

## SOLICITATION INSTRUCTIONS TO VENDORS

**1. AUTHORITY TO PURCHASE:** The Administrator of the Division of Purchasing, Department of Administration or the Administrator's delegates are the only statutory agents authorized to execute Contracts for the procurement of goods and services, unless exempted pursuant to statute or rule.

**2. E-PURCHASING:** The State of Idaho, Division of Purchasing and many individual Agencies utilize the Idaho e-Procurement System (IPRO), an electronic procurement system. Depending upon which profiling options vendors select in IPRO, vendors may be sent e-mail notifications of acquisition opportunities on those Solicitations electronically posted.

**3. ELECTRONIC SIGNATURES:** IDAPA 38.05.01.061 specifically allows for electronic signatures on responses submitted to formal solicitations. IPRO processes all information electronically on the Internet. Signatures by both the submitting Vendor and the State may be electronic and electronic signatures used with IPRO are as fully binding and legal for the State's purchasing process as a manually affixed signature. Any reference in these Solicitation Instructions to Vendors to "signed," "signature," "manually signed in ink," or equivalents will include electronic signatures.

**4. DEFINITIONS:** Unless the context requires otherwise, all terms not defined below shall have the meanings defined in Idaho Code Section 67-9203 or IDAPA 38.05.01.011.

4.1. Agency – All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.

4.2. Bid – A written offer that is binding on the Bidder to perform a Contract to purchase or supply Property in response to an Invitation to Bid.

4.3. Bidder – A Vendor who has submitted a Bid.

4.4. Contract – Contract means any state written agreement, including a Solicitation or specification documents and the accepted portions of the Solicitation, for the acquisition of Property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries.

4.5. Contractor – A Vendor who has been awarded a Contract.

4.6. Invitation to Bid (ITB) – All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed Bids.

4.7. Offeror – A Vendor who has submitted a proposal in response to a Request for Proposals for Property to be acquired by the State.

4.8. Property – Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such Property. Includes concession services and rights to access or use state property or facilities for business purposes.

4.9. Proposal – A written response, including pricing information, to a Request for Proposals that describes the solution or means of providing the Property requested and which Proposal is considered an offer to perform in full response to the Request for Proposals. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for Contract award.

4.10. Quotation – An offer to supply Property in response to a Request for Quotation and generally used for small or emergency purchases.

4.11. Request for Quotation (RFQ) – The document, form or method generally used for purchases solicited in accordance with small purchase or emergency purchase procedures.

4.12. Request for Proposals (RFP) – Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive Proposals and is generally utilized in the acquisition of services or complex purchases.

4.13. Solicitation – An Invitation To Bid, a Request For Proposals or other document issued by the purchasing activity for the purpose of soliciting Bids, Proposals or Quotations to perform a Contract.

4.14. State – The state of Idaho including each Agency unless the context implies other state(s) of the United States.

4.15. Vendor – A person or entity capable of supplying Property to the State.

**5. AWARD METHOD:** Contracts may only be awarded to the "Lowest Responsible Bidder." The Lowest Responsible Bidder is defined by Idaho Code Section 67-9203(9) as "The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price." When deemed to be in the best interest of the State, and set forth in the Solicitation documents, additional consideration may be given to the elements of discounts, supply location, quality of products or previous service, delivery time, or other elements.

**6. ADMINISTRATIVE FEE:** In accordance with Paragraph 5 of the State of Idaho Standard Terms and Conditions, Contracts issued through IPRO as Statewide Blanket Purchase Orders (SBPO) will be subject to an Administrative Fee of one and one-quarter percent (1.25%) based on orders placed against the Contract, unless specifically exempted. The Administrative Fee must be included in the prices offered by the Vendor submitting a response to an ITB or RFP issued by the State, when the solicitation will result in a Statewide Blanket Purchase Order (SBPO) which is not otherwise specifically exempt (See Paragraph 5, State of Idaho Standard Terms and Conditions).

**7. DETERMINATION OF RESPONSIBILITY:** The State reserves the right to make reasonable inquiry about or from the submitting Vendor or from third parties to determine the responsibility of a submitting Vendor. Such inquiry may include, but not be limited to, inquiry regarding financial statements, credit ratings, references, potential subcontractors, and past performance. The unreasonable failure of a submitting Vendor to promptly supply any requested information may result in a finding of non-responsibility.

**8. SOLICITATION AMENDMENTS:** It will be the Vendors' responsibility to check for any amendments to the solicitation document(s) prior to submitting a Bid, Proposal, or Quotation. In the event it becomes necessary to revise any part of the Solicitation, amendment(s) will be made available via IPRO. Information given to one Vendor will be available to all other Vendors if such information is necessary for purposes of submitting a Bid, Proposal or Quotation, or if failure to give such information would be prejudicial to uninformed Vendors.

**9. NOTICE OF EFFECTIVENESS:** No Contract is effective until the authorized State purchasing official has signed the Contract (which signature may be electronic), and the effective or award date has passed. The Vendor shall not provide any goods or render services until the Contract has been executed by the State purchasing official and the Contract has become effective. Furthermore, the State is in no way responsible for reimbursing the Vendor for goods provided or services rendered prior to execution by the authorized State purchasing official and the arrival of the effective date of the Contract.

**10. ECONOMY OF PREPARATION:** If submitting a response to a solicitation, responses should be prepared simply and economically, providing a clear, complete and concise description of the Offeror's capabilities to satisfy the State's requirements.

**11. SPECIFICATIONS:** Specifications describe the Property the State wants to acquire. Vendors are encouraged to review the specifications closely and present written questions within the time prescribed in the Solicitation to the designated purchasing official. See also Paragraph 14 on Administrative Appeals. The State is prohibited from accepting Property that does not meet the minimum specifications pursuant to Idaho Code Section 67-9230(6).

**12. LAWS:** The laws governing the State's purchases of goods and services are found in Idaho Code Section 67-9201 through Section 67-9234 and IDAPA 38.05.01 et seq., both available on the Internet at <https://purchasing.idaho.gov/governing-laws-and-policies/>. It is the Vendor's responsibility to conform to **ALL** applicable federal, state and local statutes or other applicable legal requirements. The information provided herein is intended to assist Vendors in meeting applicable requirements but is not exhaustive and the State will not be responsible for any failure by any Vendor to meet applicable requirements.

**13. PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES:** Idaho preferences are governed by Idaho Code Section 67-2349 (Reciprocal Preference) and Idaho Code Section 60-101 – 103 (Printing).

**14. ADMINISTRATIVE APPEALS:** The laws applicable to administrative appeals are set forth at Idaho Code Section 67-9232(1) (Specification Appeals), Idaho Code Section 67-9232(2) (Nonresponsive Appeals), Idaho Code Section 67-9232(3) (Bid Award/Lowest Responsible Bidder Appeal), and Idaho Code Section 67-9232(4) (Sole Source Appeal).

**15. SUBMISSION FORMS:**

15.1. Submission Forms – Proper completion of the electronic forms is required. Vendor warrants by submitting a Bid, Proposal or Quotation that it accepts the State of Idaho Standard Contract Terms and Conditions and the Solicitation Instructions to Vendors, and any Special Terms and Conditions identified in the Solicitation. Additionally, one or more of the following may be applicable:

15.1.1. If Vendor is a natural person eighteen (18) years of age or older,

15.1.1.1. by submitting its Bid, Proposal or Quotation, warrants that its Bid, Proposal or Quotation is subject to Idaho Code section 67-7903 and, pursuant thereto, by submitting its Bid, Proposal or Quotation, attests, under penalty of perjury, that it is a United States citizen or legal permanent resident or that it is otherwise lawfully present in the United States pursuant to federal law; and

15.1.1.2. prior to being issued a Contract, Vendor will be required to submit proof of lawful presence in the United States in accordance with Idaho Code Section 67-7903.

**16. BID AND REQUEST FOR PROPOSAL SUBMISSIONS:**

16.1. Bid Submissions – The submitting Vendor is the individual or entity as it is profiled in IPRO. If Vendor's submittal includes a signed State supplied signature page which identifies a different legal entity than the IPRO profile under which the Bid or Proposal was submitted, the submitting Vendor is the individual or entity identified on the state supplied Signature Page. Vendors must complete all steps in the IPRO submission process prior to the scheduled closing date and time.

16.2. Late Submissions – It is the submitting Vendor's responsibility to ensure that its Bid, Quotation, or Proposal is submitted prior to the specified closing time. Late submissions will not be considered under any circumstances. Submissions will use IPRO's time to determine receipt time. No responsibility will be assumed for the failure of any computer or electronic equipment. **LATE SUBMISSIONS WILL NOT BE ACCEPTED, AND WILL BE RETURNED TO THE SUBMITTING VENDOR. NO DEVIATIONS WILL BE ALLOWED.**

**17. TABULATION INFORMATION:**

Electronic Opening – Solicitations will contain detailed information regarding closing/opening dates and times. Vendors may attend openings of submitted Solicitations via a virtual meeting link specified on the Solicitation. At that time, for Bids, the names of Bidders and Bid amount will be announced. For Proposals, only the names of the Offerors will be announced. No other information will be disclosed at that time. Individuals may request tabulation information when it becomes available. No tabulation information will be given over the phone.

**18. TERMS AND CONDITIONS OF ENSUING CONTRACT:** Any ensuing Contract will be governed by the State of Idaho Standard Contract Terms and Conditions, any applicable Special Terms and Conditions and, if applicable, any negotiated provisions, all as specified in the Solicitation. Unless otherwise identified in the Solicitation, no additional or supplemental terms and conditions submitted by the submitting Vendor as part of its response shall be evaluated or considered. Any and all such additional terms and conditions shall have no force and effect and shall be inapplicable to the Solicitation and any ensuing Contract. If additional or supplemental terms and conditions, either intentionally or inadvertently appear separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed that the State of Idaho Standard Contract Terms and Conditions and any Special Terms and Conditions in the Solicitation are the only conditions applicable to the Solicitation and any ensuing Contract and the submitting Vendor's authorized signature affixed to the signature page form attests to this. If you condition your Bid or Proposal on such additional terms and conditions, your Bid or Proposal will be deemed nonresponsive. **IF YOU HAVE QUESTIONS OR CONCERNS REGARDING THE STATE'S TERMS AND CONDITIONS, ADDRESS THEM IN WRITING TO THE DESIGNATED PURCHASING OFFICIAL WITHIN THE TIME PERIOD PRESCRIBED PRIOR TO THE SOLICITATION CLOSING DATE.**

**19. PRE-OPENING SOLICITATION WITHDRAWALS OR MODIFICATION:**

19.1. Pre-Opening Solicitation Withdrawals – A submitting Vendor may withdraw a previously submitted Solicitation

response at any time prior to the closing by submitting another response with a zero unit price for each affected line item of the Solicitation and inserting the words "WITHDRAWAL OF PREVIOUSLY SUBMITTED BID" in the comments field for each affected line item or may select the "INTENTIONAL NO BID" checkbox in IPRO.

19.2. Pre-Opening Solicitation Modification – A submitting Vendor may modify or change a previously submitted Solicitation response at any time prior to the closing by amending its solicitation response in IPRO and resubmitting (i.e. adding or removing attachments, modifying pricing, etc.).

## **20. REJECTION OF BIDS AND PROPOSALS AND CANCELLATION OF SOLICITATION:**

20.1. Prior to the issuance of a Contract, the State shall have the right to accept or reject all or any part of a Bid, Proposal or Quotation or any and all Bids, Proposals and Quotations when: (i) it is in the best interests of the State; (ii) the Bid, Proposal or Quotation does not meet the minimum specifications; (iii) the Bid, Proposal or Quotation is not the lowest responsible Bid, Proposal or Quotation; (iv) a finding is made based upon available evidence that a submitting Vendor is not responsible or is otherwise incapable of meeting specifications or providing an assurance of ability to fulfill Contract requirements; or (v) the item offered deviates to a major degree from the specifications, as determined by the State (minor deviations, as determined by the State, may be accepted as substantially meeting the Solicitation requirements). Deviations will be considered major when such deviations appear to frustrate the competitive Solicitation process or provide a submitting Vendor an unfair advantage.

20.2. Prior to the issuance of a Contract, the State shall have the right to reject all Bids, Proposals, or Quotations or to cancel a Solicitation. Cancellation may be for reasons that include, but are not limited to: (i) inadequate or ambiguous specifications; (ii) specifications have been revised; (iii) Property is no longer required; (iv) there is a change in requirements; (v) all submissions are deemed unreasonable or sufficient funds are not available; (vi) Bids, Proposals or Quotations were not independently arrived at or were submitted in bad faith; (vii) it is determined that all requirements of the Solicitation process were not met; (viii) insufficient competition; or (ix) it is in the best interests of the State.

**21. BURDEN OF PROOF:** It shall be the responsibility and burden of the submitting Vendor to furnish, with its original submission, unless otherwise provided in the Solicitation, sufficient data for the State to determine whether or not the property offered conforms to the specifications.

**22. ALTERNATE BIDS:** Multiple bids submitted by a single submitting Vendor, or a submitting Vendor's alternate bids, **WILL NOT BE ACCEPTED UNLESS SO STATED IN THE SPECIFICATIONS.**

**23. DISCOUNTS:** Discounts, when applicable, shall be shown in a single net percentage figure (e.g. 57-1/4% instead of 50, 10, and 5 percent). **DISCOUNTS FOR PROMPT PAYMENT WILL BE ACCEPTED BUT CANNOT BE USED IN DETERMINING THE LOWEST BID.**

**24. UNIT PRICES GOVERN:** Unit prices shall govern. **IMPORTANT:** Prices must be given in the "unit of measure" required in the Solicitation. Example: If the Solicitation requires an item by the "piece," submit pricing by the "piece." If the Solicitation requires an item by the "foot," submit pricing by the "foot."

**25. FIRM PRICES:** The submitting Vendor agrees that its Bid, Quotation or Proposal shall be good and may not be withdrawn for a period of ninety (90) days after the scheduled closing date, unless otherwise identified in the Solicitation. No Bid, Quotation or Proposal will be accepted if marked "price prevailing at time of delivery," "estimated prices," "actual costs to be billed," or similar phrases. After the date and time of closing, no price change will be allowed, unless otherwise stated in the Solicitation. All Bids, Quotations and Proposals must be in U.S. Dollars.

**26. ORAL INFORMATION:** Questions concerning a Solicitation must be directed in writing to the designated purchasing official in the period of time prescribed in the Solicitation. Bids, Proposals, or Quotations deviating from the specifications by any means other than that which is allowed by an amendment to the Solicitation written and issued by the State will be subject to rejection. The State will not be responsible for any verbal or oral information given to Vendors by anyone other than an authorized purchasing official who has provided information in writing. Reliance on any oral representation is at the Vendor's sole risk.

**27. GOVERNMENTAL USE ONLY:** Unless otherwise noted in the Solicitation, all purchases made pursuant to the Solicitation are for the internal use of government only and will not be resold to the general public at retail. Upon request, the State will issue a certification that all purchases made pursuant to the Solicitation are intended for the internal use of government and will not be resold to the general public at retail.

## 28. PUBLIC RECORDS:

28.1. The Idaho Public Records Law, Idaho Code Sections 74-101 through 74-126, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a State Agency or a local agency (political subdivision of the state of Idaho) regardless of the physical form or character. All, or most, of the information contained in your response to the State's Solicitation will be a public record subject to disclosure under the Public Records Law. The Public Records Law contains certain exemptions. One exemption potentially applicable to part of your response may be for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy. If you consider any material that you provide in your Bid, Proposal or Quotation to be a trade secret, or otherwise protected from disclosure, you **MUST** so indicate by marking as "exempt" **EACH PAGE** containing such information. Marking your entire Bid, Proposal or Quotation as exempt is not acceptable or in accordance with the Solicitation or the Public Records Law and **WILL NOT BE HONORED**. In addition, a legend or statement on one (1) page that all or substantially all of the response is exempt from disclosure is not acceptable or in accordance with the Public Records Law and **WILL NOT BE HONORED**. Prices that you provide in your Bid, Proposal or Quotation are not a trade secret. The State, to the extent allowed by law and in accordance with these Solicitation Instructions, will honor a designation of nondisclosure. Any questions regarding the applicability of the Public Records Law should be addressed to your own legal counsel **PRIOR TO SUBMISSION** of your Bid, Proposal or Quotation.

28.2. If your Bid, Proposal or Quotation contains information that you consider to be exempt, you must also submit an electronic redacted copy of the Bid, Proposal or Quotation with all exempt information removed or blacked out. The State will provide this redacted Bid, Proposal or Quotation to requestors under the Public Records Law. Submitting Vendors must also:

28.2.1. Identify with particularity the precise text, illustration, or other information contained within each page marked "exempt" (it is not sufficient to simply mark the entire page). The specific information you deem "exempt" within each noted page must be highlighted, italicized, identified by asterisks, contained within a text border, or otherwise be clearly distinguished from other text or other information and be specifically identified as "exempt."

28.2.2. Provide a separate document with your Bid, Proposal or Quotation entitled "List of Redacted Exempt Information," which provides a succinct list of all exempt material noted in your Bid, Proposal or Quotation. The list must be in the order in which the material appears in your Bid, Proposal or Quotation, identified by Page#, Section#/Paragraph#, Title of Section/Paragraph, specific portions of text or other information; or in a manner otherwise sufficient to allow the State to determine the precise material subject to the notation. Additionally, this list must identify with each notation the specific basis for your position that the material be treated as exempt from disclosure.

28.3. Vendor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring a designation of exempt or for the Vendor's failure to designate individual documents as exempt. The Vendor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State receives a request for materials claimed exempt by the Vendor, the Vendor shall provide the legal defense for such claim.

**29. LENGTH OF CONTRACT:** Pursuant to Idaho Code Section 67-9205(10), the State may enter into Contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such Contracts contain no penalty to or restriction upon the State in the event cancellation is necessitated by a lack of financing for any such Contract or Contracts.

**30. LEASE-PURCHASE OPTIONS:** Idaho Code Section 67-9222 reads, in part, as follows: "Any exercise of an option to acquire previously non-owned property, or any other procedure which shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and, prior to execution all applicable provisions and procedures of this chapter shall be exercised." (**NOTE:** This provision is **NOT** applicable to time purchase or installment purchase contracts).