

Document	Effective Date
Solicitation Terms & Conditions	08/08/2008
Purchase Order Terms and Conditions	01/01/2009
Special Provisions	01/01/2009

STATE OF COLORADO SOLICITATION INSTRUCTIONS/ TERMS AND CONDITIONS

Requests for Documented Quotes,
Invitations for Bids, Requests for Proposals

Effective August 8, 2008

1. General

1.1 Applicability. Except to the extent modified, supplemented, or replaced in any solicitation by the Procuring Agency, these provisions and terms and conditions apply to a request for documented quotes, invitation for bids, or request for proposals issued by State agencies and State institutions of higher education on the Bid Information and Distribution System (BIDS) for supplies and services. These instructions are intended to summarize the State's procurement process and provide instructions to offerors, but they are not intended to modify procurement statutes and implementing rules.

1.2. Applicability of Current Version; Significant Changes. This version of these provisions applies to any solicitation published on or after the effective date above. This version adds an Environmental Purchasing Preference section to IFB's.

1.3 Definitions.

"BIDS" is the Bid Information and Distribution System used by State Agencies for publication of their solicitations.

"Contract" includes a State contract executed pursuant to State Fiscal Rules,

any purchase order by a State Agency, and any other informal agreement permitted by State Fiscal Rules, unless the context clearly requires another meaning.

"Procuring Agency" is the State Agency that issues the solicitation on BIDS or, in the case of the executed contract or purchase order, the State Agency executing or issuing the purchase order or contract.

"Solicitation" refers to a request for documented quotes, invitation for bids, or request for proposals unless the context requires another meaning.

"State" refers to the State of Colorado.

"State Agency" refers to agencies, departments, and institutions of higher education of the State of Colorado.

"Unless otherwise specified" and "unless otherwise agreed" refers to the Procuring Agency's terms in the solicitation or other instructions to offerors that are inconsistent with these terms and conditions and, when the context requires, the resulting purchase order or contract that are inconsistent with or otherwise modify these terms and conditions.

"Vendor" refers to any person or entity responding to a solicitation, and has the same meaning as "contractor" or "offeror."

1.4 Telephone, E-mail, Facsimile and Electronic Quotes. If permitted by the Procuring Agency, telephone, e-mail, facsimile or other electronic quotations may be submitted in response to requests for documented quotes.

1.5 Late Quotes, Bids, and Proposals.

1.5.1. Vendors submitting quotes, bids, and proposals bear the risk that quotes, bids, and proposals may not arrive within the time required in the solicitation.

1.5.2. Quotes by registered vendors received prior to the time of award may be considered, at the discretion of the Procuring Agency. Vendors are cautioned, however, that State Procurement Rules restrict the authority of the Procuring Agency to consider bids and proposals received after the time specified in the solicitation.

1.6 Present/Former Employee Standards of Conduct -- Disclosures.

Pursuant to sections 24-18-101 and 201, *et. seq.*, C.R.S., and section 24-50-507, C.R.S., former and present public employees and officials may not "be interested" in some State Agency contracts and are prohibited from engaging in certain activities in relation to State contracts. The State reserves the right to void or terminate contracts entered into in contravention of those provisions, or contracts in which a current State employee performs

any contract administration function involving the use of State time or resources or that is otherwise contrary to State law. Notwithstanding the disclosure provisions in section 24-18-201, C.R.S., the State reserves the right to disqualify any quote, bid, or proposal, or void or terminate any contract involving the participation or use of a present or former employee within the meaning of that section where such disqualification or termination is deemed to be in the best interest of the State. At the time of the submission of any quote, bid, or proposal, the contractor shall disclose to the Procuring Agency the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of receipt of quotes, bids, or proposals) participating in development of the quote, bid, or proposal. Further, the contractor shall disclose during contract performance the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of any resulting contract or purchase order).

1.7 Alternative Bids or Offers/Affiliated Vendors. Unless otherwise permitted by the Procuring Agency, alternative bids or proposals by any vendor are not permitted. Unless otherwise permitted by the Procuring Agency, quotes, proposals or bids by affiliated vendors are not permitted except in accordance with this paragraph. An affiliated vendor is one who is controlled or owned by another vendor responding to this solicitation, or owned or controlled by a third person or other entity who controls or owns two vendors responding to this solicitation. "Affiliation" includes one person's having a substantial role in the preparation of offers by two vendors responding to this solicitation. A submission of a quote, bid or proposal in connection with any solicitation represents a certification that the quoter, bidder, or offeror is not affiliated with any known vendor also submitting a quote, bid, or proposal in response to the solicitation, except to the extent the nature of such affiliation is described with particularity. The State reserves the right to disqualify any quote, bid, or proposal by, or void any resulting purchase order or contract with, any vendor responding to a solicitation in violation of this provision or the following certificate of independent price determination.

1.8 Certificate of Independent Price Determination. Except as otherwise disclosed with particularity, through its submission of a quote, bid, or offer, the vendor certifies that the prices and other terms in the quote, bid, or offer have been arrived at independently without any consultation, communication, agreement with, or knowledge of the contents of the quote, bid, or offer by, any other competing vendor. For purposes of this paragraph, "consultation, communication, agreement with, or knowledge" does not include knowledge of prices or terms gained through availability of established price lists or catalogues made available to the public by the competing vendor.

1.9. Submission of Quotes, Bids and Proposals. Unless otherwise specified in the solicitation, any written bid or proposal must be signed by an individual authorized to bind the vendor. Vendors are requested to use any signature/cover sheet included as an attachment to the solicitation by the Procuring Agency. Otherwise, include with the signature page at least the name of vendor, federal employer identification number (FEIN/tax ID), address, point-of-contact, and telephone number. In IFBs and RFPs, comply also with the requirements in section 3.3, Bid Return Format. The vendor's signature represents vendor's acknowledgment that it has received all attachments referred to on the BIDS solicitation pages, and all solicitation modifications posted on BIDS through the date established for receipt of quotes, bids, or proposals.

1.10. Specifications; Samples; Brand Name or Equal. Specifications are provided to identify the product/service required and to establish an acceptable quality level. Bids on products of equal quality and usability will normally be considered unless otherwise stated. The State will be the sole judge in determining "equals" in regard to quality and performance.

1.10.1. Failure to furnish brochures, specifications, and/or samples as requested may be sufficient cause to consider a quote unacceptable or a bid non-responsive.

1.10.2. Samples of product(s), when required, must be furnished free of expense to the State Agency, and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the bidder's expense.

1.10.3. A brand name or equal specification means that the brand name is for the purpose of describing the standard of quality, performance, and characteristics desired. Unless otherwise specified, information to address equivalent substitutes in brand name or equal descriptions must include published information -- such as brochures, descriptions, or other information made available in the general course of the vendor's business -- that demonstrates: equivalent functionality in terms of significant (or other specified, e.g. form, fit, or function) performance characteristics; similar duration and scope of warranty protections; comparable experience with the same, similar, or predecessor product line; and an adequate period (or minimum period specified in the solicitation) of customer support experience to demonstrate a comparable acceptable level and availability of customer support. The determination of whether a proposed substitute is acceptable is totally within the discretion of the Procuring Agency

1.11. Number of Awards. Unless otherwise specified in the solicitation, the Procuring Agency may award individual line items to different vendors or

otherwise make multiple awards to vendors who, in the Procuring Agency's judgment, best satisfy the requirements consistent with the award criteria in the solicitation.

1.12. Vendor Inquiries. Vendors may make written or, if permitted by the Procuring Agency, e-mail or fax inquiries concerning this solicitation before the date and time indicated for receipt of quotes, bids, or offers. Send all inquiries to the point-of-contact indicated on the BIDS solicitation. Responses to vendor's inquiries amending or clarifying invitations for bids or requests for proposals will be made in writing by the Procuring Agency and posted on BIDS. Vendors may not rely on any other statements, written or oral, that alter any specification or other term or condition of the solicitation. It is incumbent upon offerors to carefully and regularly monitor BIDS notifications for any such postings.

1.13 BIDS Registration. Unless a limited competition procedure is used by the State Agency in accordance with the Procurement Rules, a vendor must be currently registered on BIDS at the time specified by a Procuring Agency for receipt of quotes, bids or proposals for its bid or proposal to be considered responsive. BIDS registration is not required for responding to requests for information or solicitations not required by the Procurement Rules to be placed on BIDS, e.g. discretionary use of documented quotes for acquisition of services less than \$25,000 and commodities less than \$10,000.

1.14. Protest. A protest of any portion of a State Agency solicitation must be submitted in writing to the Procuring Agency, in accordance with Title 24, Article 109, C.R.S., as amended. Vendors must protest within seven (7) working days after becoming aware of the facts giving rise to the protest. The requirement for timely (seven working days) submission of any protest relating to award will begin on the first working day following posting of the award notice on BIDS, or on receipt of any other award notice issued by the Procuring Agency, whichever is earlier.

1.15. Cancellation of Solicitation. Pursuant to Procurement Rule R-24-103-301, State Agency solicitations may be canceled or any or all quotes, bids or proposals rejected when it is in the best interests of the State.

2. Documented Quotes

2.1 Applicability. Except as replaced, modified or supplemented by the Procuring Agency in the solicitation, these procedures apply to any solicitation identified on the solicitation as a "request for documented quotes" or a "documented quote" issued by a State Agency.

2.2 Description. The documented quote process is a State small purchase

procedure that is informal but results in awards that are most advantageous to the State.

2.3 Responsiveness of Quotations.

2.3.1. Vendors must furnish the samples (if required) and other information necessary to provide the Procuring Agency with information sufficient to evaluate the price, acceptability of the supply or service, equivalency of substitutes in brand name or equal descriptions, or other factors being considered in the evaluation of quotations.

2.3.2. Unless otherwise specified, information to address delivery terms must describe the time for delivery, terms for transportation (e.g. F.O.B. terms), any unusual or unique packing and handling provisions, or any other delivery and shipping terms.

2.3.3. The Procuring Agency may, but is not required to, contact quoting vendors to obtain additional or missing information and to clarify aspects of the quote as deemed necessary to determine the acceptability of the quote. The Procuring Agency may reject as unacceptable quotes from vendors not registered on BIDS at the time set for receipt of quotes, quotes that do not provide sufficient information to permit their evaluation, or quotes that do not meet the minimum requirements in the solicitation.

2.4. Award

2.4.1. In the case of goods or services, the award will be made to the quote determined by the Procuring Agency to be the most advantageous to the State, price/cost being the primary consideration. The determination of whether the quote is acceptable and meets the minimum requirements of the solicitation is solely within the discretion of the Procuring Agency. No formal evaluation system or methodology is required for any documented quote process.

2.4.2. Small purchases of services (less than or equal to \$25,000) and goods (less or equal to \$10,000) are not subject to the Procurement Rule procedures for documented quotes. If BIDS is used by State Agencies in obtaining quotes for goods or services below those thresholds, the selection of the vendor is within the absolute discretion of the Procuring Agency.

2.4.3. The award notice will be posted on BIDS for any solicitation posted on BIDS.

3. Invitation for Bids and Requests for Proposals

Except as replaced, modified or supplemented in the solicitation, the following provisions apply to invitations for bids and requests for proposals issued by State Agencies. For simplicity, unless the context requires another meaning, the term "bid" or "bidder" in this section 3 refers to a bid submitted in response to an invitation for bids (IFB) and a proposal submitted in response to a request for proposals (RFP), both of which are considered "offers."

3.1. Information Required. Bidders shall furnish all the information required to be submitted at the time of bid submission. Bidders are expected to examine the drawings, specifications, schedule of delivery and all instructions. Should the bidder find any part of the listed specifications or terms and conditions to be discrepant, incomplete or otherwise questionable in any respect, it shall be the responsibility of the bidder to call such matters to the attention of the purchasing agent immediately. Failure to do so will be at the bidder's risk. Amendments to this solicitation will be official only furnished, in writing, by the state Procuring Agency. Bidders shall not rely on verbal statements that alter any specification or other term or condition of the solicitation.

3.2. Products/Services Provided. The bidder shall furnish the products and/or services in strict accordance with the specifications, and at the price set forth for each item. All products quoted shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.

3.3. Bid Return Format for Written Responses. Written IFB and RFP responses shall be submitted in a sealed envelope and in accordance with the instructions by the Procuring Agency in the solicitation. The IFB or RFP number and the opening date and time should be written in the lower left corner of the envelope. If the bid package is too large to be submitted in a bid envelope, a bid envelope should be affixed to the outside of the sealed bid package.

3.4. Valid Bid Period. Bids shall be firm for a period of no less than thirty (30) calendar days after the opening of the bids, unless otherwise specified in the solicitation. Proposals submitted in response to a request for proposal shall be firm for a period of not less than ninety (90) calendar days, unless otherwise specified in the solicitation.

3.5. Discounts. Discounts offered for payment within less than thirty (30) calendar days will not be considered in evaluating offers for award, unless otherwise specified. Discounts of less than thirty (30) calendar days will be taken if payment is made within the discount period, even though not considered in evaluation of the bid.

3.6. Bid Acceptance/Obligation. The State of Colorado reserves the right to

reject any or all bids and to waive informalities and minor irregularities in bids received and to accept all or any portion of the bid, deemed in the best interest of the State and not contrary to law. This solicitation implies no obligation on the part of the State Agency to pay any costs incurred in the preparation or the submission of bids or proposals, or to purchase or contract for products or services offered, nor does the State Agency's silence imply any acceptance or rejection of any offer.

3.7. Modification or Withdrawal of Proposals. Bids or proposals may be modified or withdrawn by the vendor prior to the established due date and time for receipt of offers.

3.8. Evaluation and Award.

3.8.1. In the case of competitive sealed proposals (RFP), the State reserves the right to make an award on receipt of initial proposals, so offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Proposals requiring major revision in order to be susceptible of award, or otherwise not meeting the mandatory or other requirements required for further consideration as specified in the RFP, may be classified as unacceptable and shall be ineligible for further consideration. The State may conduct discussions with offerors in the competitive range for the purpose of promoting understanding of the state's requirements and the offeror's proposal, to clarify requirements, and to make adjustments in services to be performed and in prices. Revisions to proposals, if permitted, will be requested in writing or electronically from offerors.

3.8.2. Award of a contract as a result of an IFB will be made to the low responsive and responsible bidder. For a competitive sealed proposal award (RFP), award will be made to the responsible offeror whose proposal is determined to be most advantageous to the State, price and other factors considered, in accordance with the criteria described in the RFP.

3.8.3. In the case of IFBs, if low tie bids are received, in accordance with section 24-103-202.5, C.R.S., resident bidders shall be given a preference over nonresident bidders. If low tie bids are among resident bidders or nonresident bidders, the procurement officer will use the procedure in Procurement Rule R-24-103-202.5-01 to determine the award, after notice to the interested vendors. Any bidder who wishes to be considered a "resident" bidder for purposes of section 24-103-202.5 shall include with its bid proof that the vendor meets the definition of "resident bidder" set forth in section 24-103-101(6), Colorado Revised Statutes.

3.9. Requirement for Valid Contract. The State Agency will not be responsible for any products delivered or services performed prior to

issuance of a purchase order signed by an authorized representative of the State Agency's purchasing department, or a contract signed by a duly authorized representative of the State Agency and approved by the State Controller or designee.

3.10. Vendor Forms. In the event bidder's form(s) or part(s) of forms are included as an attachment(s) bidder agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document shall supersede and control over those contained in the bidder's form(s) regardless of any statement to the contrary in a bidder form(s). Unless the State specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

3.11. Environmental Purchasing Preference. In accordance with section 24-103-207.5, C.R.S., titled "Purchasing Preference for Environmentally Preferable Products", bidders responding to this solicitation may seek to qualify for the preference and governmental bodies conducting this solicitation shall award a contract to a bidder who offers environmentally preferable products subject to the conditions in the Procurement Code and Rules.

3.12. Waste Reduction. The State desires and encourages that bids be submitted on recycled paper, printed on both sides. While the appearance of bids and professional presentation is important, unnecessarily elaborate proposals and the use of non-recyclable or non-recycled glossy paper is discouraged.

4. Purchase/Contract Terms and Conditions.

4.1. Except as replaced, modified, or supplemented by the terms of the solicitation, a purchase order or a State contract executed between the procuring agency and vendor, an award will be governed by provisions in the Purchase Order Terms and Conditions that follow.

4.2. The State reserves the right to negotiate and clarify the terms and conditions where there is no appreciable affect on price/cost, quality, delivery, or other performance.

4.3. Except as replaced, modified, or supplemented by the procuring agency, the following insurance provision is specified in accordance with paragraph 19 of the Purchase Order Terms and Conditions for all IFBs and

RFPs involving services on State property (unless incidental to the delivery of a supply or good), or having services separately priced in excess of \$50,000:

- A. The contractor shall obtain, and maintain at all times during the term of the contract, insurance in the following kinds and amounts:
- 1) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.
 - 2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - a. \$1,000,000 each occurrence;
 - b. \$1,000,000 general aggregate;
 - c. \$1,000,000 products and completed operations aggregate; and
 - d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.
 - 3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
 - 4) Professional liability insurance with minimum limits of liability of not less than \$_____. (To be specified in the solicitation.)
- B. The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
- C. The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.
- D. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
- E. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
- F. The contractor shall provide certificates showing insurance coverage required by the contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the

contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of the contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

- G. Notwithstanding subsection A of this section, if the contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of the contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

4.4 Software Piracy Prohibition. No State or other public funds payable under any contract or purchase order executed as a result of a solicitation shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Vendor certifies that, for the term of any purchase order or contract, and any extensions, the Vendor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Vendor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under the contract or purchase order, including, without limitation, immediate termination of the contract or purchase order and any remedy consistent with United States copyright laws or applicable licensing restrictions.

4.5. State law limits the use of purchase orders and requires contracts that include services priced at more than \$100,000, or supply/commodity contracts exceeding \$100,000 in value and including unpriced services not incidental to the transaction, to be bilaterally executed, reviewed by the Attorney General, and approved by the State Controller or his designee. Fiscal Rule 3-1, 1 Code of Colorado Regulations Section 101-1. The Special Provisions following the Purchase Order Terms and Conditions are required by State law to be included in State contracts, and the Special Provisions govern over any other terms and conditions in the solicitation, including the provisions in the Purchase Order Terms and Conditions to the extent they are inconsistent.

Purchase Order Terms and Conditions

Effective January 1, 2009



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STATE OF COLORADO SPECIAL

PROVISIONS

Effective January 1, 2009

State Contracts and Colorado Special Provisions

Under State law, bilateral State Contracts must be used in lieu of a purchase order for transactions including services priced at more than \$100,000 or for supply/commodity contracts exceeding \$100,000 in value and including unpriced services not incidental to the transaction. In State Contracts, the Colorado Special Provisions attached are required by the Colorado Code of Federal Regulation, Fiscal Rule 3-1, 1 CCR 101-1. The provisions in the Special Provisions govern in the event of conflict or inconsistency with any other term or condition in the solicitation or the vendor's offer.



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