

## BIDDER INSTRUCTIONS

### 1. DEFINITIONS:

- a) **"Bid"** means an offer, made in response to a solicitation to perform a contract for work and labor or to supply goods at a specified price, whether or not it is considered a "sealed bid" or results in award of a contract to a single or non-competitively bid contract.
- b) **"Bidder"** means a supplier who submits a bid to the State in response to a solicitation.
- c) **"Solicitation"** means the process, by whatever name known or in whatever format used, of notifying prospective bidders that the State wishes to receive bids for furnishing goods or services.
- d) **"Supplier"** means a business entity, bidder, offeror, vendor or contractor.

### 2. SUBMISSION OF BIDS:

- a) Bids must be hand delivered or sent via U.S. Mail or common carrier unless another method (e.g., facsimile) is specifically authorized in the solicitation.
- b) Where a "sealed" bid is required, each bid shall be separately sealed inside an envelope and must be signed and received by the closing time and date specified, and on the forms furnished by the State to be considered for award. The State reserves the right to consider authorized facsimile bids as properly "sealed" if received prior to the closing time specified, provided that a signature is shown on the facsimile.
- c) The bidder is solely responsible for ensuring that the full bid is received by the State in accordance with the solicitation requirements, prior to the date and time specified in the solicitation, and at the place specified. The State shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or misdelivery.
- d) Bids received after the time stated will be considered non-responsive.
- e) If facsimile transmission of the bid is acceptable, and the bidder chooses to transmit their bid via facsimile, the bidder understands and agrees that the State will consider only those portions of the bid received prior to the closing time specified; any pages received after that time will not be considered.
- f) If no time for receipt of bids is specified in the solicitation, the bid shall be due by the close of the business day on the date indicated. Close of the business day shall be 5:00 p.m. All times are Pacific Standard Time (PST)/Pacific Daylight Time (PDT).
- g) Generally, sealed bids will be opened and read on the due date unless another date and time is specified in the solicitation or any addendum thereto or the reverse auction terms and conditions are included in the solicitation. When the Department of General Services, Procurement Division, facilitates a reverse auction all bids remain confidential before and during the auction. Information is not public, including the number and names of the responders, until the Notice of Intent to Award or contract award is published, whichever occurs first.

### 3. SOLICITATION ADDENDUM (ADDENDA):

- a) If a supplier received this solicitation through some means other than being a prequalified supplier on the State's bidders list, it is the responsibility of the supplier to advise the buyer of its intention to provide a bid so that addenda or other correspondence related to the solicitation will be sent to the supplier.
- b) In the event that the solicitation is revised by an addendum, supplier shall submit the original solicitation and any addenda that the buyer requires be submitted.
- c) Price(s) offered shall reflect all addenda issued by the State. Failure to do so will permit the State to interpret the bid to include all addenda issued in any resulting contract.

### 4. PRICES:

- a) All prices and notations must be printed in ink or typewritten.
- b) All prices must be bid in U.S. currency.
- c) Unit prices may not be more than four (4) places to the right of the decimal point. For example, a unit price of \$.56726 each, would exceed this limitation. Unit prices which exceed this limitation will automatically be truncated to the fourth decimal place for both evaluation and award purposes. Using the example just cited, the "6" at the end of the unit price would be truncated (i.e., dropped off) leaving a unit price of \$.5672 each.
- d) An error in the bid may cause the rejection of that bid; however, the State may at its sole option retain the bid and make certain arithmetic corrections. In determining if a correction will be made, the State will consider the conformance of the bid to the format and content required by the solicitation, and any unusual complexity of the format and content required by the solicitation.
  - i) If the bidder's intent is clearly established based on review of the complete bid submittal, the State may at its sole option correct an error based on that established intent.
  - ii) The State may at its sole option correct obvious clerical errors.
  - iii) The total price of unit-price items will be the product of the unit price and the quantity of the item. If the unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the "Extension" price by the quantity of the item.

**5. CASH DISCOUNTS:** The State encourages bidders to offer cash discounts for prompt payment, however, unless provided elsewhere in the solicitation, cash discounts offered by bidders for the prompt payment of invoices will not be considered in evaluating offers to determine the successful bidder for award of any resulting contract.

**6. INSPECTION OF SOLICITATION DOCUMENTS:** Supplier shall carefully review all documents referenced and made a part of this solicitation to ensure that all information required to properly respond to the solicitation has been received or made available and all requirements are priced in the bid. Failure to examine any document, drawing, specification, or instruction will be at the supplier's sole risk.

**7. BRAND NAMES:** Any reference to brand names and model numbers in the solicitation is intended to be descriptive, but not restrictive, unless otherwise specified. Bids offering equivalent items meeting the standards of quality specified may be considered, unless otherwise specified, providing the bid clearly describes the article offered and how it differs from the referenced brand. Unless bidder specifies otherwise, it is understood that the bidder is offering a referenced brand item as specified in the solicitation. The State reserves the right to determine whether a substitute offer is equivalent to and meets the standards of quality indicated by the brand name references, and the State may require the supply of additional descriptive material and a sample.

### 8. EVALUATION OF BIDS:

- a) Where more than one line item is specified in the solicitation, the State reserves the right to determine the lowest responsible bidder, either on the basis of individual items, combination of items as specified in the solicitation, or on the basis of all items included in the solicitation, unless otherwise expressly provided.
- b) Unless otherwise specified in the solicitation, the State may accept any item or combination of items as specified in the solicitation, of any bid unless the bidder expressly objects and conditions its response on receiving all items for which it provided a bid. In the event that the bidder so objects, the State may consider the bidder's objection and evaluate whether the award on such basis will result in the lowest

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- price to the State or may determine in its sole discretion that such an objection is non-responsive and renders the bidder ineligible for award.
- c) This solicitation is subject to all requirements set forth in the Electronic Waste Recycling Act of 2003 (Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste, hereafter called the "Act"). If the products and/or services being acquired pursuant to this solicitation are not subject to the Act, then bidder must demonstrate that the Act is inapplicable to all lines of business engaged by the supplier (or related agents, subsidiaries, partners, joint ventures, and sub-contractors). Contracts awarded, wherein a violation of the Act is found, are subject to sanctions defined in Public Resources Code, Chapter 8.5, Article 7.
- d) This solicitation is subject to all requirements set forth in Sections 6452, 6487, 7101 and 18510 of the Revenue and Taxation Code, and Section 10295.1 of the Public Contract Code, requiring suppliers to provide a copy of their retailer's seller's permit or certification of registration, and, if applicable, the permit or certification of all participating affiliates issued by the State of California's Board of Equalization. Unless otherwise specified in this solicitation, a copy of the retailer's seller's permit or certification of registration, and, if applicable, the permit or certification of all participating affiliates, must be submitted within five (5) State business days of the State's request. Failure of the supplier to comply by supplying the required documentation will cause the supplier's bid to be considered non-responsive and the bid rejected.
- e) Public Resources Code Section 42290 et seq. prohibits the State from contracting with any supplier, manufacturer, or wholesaler, and any of its divisions, subsidiaries, or successors that have been determined to be noncompliant to the recycled content plastic trash bag certification requirements. This includes award of a State contract or subcontract or renewal, extension, or modification of an existing contract or subcontract. Prior to award the State shall ascertain if the intended awardee or proposed subcontractor is a business identified on the current California Integrated Waste Management Board noncompliant list(s). In the event of any doubt of the status or identity of the business in violation, the State will notify the Board of the proposed award and afford the Board the opportunity to advise the State. No award will be made when either the bidder or a subcontractor has been identified either by published list or by advice from the Board, to be in violation of certification requirements.
- f) All other criteria to be used in evaluating bids will be identified elsewhere in the solicitation.
- 9. CONFLICT OF INTEREST:**
- a) Current State Employees (PCC Section 10410):
- i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
  - ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b) Former State Employees (PCC Section 10411):  
For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency.
- c) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
- 10. JOINT BIDS:** A joint bid submitted by two or more bidders participating jointly in one bid may be submitted and each participating bidder must sign the joint bid. If a contract is awarded to bidders who furnished a joint bid, it shall be deemed one indivisible contract. Each such joint contractor will be jointly and severally liable for the performance of the entire contract, and the joint contractors must designate, in writing, one individual having authority to represent them in all matters relating to the contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint contractors.
- 11. SAMPLES TO DETERMINE RESPONSIVENESS TO TECHNICAL REQUIREMENTS FOR PURPOSES OF AWARD:**
- a) Samples of items, when required by the State, must be furnished free of expense to the State, unless otherwise provided.
  - b) Unless expressly set forth in the solicitation, the sample or samples furnished must be identical in all respects to the product or products being offered to the State.
  - c) Bidders offering products of a different manufacturer and model number than those specified in the solicitation may be required to submit samples for inspection and specification compliance testing in order for the State to determine if the item offered is equivalent to and meets the minimum standards of quality acceptable to the State as indicated by the manufacturer and model number specified in the solicitation.
  - d) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at bidder's expense.
  - e) Samples may be required prior to award. If requested, such samples must be delivered to the address specified and within the timeframe identified in the notification. Failure to submit samples as specified may be grounds for rejection.
- 12. SPECIFICATION CONCERNS:**
- a) In the event a supplier believes that the State's solicitation is unfairly restrictive, ambiguous, contains conflicting provisions or mistakes or in the supplier's experience any resulting contract would be commercially impractical to perform, the matter should be promptly brought to the attention of the buyer identified in the solicitation, either by telephone, letter or visit, immediately upon receipt of the solicitation, in order that the matter may be fully considered and appropriate action taken by the State prior to the closing time set to receive bids.
  - b) Unless otherwise specified, failure by any supplier to raise any concern relating to the solicitation requirements within at least two (2) working days prior to the bid close date, will be deemed a waiver of the supplier's right to protest any decision for contract award relating to the solicitation's requirements.
- 13. VALIDITY OF BID:** Unless specified elsewhere in the solicitation, bidder's bid shall be valid for forty-five (45) days following the date the response is due.
- 14. MISTAKE IN BID:** If prior to contract award, a bidder discovers a mistake in their bid which renders the bidder unwilling to perform under any resulting contract, the bidder must immediately notify the buyer and request to withdraw the bid. It shall be solely within the State's discretion as to whether withdrawal will be permitted. If the solicitation contemplated evaluation and award of "all or none" of the items, then any withdrawal must be for the entire bid. If the solicitation provided for evaluation and award on a line item or combination of items basis, the State may consider permitting withdrawal of specific line item(s) or combination of items.

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### 15. STATE'S RIGHTS:

- a) The State reserves the right to modify or cancel in whole or in part its solicitation at any time prior to contract award.
- b) The State reserves the right to reject any or all bids if the State determines that a bidder's bid was non-responsive to the solicitation requirements and to waive informalities and minor irregularities in bids received.
- c) The State reserves the right to reject any or all bids if the State determines that a bidder is not a responsible supplier.

**16. UNFAIR PRACTICES ACT AND OTHER LAWS:** Supplier warrants that its bid complies with the Unfair Practices Act (Business and Professions Code Section 17000 et seq.) and all applicable State and Federal laws and regulations.

### 17. VIOLATION OF AIR OR WATER POLLUTION LAWS:

- a) Unless the contract is less than \$25,000 or with a non-competitively bid contract supplier, Government Code Section 4477 prohibits the State from contracting with a person, including a corporation or other business association, who has been determined to be in violation of any state or federal air or water pollution control law.
- b) Prior to an award, the State shall ascertain if the intended awardee is a person included in notices from the Boards. In the event of any doubt of the intended awardee's identity or status as a person who is in violation of any state or federal air or water pollution law, the State will notify the appropriate Board of the proposed award and afford the Board the opportunity to advise the State that the intended awardee is such a person.
- c) No award will be made to a person who is identified either by the published notices or by advice, as a person in violation of state or federal air or water pollution control laws.

### 18. NON-DISCRIMINATION TOWARD WTO GPA SIGNATORIES:

Any contract resulting from this solicitation in excess of \$554,000 is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA). All bidders offering products or services of countries that are signatories to the WTO GPA and that have agreed to cover reciprocal subcentral coverage under the WTO GPA will be accorded non-discriminatory treatment in the award of contracts under this solicitation. These countries currently include the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom), Aruba, Hong Kong, Singapore, Israel, Japan, Korea, Liechtenstein, Norway, and Switzerland.

**19. INDEPENDENCE OF BID:** Unless supplier is furnishing a joint bid, by submitting this bid, bidder swears under penalty of perjury that it did not conspire with any other supplier to set prices in violation of anti-trust laws.

**20. BID EVALUATION PREFERENCES:** In evaluating bids, the State will give preferences in accordance with the law for suppliers who are a California certified Small Business. If the bidder claims preferences under the Enterprise Zone Act (EZA), Target Area Contract Preference Act (TACPA) and Local Agency Military Base Recovery Area (LAMBRA) Act, the bidder must complete and return the appropriate forms incorporated in the solicitation. Preferences may also be given for bidders using recycled products in accordance with Public Resources Code Section 42890 et seq. Where multiple preferences are claimed, the State will verify eligibility for the preference(s) and evaluate and apply preference(s) in accordance with law and established procedures.

**21. PROTESTS:** The Department of General Services, Procurement Division, has appointed a Protest Coordinator to serve as the primary point of contact for handling: (1) initial protests of solicitation requirements as allowed for in Public Contract Code (PCC) Section 12102(h); (2) protests of proposed awards for commodities (PCC Section 10306) and information technology goods and services (PCC Section 12102[h]); and (3) the Alternative Protest Process (PCC Section 12125 et seq.). A Supplier Advocate has been established in accordance with PCC Section 10300 as a resource to protesting bidders seeking assistance and information. Contact the buyer or contact the Procurement Division at (916) 375-4400 for assistance.

### 22. INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS:

Any independent contractor, prior to being awarded a purchase order which contains services, must provide certain information pertaining to its business to the State. The State, in accordance with Unemployment Insurance Code Section 1088.8, will report such information to the Employment Development Department. By submitting a bid, bidder acknowledges this information is required and that it is being reported to the Employment Development Department.

**23. LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10302(b) and 12104.5(b).).

### 23. AMERICANS WITH DISABILITY ACT (ADA):

To comply with the non-discrimination requirements of the ADA, it is the policy of the State to make every effort to ensure that its programs, activities and services are available to all persons, including persons with disabilities. For persons with a disability needing a reasonable modification to participate in the procurement process, or for persons having questions regarding reasonable modifications for the procurement process, you may contact the buyer listed elsewhere in this solicitation.

a) If the contracting agency issuing this solicitation is an agency other than the Department of General Services, Procurement Division, the telephone numbers for TTY/TDD (telephone device for the deaf) or California Relay Service Numbers will be provided elsewhere in this solicitation.

b) If the agency issuing this solicitation is the Department of General Services, Procurement Division, you may also contact the Procurement Division at (916) 375-4400 (main office), or contact the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service Numbers, as follows:

• **Procurement Division TTY:**

Sacramento Office: (916) 376-1891

**California Relay Service:**

Voice: 1-800-735-2922 or

1-888-877-5379

TTY: 1-800-735-2929 or

1-888-877-5378

Speech to Speech: 1-800-854-7784

**Note:** To ensure that we can meet your need, it is best that we receive your request for reasonable modification at least **10 working days** before the scheduled event or the due date for procurement documents.