



## Standard Terms and Conditions

### ***Online Bid Submission Is Preferred***

#### **1. Authority**

Division 4 of the Department of Finance Administrative Code (Chapters 355-4-1 through 355-4-6), effective October 1, 2022, is incorporated by reference and made a part of this document. To view the relevant provisions of the Administrative Code, visit our website <https://purchasing.alabama.gov/>

#### **2. Choice of Law; Venue**

This Contract will be governed by laws of the State of Alabama and the sole venue for litigation and alternative dispute resolution activities will be the City of Montgomery in the State of Alabama. No other court shall have jurisdiction.

#### **3. Not to Constitute a Debt of the State**

The terms and commitments contained in the ITB, or any contract resulting from this ITB, shall not constitute a debt of the State of Alabama, the incurring of which is prohibited by Section 213 of the Official Recompilation of the Constitution of Alabama, 1901, as amended.

#### **4. Proration**

Any provision of a contract resulting from this bid to the contrary notwithstanding, in the event of failure of the State to make payment hereunder as a result of partial unavailability, at the time such payment is due, of such sufficient revenues of the State to make such payment (proration of appropriated funds for the State having been declared by the governor pursuant to Section 41-4-90 of the Code of Alabama 1975), the supplier shall have the option, in addition to the other remedies of the contract, of renegotiating the contract (extending or changing payment terms or amounts) or terminating the contract.

#### **5. Non-appropriation of funds**

Section 41-4-144(c) of the Code of Alabama: "(c) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the supplier shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for that purpose."

#### **6. Open Trade/No Boycott**

For the term of this contract, supplier represents that it is not currently engaged in, and agrees not to engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this State can enjoy open trade.

#### **7. Dispute Resolution**

In the event of any dispute between the parties arising from this solicitation and any agreement relating to purchases or leases resulting therefrom, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, supplier's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize

appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar Association.

#### **8. Compliance with Ala. Act No. 2023-409.**

In compliance with Ala. Act No. 2023-409, by signing this contract, Supplier provides written verification that Supplier, without violating controlling law or regulation, does not and will not, during the term of the contract engage in economic boycotts as the term "economic boycott" is defined in Section 1 of the Act. Under Section 2 of the Act, the written verification may be waived if the contracting governmental entity determines based on cost and quality factors that such a waiver is clearly in the best interest of the public.

#### **9. Cancellation**

A contract for supplies may be canceled by the Chief Procurement Officer, for justifiable cause, by giving the supplier thirty (30) days written notice. A supplier may request cancellation and the Chief Procurement Officer may grant the request, in his or her sole discretion, if performance is prevented by an act of God, act of War, order of legal authority, or other unavoidable circumstances not attributable to the fault or negligence of the supplier.

Contracts for services may be cancelled for justifiable cause by the Chief Procurement Officer by giving the vendor at least 72 hours' written notice. The burden of proof for such relief rests with the supplier. All correspondence pertaining to cancellation of a contract must be addressed to the Chief Procurement Officer with a copy to the using agency.

#### **10. Sales Tax Exemption**

Pursuant to Section 40-23-4 (a)(11) of the Code of Alabama 1975, the State of Alabama is exempt from paying sales tax. An exemption letter will be furnished upon request.

#### **11. No Indemnification**

Supplier acknowledges and agrees that, under the terms of this solicitation and agreements relating to purchases or leases resulting therefrom, the State is prohibited from indemnifying the supplier. The State does not agree to and will not indemnify the supplier for any reason. The State of Alabama does not release or waive, expressly or implied, the State of Alabama's right to assert sovereign immunity or any other affirmative defense right it may have under law. The State of Alabama shall control the defense and settlement of any legal proceeding on behalf of the State, including the selection of attorneys.

#### **12. Foreign Corporation – Alabama Secretary of State Registration**

Section 10A-1-7.01 to -7.14 of the Code of Alabama 1975 require a foreign entity (an out-of-state company/firm) to register with the Alabama Secretary of State's Office before transacting business in the State.

#### **13. Beason-Hammon Alabama Taxpayer and Citizen Protection Act**

As required by Section 31-13-9(k) of the Code of Alabama 1975, the supplier agrees to the following: "By signing this contract, the contracting parties affirm, for the duration of any agreement that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

Verification of enrollment in the E-Verify program will be required prior to any award to a supplier who employs one or more employees within the State of Alabama. E-Verify documentation should be identified with the bid number and the buyer name. Failure to provide documentation within 5 calendar days of **notification will result in the rejection** of the supplier's bid. To enroll in the E-Verify program visit <https://www.e-verify.gov/>

#### **14. Conflict of Law**

If any provision of this solicitation and any subsequent award shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then that conflicting provision shall be deemed null and void.

#### **15. Disclosure Statement**

Section 41-16-82 of the Code of Alabama 1975 requires the Vendor Disclosure Statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000. In circumstances where a contract is awarded by competitive bid, the Statement shall be required only from the person receiving the contract and shall be submitted within ten (10) days of the award.

**16. Certification Pursuant to Act No. 2006-557**

Section 41-4-142 of the Code of Alabama 1975 (Act No. 2006-557) provides that every bid submitted and contract executed shall contain a certification that the supplier, supplier, and all of its affiliates that make sales for delivery into Alabama or leases for use in Alabama are registered, collecting, and remitting Alabama State and local sales, use, and/or lease tax on all taxable sales and leases into Alabama. By submitting this bid, the supplier is hereby certifying that they are in full compliance with Section 41-4-142, they are not barred from bidding or entering into a contract as a result, and acknowledges that the awarding authority may declare the contract void if the certification is false.

**17. Supplier Qualifications**

After bid opening, the State reserves the right to request written proof of qualifications including, but not limited to, manufacturer's reseller authorization, professional licenses, certificates of insurance, etc.

**18. Pricing**

The State of Alabama reserves the right to conduct analysis based on cost realism and/or price reasonableness for any or all bids as determined necessary in the sole discretion of the Chief Procurement Officer. Such analysis may include requests pursuant to Section 41-4-141 of the Code of Alabama 1975.

**19. Product Delivery, Receiving and Acceptance:**

In accordance with the Universal Commerce Code (Title 7 of the Code of Alabama 1975), after delivery, the State of Alabama shall have the right to inspect all products before accepting. The State will inspect products in a reasonable timeframe. Signature on a delivery document does not constitute acceptance by the State. The State will accept products only after satisfactory inspection.

**20. Invoices**

Inquiries concerning invoice payments are to be directed to the receiving agency.

**21. Late Payments**

Penalty for agencies paying invoices late may not exceed the rate charged by State of Alabama Comptroller's Office per Section 41-16-3 of the Code of Alabama and as established by the Secretary of the Treasury under the authority of 26 U.S.C. §6621.

**22. Electronic Payments**

Vendors must accept multiple forms of electronic payment at no additional cost to the State. Payment forms include but are not limited to state issued credit cards, P-cards, EFT or other forms of electronic payment.

**23. Supplier Registration**

Suppliers may receive bid notices by registering for commodities at the Alabama Buys supplier portal, <https://alabamabuys.gov>.

**24. Participation in Solicitation**

Suppliers must be registered in Alabama Buys and must log into the solicitation at the Public Solicitation site prior to the bid close date and time to indicate participation in the bid. Responses from suppliers who have not indicated their participation will be rejected.

**25. Communication During Solicitation Process**

There shall be no communication regarding this solicitation between suppliers and the State agency requisitioning the good(s) or service(s) from the time the solicitation is published until the award is posted as final. Unless stated elsewhere in the solicitation, any communications, either written, oral, or electronic between the Supplier and the requisitioning State agency regarding the solicitation must come through the buyer administering the solicitation. Failure to abide by this term and condition may result in disciplinary actions up to debarment.

**26. Internet Website Links**

Internet and/or website links will not be accepted in bid responses as a means to supply any requirements stated in this Invitation to Bid (ITB).

**27. Alternate Bid Response**

Unless stated elsewhere in this Invitation to Bid (ITB) the State of Alabama will accept and evaluate alternate bid submittals on any Invitation to Bid (ITB) provided the response meets all bid requirements.

**28. Bid Responses and Bid Results**

Unevaluated Bid Responses are available at <https://alabamabuys.gov>. The complete bid file will be made available for review as DOPITBBPV8.9.24

provided by (or as outlined) in Section 41-4-115 of the Code of Alabama and Section 355-4-1-.04 of the Department of Finance Administrative Code.

### **29. Exception to Terms and Conditions**

Suppliers shall not place any qualification, exceptions, conditions, reservations, limitations, or substitutions in their bid concerning the contract terms and conditions. Any such qualifications, exceptions, conditions, reservations, limitations or substitutions may result in rejection of the bid.

### **30. Intent to Award**

The State of Alabama Division of Procurement will issue an 'Intent to Award' before a final award is made. The 'Intent to Award' will continue for a period of fourteen (14) calendar days, after which the award will be final provided there are no protests. A detailed explanation of this process may be reviewed in the Alabama Administrative Code – Chapter 355-4-6-.01. All protest communications filed via email must be sent to: [protests@purchasing.alabama.gov](mailto:protests@purchasing.alabama.gov) "

### **31. Confidentiality**

Procurement information is a public record to the extent provided by state law and shall be available to the public. Alabama Code 41-4-115 defines what is exempt from disclosure. Additional rules are included in Sections 355-4-1-.03(4) and 355-4-1-.04 of the Alabama Department of Finance Administrative Code.

### **32. Click Wrap**

The State of Alabama acknowledges that additional terms between the supplier and the State or third-party terms may apply but does not agree to be bound by them unless provided for review and separately agreed to in writing by an authorized official of the State of Alabama. If the purchase or use of the supplies or services provided utilizes a computer interface, no State of Alabama end user shall be deemed to have agreed to any clause by virtue of it appearing in an "I agree" click box or other comparable mechanism ("click-wrap" or "browse-wrap"); rather the terms and conditions, such as End User License Agreements, may only be accepted by inclusion in an agreement and signature by an authorized official of the State of Alabama. If the terms and conditions or any other third-party terms and conditions are invoked through click wrap, execution by any unauthorized individual shall not bind the end user or the State of Alabama to such clause. Any clause which requires the State of Alabama to indemnify another party or clause which assigns jurisdiction to any state other than Alabama which is contained in such click-wrap is deemed to be stricken from the terms and conditions unless expressly agreed in writing and under the signature of an authorized individual.

### **33. Assignment**

Any contract which results from this solicitation shall not be assignable by supplier without written consent of the State of Alabama. Any assignment or other transfer in violation of this provision will be null and void.

### **34. Debarment and Suspension**

Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency. If supplier cannot certify this statement, supplier must attach a written explanation for review by the Chief Procurement Officer.

### **35. Merit System Exclusion**

It is understood and agreed that supplier is an independent supplier and as such all services rendered by supplier and its agents and employees thereof shall be as an independent supplier and not as an employee, Merit or otherwise, of the State of Alabama, and supplier or its agents and employees thereof shall not be entitled to or receive Merit System benefits.

### **36. Severability**

In the event any provision of this solicitation or resulting contract shall not be enforceable, the remaining provisions shall continue in full force and effect.

### **37. Volume of Business**

Except as otherwise stated in this solicitation, the State of Alabama cannot and does not guarantee any volume of business.

### **38. Waiver**

The failure of the State of Alabama to require performance of any provisions of this solicitation or resulting contract shall not affect the State's right to require performance at any time thereafter, nor shall a waiver of any breach or default constitute a waiver of any subsequent breach or default nor constitute a waiver of the provision itself.

**By submitting this bid, I hereby affirm the following:**

I acknowledge receipt of the solicitation and all amendments (new rounds). I have read the solicitation and agree to furnish each item or service offered at the price quoted. I will comply with all terms and conditions contained within this solicitation. I have not been in any agreement of collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding. I further certify that I am not barred from bidding or entering into a contract and acknowledge that the contracting state agency may declare the contract void if this certification is false.

**Requirements for ITB Responses Via Submitted Email**

Suppliers must be registered in Alabama Buys. Interested suppliers must click the "Participate in RFx" button on the Alabama Buys' Public Solicitation site. You will be prompted to log in or register. The option to email a response should only be utilized if you are having difficulties submitting your response inside of Alabama Buys. If you successfully submitted an electronic response in Alabama Buys, please do not submit a duplicate of your response via email.

Responses must be submitted to [ITB.Responses@purchasing.alabama.gov](mailto:ITB.Responses@purchasing.alabama.gov). The email should be identified in the Subject line with the End date (preferred format of MM/DD/YY), solicitation number (ex. SRC00000xxx) and title or the proposal may be rejected. Solicitation responses must be received by the Division of Procurement by the "End date and time" indicated on the solicitation. The Division of Procurement does not assume any responsibility for late submissions.

Suppliers must submit with their response, the completed ITB Email Submission form below. The State accepts electronic signatures that meet the criteria as outlined on the manual form.

The downloaded solicitation spreadsheets/forms must be in its original format when submitted. Unless indicated in the solicitation, all item pricing must be completed and returned. If an item is not being bid, identify it as N/B (no-bid). The completed attachments must be included in the email submission. All completed documents must be attached to a single email.

In the event a supplier providing an email response fails to provide its Alabama Buys assigned supplier number or provides an incomplete number, the State reserves the right to clarify this information with the supplier. Failure of the supplier to provide the requested clarification within five (5) calendar days may result in the supplier's response being rejected as non-responsive.



# State of Alabama Department of Finance Division of Procurement ITB Email Submissions



This document is to be completed for ITB email submissions.  
The completed form must be returned along with the ITB spreadsheets/forms and attached to a single email submission.

## SOLICITATION DETAILS

|                               |  |
|-------------------------------|--|
| Solicitation Number           |  |
| Solicitation Name             |  |
| Solicitation Due / Close Date |  |

## SUPPLIER DETAILS

|                 |  |
|-----------------|--|
| Supplier Number |  |
| Company Name    |  |
| Mailing Address |  |
| Email address   |  |

I have read the solicitation and agree to furnish each item or service offered at the price quoted. I will comply with all terms and conditions contained within this solicitation. I have not been in any agreement of collusion among suppliers in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding.

## AUTHORIZED SIGNATURE

|                      |  |
|----------------------|--|
| Sign Authorized Name |  |
| Title                |  |

## ELECTRONIC SIGNATURE NOTICE

|                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;">8-1A-7</p> <p><u>Please note that simply typing a name using a signature font does not constitute a legal electronic signature.</u></p> | <p><b>Legal recognition of electronic records, electronic signatures, and electronic contracts.</b></p> <p>(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.</p> <p>(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.</p> <p>(c) If a law requires a record to be in writing, an electronic record satisfies the law.</p> <p>(d) If a law requires a signature, an electronic signature satisfies the law.</p> |
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