

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

1. SUBMISSIONS OF BIDS

- a. Bids, as well as any other documents required to be submitted with the Bid, shall be submitted online at Pennsylvania's State System of Higher Education (State System) [eProcurement Exchange](#). It is the responsibility of each bidder to ensure that its Bid is received by the State System at the State System's [eProcurement Exchange](#) prior to the due date and time set for the Bid. No Bid shall be considered if it is not submitted by the due date and time.
- b. Bids are requested for the item(s) described in the Invitation for Bids (IFB) and all the documents referenced in the Invitation for Bids (collectively called the IFB).
- c. Bids must be firm. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB, it shall be rejected. The Bid shall also be rejected if the items offered by the Bidder are not in conformance with the specifications as determined by the State System.

2. BIDDERS' REPRESENTATION AND AUTHORIZATION

Each Bidder, by making its Bid, understands, represents and acknowledges that:

- a. The Bidder has read and understands the terms and conditions of the IFB and the Bid is made in accordance with those terms and conditions.
- b. The item(s) offered in the Bid will be in conformance with the specifications referenced in the IFB without exceptions.
- c. All information provided by, and representations made by the Bidder in its bid are material and important and will be relied upon by the State System in awarding the contract(s) or purchase order(s).
- d. The price(s) and amount of the Bid have been arrived at independently and without consultation, communication or agreement with any other supplier, contractor, bidder or potential bidder.
- e. Neither the price(s) nor the amount of the Bid, and neither the approximate price(s) nor the approximate amount of the Bid have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before Bid Opening.
- f. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than the Bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- g. The Bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit complementary or other noncompetitive bid.
- h. To the best of the knowledge of the person signing the Bid for the Bidder, the Bidder, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as disclosed by the Bidder in its Bid.

3. QUESTIONS

Any questions concerning conditions and specifications must be directed to the Issuing Office via the "Questions" tab at the State System's [eProcurement Exchange](#).

4. PRICES

The successful Bidder will be required to provide the awarded items at the prices quoted in its Bid.

5. TAXES

The State System is exempt from all Federal excise and transportation taxes, the provisions of the Fair trade law, and the Pennsylvania sales and use tax for purchase of tangible personal property. The registration number with the Internal Revenue Service is 23740001-K. No exemption certificates are required and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of sales tax or use tax required to be paid with respect to its purchase or use of tangible personal property used or transferred in connection with the performance of its construction contract. If the State System is required by law to pay any excise tax and then seek a refund or credit, the contractor may add the amount of the tax to the bid price as a separate item.

6. APPROVED EQUAL

Whenever an item is defined in this IFB by trade name and/or catalogue number of a manufacturer or vendor, the term "or approved equal", if not inserted therewith, shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a "no substitute" is requested. When a "no substitute" is requested, the State System will consider Bids for the referenced items only. The term "or approved equal" is defined as meaning any other make which, in the sole opinion of the State System, is of such character, quality and performance equivalence as to meet the standard of quality of the items specified for which it is to be used equally as well as that specified. The Bidder quoting on a product other than the referenced product, shall: a) furnish complete identification in its Bid of the product it is offering by trade name, brand and/or model number; b) furnish descriptive literature and data with respect to the substitute product it proposes to furnish; and c) indicate any known specification deviations from the referenced product.

7. MODIFICATION OR WITHDRAWAL OF BID

- a. **Bid Modification Prior to Bid Opening/Bid Due Date/Time.** Bids may be modified at any time prior to the Bid Due Date/Time via the State System's [eProcurement Exchange](#).
- b. **Bid Withdrawal Prior to Bid Opening.** Bids may be withdrawn at any time prior to the Bid Due Date/Time via the State System's [eProcurement Exchange](#).
- c. **Bid Withdrawal After Bid Opening.** Bidders are permitted to withdraw erroneous Bids after Bid Opening only if the following conditions are met:
 - 1) The Bidder submits a written request for withdrawal to the Issuing Office.
 - 2) The Bidder presents credible evidence with the request that the reason for the lower Bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the Bid.
 - 3) The request for relief and supporting evidence must be received by the Issuing Office within three (3) business days after Bid opening, but before award of the contract/purchase order.
 - 4) The Issuing Office shall not permit a Bid withdrawal if the Bid withdrawal would result in the award of the contract/purchase order on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the Bidder has a substantial interest.
 - 5) If a Bidder is permitted to withdraw its Bid, the Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.
- d. **Firm Bid.** Except as provided above, a Bid may not be modified, withdrawn, or cancelled by any Bidder for a period of sixty (60) days following the time and date designated for Bid Opening, unless otherwise specified by the Bidder in its Bid. If the lowest responsible Bidder, as determined by the Issuing Office, withdraws its Bid prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to the State System for all costs and damages associated with the re-award or re-bid including the difference between the Bidder's price and the actual cost that the State System pays for the awarded items.
- e. **Clarification and Additional Information.** After the receipt of Bids, the Issuing Office shall have the right to contact Bidders for the purpose of seeking:
 - 1) Clarification of the Bid which confirms the Issuing Office's understanding of statements or information in the Bid or;
 - 2) Additional information on the items offered; provided the IFB does not require the rejection of the Bid for failure to include such information.

8. REJECTION OF BIDS

The State System reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid if the best interests of the State System are thereby served.

9. AWARD

Unless all Bids are rejected, and except as otherwise provided by law, award will be made, through the issuance of a contract/purchase order to the lowest responsible and responsive Bidder. Unless otherwise specified, the State System reserves the right to award by item or on a total Bid basis, whichever is deemed more advantageous to the State System. In cases of discrepancies in prices, the unit price will be binding unless the unit price is obviously in error and the extended price is obviously correct, in which case the erroneous unit price will be corrected.

10. TIE BIDS

All tie Bids will be broken by the State System's Issuing Office.

11. PROMPT PAYMENT DISCOUNTS

Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Bidder, however, the State System will take advantage of such offer.

12. BID PROTEST PROCEDURES

- a. **Who May File the Protest.** Any Bidder or prospective bidder who is aggrieved in connection with the IFB or award of the contract/purchase order may file a protest. Protests relating to cancellation of invitations for bids and protests relating to the rejection of all bids are not permitted. A Bidder is a person that submits a bid in response to the IFB. A prospective bidder is a person that has not submitted a bid in response to the IFB.
- b. **Time for Filing.**
 - 1) If a protest is submitted by a prospective bidder, the protest must be filed before Bid Opening date/time.
 - 2) If a protest is filed by a Bidder, the protest must be filed within seven days after the protesting Bidder knew or should have known of the facts giving rise to the protest EXCEPT THAT IN NO EVENT MAY A PROTEST BE FILED LATER THAN SEVEN (7) DAYS AFTER THE DATE THE CONTRACT OR PURCHASE ORDER WAS AWARDED. Date of filing is the date of receipt of the Bid protest.
 - 3) Untimely filed protests shall be disregarded.
- c. **Form of Protest.**
 - 1) Protests must be in writing and filed with the Issuing Office.
 - 2) A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal.
 - 3) The protesting party may submit with the protest any documents or information deemed relevant.
- d. **Notice of Protest.** If award has been made, the Issuing Office shall notify the successful Bidder of the protest. If the protest is received before award and substantial issues are raised by the protest, all Bidders who appear to have a substantial and reasonable prospect of winning the award shall be notified and may file their agreement/disagreement with the Issuing Office within three (3) days after receipt of notice of the protest.
- e. **Stay of Procurement.** The Issuing Office shall immediately decide, upon receipt of the protest, whether or not the solicitation or award shall be stayed, or if the protest is timely received after the

award, whether the performance of the contract should be suspended. The Issuing Office shall not proceed further with the IFB or with the award of the contract, and shall suspend performance under the contract if awarded, unless the Chancellor makes a written determination that the protest is clearly without merit or that award of the contract/purchase order without delay is necessary to protect the substantial interests of the State System.

f. **Procedures.**

- 1) **Response By Chancellor, Pennsylvania State System of Higher Education.** Within fifteen (15) days of the receipt of a protest, the Chancellor may submit a written response to the Director of Strategic Sourcing. The response may include any documents or information that the Director of Strategic Sourcing deems relevant to the protest.
- 2) **Protesting Party Reply.** Within ten (10) days of the date of the Director's response, the protesting party may file a written reply.
- 3) **Review.** The Chancellor shall:
 - a. Review the protest and any response or reply.
 - b. Request and review any additional documents or information the Chancellor deems necessary to render a decision.
 - c. Give the protesting party and the Director of Strategic Sourcing reasonable opportunity to review and address any additional documents or information requested by the Chancellor.
 - d. At the Chancellor's sole discretion, conduct a hearing.
 - e. Within sixty (60) days of the receipt of the protest, issue a written determination stating the reasons for the decision.
 - f. If additional time is required to investigate the protest, inform the protesting party of the additional time needed to render a determination and obtain the protesting party's consent.
- 4) **"Clearly Without Merit" Determinations.** If the Chancellor determines, upon receipt, that the protest is clearly without merit and does not stay the procurement, the Chancellor shall immediately issue the decision as required by Subparagraph a. below.
 - a. **Settlement.** The Issuing Office has the authority to settle and resolve bid protests.
 - b. **Decision.** The Chancellor shall promptly, but in no event later than sixty (60) days from the filing of the protest, issue a written decision. The decision shall:
 - 1) State the reasons for the decision.
 - 2) If the protest is denied, inform the protesting party of its right to file an appeal in Commonwealth Court within fifteen (15) days of the mailing date of the decision.
 - 3) If it is determined that the solicitation or award was contrary to law, enter an appropriate order.

The Chancellor shall send a copy of the decision to the protesting party and any other person determined by the Chancellor to be affected by the decision.