify the statutory intent, but 19-11-801(c) seems to signal a parallel intent. ~~this is likely to be read “without.” Updating the current language by changing “with” to “without” in a revision of statute along with an additional rule would shore up the legal foundation for a political subdivision to pursue Competitive Bidding in select cases.~~

Recommendation III-4 suggests that detail be added regarding calculation of an economic justification under statute 19-11-249(a)(2)(B)(ii). R1: 19-11-249 requires an agency to include a verifiable economic justification in order to use a cooperative purchasing agreement. The statute notes that rules should be adopted to create a review policy incorporating comparison among pricing from a current State contract and pricing from a cooperative purchasing agreement, in addition to further information gleaned from a request for information. As existing rules do not further detail how such information can be leveraged to calculate an economic justification, and the statute sets the stage for further rule promulgation, there is an opportunity to clarify the economic justification sought.

Policy Review

Recommendation III-2 was informed in part by the fact that while a MAP RFP template exists, the process is not referenced in the Procurement Manual, which would be the likely place an agency end user would go for further information on when and how to conduct a MAP RFP.

Interview Findings

Recommendation III-2 was also informed by information provided in interviews with agency SMEs. The interviewees generally highlighted an absence of guidance and clarity regarding when they should utilize the MAP RFP process as opposed to the traditional RFP process. Interviewees indicated that in their experience, the MAP process works well for procurements that benefit from offerors making suggestions to potential scope approaches and related details such as performance standards that may be unknown during RFP development, or subject to differing potential approaches. At the same time, the traditional RFP process works well when the State needs to provide detailed, prescriptive

requirements, such as may be required by direction from Federal partners. Maintaining both processes, and providing clear guidance on when to use the MAP RFP process and when to use traditional RFPs can ultimately help OSP and agency staff develop RFPs that best fit the needs of each specific solicitation.

Solicitation Review

No findings or recommendations on procurement method selection stemmed from our solicitation review.

Recommendations:

Ikaso makes the following recommendations:

Section III Recommendation Overview	
III-1	R2: 19-11-230.1 should be updated to speak to the fact that statute 19-11-229(b)(1) requires formal justification for the use of Competitive Sealed Proposals, where Competitive Sealed Bidding must be used unless a determination is made in writing that this method is not practicable and advantageous.
III-2	Guidance should be developed on when to use the MAP process and when to use traditional RFPs, based on the unique characteristics of each method, and how they best fit different solicitation needs.
III-3	~~Pending a legislative action~~ To clarify a likely typographic error in 19-11-802(c)(2), the statute ~~may~~ should be clarified updated to state through a new rule stating "A political subdivision <u>may</u> ~~elect to~~ ~~shall~~ not use competitive bidding for the procurement of other professional services without a two-thirds (2/3) vote of its governing body."
III-4	R1: 19-11-249 should be updated to clarify how the economic justification should be calculated per statutory guidance in 19-11-249(a)(2)(B)(ii).

The following update should be made in Appendix 1.1 - "Proposed Rule Updates, by Recommendation"

~~Recommendation III-3:~~

~~R2: 19-11-802. USE OF COMPETITIVE BIDDING BY A POLITICAL SUBDIVISION.~~

~~A political subdivision shall not use competitive bidding for the procurement of other professional services without a two thirds (2/3) vote of its governing body.~~