

## UNIFORM INSTRUCTIONS TO OFFERORS

### A. Definition of Terms

As used in these Instructions, the terms listed below are defined as follows:

1. “*Attachment*” means any item the Solicitation requires an Offeror to submit as part of the Offer.
2. “*Best and Final Offer*” means a revision to an Offer submitted after negotiations are completed that contains the Offeror’s most favorable terms for price, service, and products to be delivered. Sometimes referred to as a Final Proposal Revision.
3. “*Contract*” means the combination of the Solicitation, including the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer, any Clarifications, and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
4. “*Contract Amendment*” means a written document signed by the Procurement Officer issued for the purpose of making changes in the Contract.
5. “*Contractor*” means any person who has a Contract with a state governmental unit.
6. “*Day*” means calendar days unless otherwise specified.
7. “*eProcurement (Electronic Procurement)*” means conducting all or some of the procurement function over the Internet. Point, click, buy and ship Internet technology is replacing paper-based procurement and supply management business processes. Elements of eProcurement also include Invitation for Bids, Request for Proposals, and Request for Quotations.
8. “*Exhibit*” means any document or object labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
9. “*Offer*” means a response to a solicitation.
10. “*Offeror*” means a person who responds to a Solicitation.
11. “*Person*” means any corporation, business, individual, union, committee, club, or other organization or group of individuals.
12. “*Procurement Officer*” means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
13. “*Solicitation*” means an Invitation for Bids (“IFB”), a Request for Technical Offers, a Request for Proposals (“RFP”), a Request for Quotations (“RFQ”), or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
14. “*Solicitation Amendment*” means a change to the Solicitation issued by the Procurement Officer.
15. “*Subcontract*” means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

16. "State" means the State of Arizona and Department or Agency of the State that executes the Contract.

## **B. Inquiries**

1. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.
2. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.
3. Submission of Inquiries. All inquiries related to the Solicitation are required to be submitted in the State's eProcurement system. All responses to inquiries will be answered in the State's eProcurement system. Any inquiry related to the Solicitation should reference the appropriate solicitation page and paragraph number. Offerors are prohibited from contacting any State employee other than the Procurement Officer concerning the procurement while the solicitation and evaluation are in process.
4. Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
5. No Right to Rely on Verbal or Electronic Mail Responses. An Offeror shall not rely on verbal or electronic mail responses to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.
6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
7. Pre-Offer Conference. If a pre-Offer conference has been scheduled under the Solicitation, the date, time and location shall appear in the State's eProcurement system. Offerors should raise any questions about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a Solicitation Amendment.
8. Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

## **C. Offer Preparation**

1. Electronic Documents. The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the State's eProcurement system. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offeror's electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .doc and .docx (Microsoft Word), .xls and .xlsx (Microsoft Excel), .ppt and .pptx (Microsoft PowerPoint) and .pdf (Adobe Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.
2. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer in the State's eProcurement system and shall include a

signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as a signature, shall result in rejection of the Offer.

3. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in the State's eProcurement system in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
  - 3.1. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.
  - 3.2. Request for Proposals. All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An Offer that takes exception to any material requirement of the solicitation may be rejected.
4. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
5. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
6. Federal Excise Tax. The State is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.
7. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number as part of the Offer.
  - 7.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this Contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
8. Identification of Taxes in Offer. The State is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the Solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.
9. Disclosure. If the person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall set forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
10. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

11. Federal Immigration and Nationality Act. By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have five days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.
12. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the Offer.

**D. Submission of Offer**

1. Offer Submission, Due Date and Time. Offerors responding to a Solicitation must submit the Offer electronically through the State's eProcurement system. Offers shall be received before the due date and time stated in the solicitation. Offers submitted outside of the State's eProcurement system or those that are received after the due date and time shall be rejected.
2. Offer and Acceptance. Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted in the State's eProcurement system with the Offer no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.
3. Solicitation Amendments. A Solicitation Amendment shall be acknowledged in the State's eProcurement system no later than the Offer due date and time. Failure to acknowledge a Solicitation Amendment may result in rejection of the Offer.
4. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
5. Confidential Information. If an Offeror believes that any portion of an Offer, protest, or correspondence contains a trade secret or other proprietary information, the Offeror shall clearly designate the trade secret and other proprietary information, using the term "confidential." An Offeror shall provide a statement detailing the reasons why the information should not be disclosed including the specific harm or prejudice that may arise upon disclosure. The Procurement Officer shall review all requests for confidentiality and provide a written determination. Until a written determination is made, a Procurement Officer shall not disclose information designated as confidential except to those individuals deemed to have a legitimate State interest. In the event the Procurement Officer denies the request for confidentiality, the Offeror may appeal the determination to the State Procurement Administrator within the time specified in the written determination. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information.
6. Public Record. All Offers submitted and opened are public records and must be retained by the State for six years. Offers shall be open and available to public inspection through the State's eProcurement system after Contract award, except for such Offers deemed to be confidential by the State.
7. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or

other official contract form, the Offeror certifies that:

- 7.1. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
- 7.2. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with an applicable federal, state and local laws and executive orders regarding employment.

#### **E. Evaluation**

1. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
2. Taxes. If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the Offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
3. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the Offer for the purpose of evaluating that price.
4. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
5. Disqualifications. An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its Offer rejected.
6. Offer Acceptance Period. An Offeror submitting an Offer under the Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred twenty (120) days from the Best and Final Offer due date.
7. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
  - 7.1 Waive any minor informality;
  - 7.2. Reject any and all Offers or portions thereof; or
  - 7.3 Cancel the Solicitation.

#### **F. Award**

1. Number of Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State.
2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
3. Effective Date. The effective date of the Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

## **G. Protests**

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of the Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the Procurement Officer makes the procurement file available for public inspection. A protest shall include:

1. The name, address, email address and telephone number of the interested party;
2. The signature of the interested party or its representative;
3. Identification of the purchasing agency and the Solicitation or Contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

## **H. Comments Welcome**

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.