**Section 1.2005 General Provisions**

a) Solicitation Response

A solicitation may contain forms that must be returned or may require compliance in a prescribed format. If a form or format is prescribed, prospective vendors shall submit as instructed.

1) The date and time paper bids, offers, responses or submissions are received shall be recorded. The paper bids, offers, responses or submissions shall be stored in a secure manner (e.g., locked filing cabinet, locked desk, or locked room with access to the secure location limited to known persons) by the person responsible for receiving the paper bids, offers, responses or submissions.

2) The SPO and State agencies shall maintain the confidentiality of bids, offers, responses or submissions. No information within bids, offers, responses or submissions received shall be disclosed to anyone prior to opening. State employees may confirm receipt of the bid, offer, response or submission to the bidder, offeror, respondent or vendor.

3) If a paper bid, offer, response or submission is opened for identification purposes or in error, the procurement file shall include a signed statement explaining the reason for the mistake or error, including the name of every person involved. The paper, response or submission shall be resealed until the time set for the opening of the solicitation.

b) Late Bids, Proposals, Responses, Submissions, Quotes, Withdrawals, Modifications, and Other Documents, Entries or Emails

1) Any bid, proposal, response or quote (including any modification, withdrawal or other procurement-related submission) received after the due date and time for receipt, or at other than the specified location, including eProcurement or the specified email address if applicable, is late. A submission that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered. State employees shall not be responsible for ensuring subsequent delivery of misdelivered items. State employees shall not be responsible for failed submissions in the eProcurement system. Delivery at the specified location and time shall be the sole responsibility of the bidder or offeror.

2) No late procurement-related submission will be considered unless the SPO, and not a designee, determines it would have been timely but for the action or inaction of State personnel directly serving the procurement activity (e.g., providing the wrong address) or a system outage of the eProcurement system. It is the responsibility of the bidder, offeror, respondent or vendor to ensure delivery at the time and to the place specified. Bidders, offerors, respondents or vendors submitting a late bid, proposal, response or quote will be notified and given the opportunity to retrieve the submission at their cost. Late submissions not returned to the vendor will be destroyed after all related procurement activity is complete and the resulting contract has been executed.

3) Records shall be made and kept for each late bid, proposal, response, quote, modification or withdrawal.

4) Any other submission, document or entry in the Bulletin or by email that relates to a bid, proposal, response, submission or quote that has a time or date deadline shall be treated in the same manner as a late bid, proposal, response, submission or quote.

c) Extension of Solicitation Due Date

1) The SPO may, prior to the date or time for submitting or modifying a bid, proposal, response, submission or quote, extend the date or time for the convenience of the State.

2) The SPO may, 72 hours prior to the time for submitting a bid, proposal, or response, allow modification to the solicitation for the convenience of the State. If notice of a modification to a solicitation cannot be made at least 72 hours in advance of the time the response is due, the solicitation shall be cancelled and reissued or the SPO shall extend the time to respond for a reasonable period of time.

3) All notices under this subsection (c) will be provided electronically and posted on the Bulletin.

d) Bid/Proposal/Response/Submission Firm Time

1) Unless otherwise provided in the solicitation, the vendor's bid/proposal/response/submission must be kept firm for at least 30 days after the opening date.

2) After opening bids, proposals, responses or submissions, the SPO may request bidders, offerors, respondents or vendors to extend the time during which the State agency may accept the bids, offers, responses or submissions, provided that, with regard to bids, no other change is permitted. This extension shall not exceed 180 days after the opening and does not provide an opportunity for others to submit bids, offers, responses or submissions.

e) Electronic Submissions

1) The solicitation or small purchase request for quotation may state that electronic submissions will be considered if they are received at the designated location (e.g., eProcurement system or email) by the time and date set for receipt. Any required attachments will be submitted as stated in the solicitation or small purchase request for quotation.

2) Electronic submissions authorized by specific language in the solicitation or small purchase request for quotation will be opened in accordance with State electronic security measures in effect at the time of opening.

f) Intent to Submit

The solicitation may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid, offer, or response for the solicitation. Bids, offers, or responses submitted without complying with the notice of intent requirement may be rejected.

g) Only One Bid, Proposal, Response, Quote, or Submission Received

If only one bid, proposal, response, quote, or submission is received, and if it meets all requirements, the SPO may award to the single bidder, offeror, respondent, or vendor if the price submitted is fair and reasonable, and other prospective bidders, offerors, respondents, or vendors had reasonable opportunity to respond or there is not adequate time for resolicitation or publication of another request for quote. Otherwise, the SPO may cancel the solicitation. Publication of the solicitation or request for quote in the Bulletin creates a presumption that other prospective bidders, offerors, respondents, or vendors had reasonable opportunity to respond.

h) Alternate or Multiple Bids, Proposals or Responses

1) Alternate bids, proposals or responses may be accepted if:

A) permitted by the solicitation and in accordance with instructions in the solicitation; or

B) only one vendor responded, in which case the alternate submission may be evaluated and treated in accordance with Section 1.2025 (Sole Economically Feasible Source Procurement); or

C) the low bidder, or best qualified offeror, who has met all requirements of the solicitation has provided a lower cost or better value alternative that meets all of the material requirements of the solicitation.

2) Multiple bids, proposals or responses may be accepted if permitted by the solicitation and submitted in accordance with instructions in the solicitation.

i) Multiple Items

A solicitation may call for pricing of multiple items of similar or related type. Award shall be as specified in the solicitation based on an individual line item, a group total of certain items, a core list, a "market basket" of related items representative of the total requirement, a grand total of all items, or other grouping method.

j) "All or None" Bids or Proposals

All or none bids or proposals may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted. If the bidder or offeror restricts acceptance of the bid or offer, or a portion thereof, by such a statement as "all or none", the bidder or offeror has "qualified" the bid or offer, which may render the bid or offer non-responsive.

k) Conditioning Bids or Proposals Upon Other Awards

Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall be rejected.

l) Unsolicited Bids, Offers or Responses

An award may not be made based on an unsolicited bid, offer, response or submission in place of the notice and competition requirements of the Code and this Part, unless otherwise provided in joint and cooperative purchasing.

m) Clarification of Bids, Proposals, Responses, Submissions or Quotes

The SPO, or State agency with SPO approval, may request that a vendor clarify its bid, proposal, response, submission, or quote as a part of the evaluation process. For example, the vendor may be asked where information that relates to a mandatory or desired specification may be found in the vendor's bid, proposal, response, submission or quote. A vendor shall not be allowed to change its bid, proposal, response, submission or quote in response to a request for clarification. A clarification is not an opportunity to make changes or for submission of best and finals offers as authorized elsewhere in this Part.

n) Assignment, Novation or Change of Name

1) Assignment. No State contract is transferable, or otherwise assignable, without the prior written consent of the CPO-GS or SPO, provided, however, that a vendor may assign their receivables under a contract after due notice to the State. The assignee, except in the case of assignment for payment only, must meet all requirements for contracting with the State. Any purported assignment without prior written consent shall be null and void.

2) Recognition of a Successor in Interest; Novation. With the exception of real property leases, when in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:

A) the transferee assumes all of the transferor's obligations;

B) the transferee meets all requirements for contracting with the State; and

C) the transferor waives all rights under the contract as against the State; and

D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the State, furnish a satisfactory performance bond.

3) Real Property Leases Successor in Interest; Declaration. When in the best interest of the State, a successor in interest may be recognized in a signed declaration in which the transferee agrees that:

A) the transferee assumes all of the transferor's obligations;

B) the transferee meets all requirements for contracting with the State; and

C) the transferee will provide disclosures of ownership interests in the real property in a manner prescribed by the CPO-GS.

4) Change of Name. A vendor may submit to the SPO a written request to change the name in which it holds a contract with the State. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor.

o) Contracting for Installment Purchase Payments, Including Interest

Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

p) Incorporation by Reference

A solicitation may incorporate documents by reference provided that the solicitation specifies where the documents can be obtained.

q) Use of Source Selection Method that is Not Required

If a purchasing agency uses a method of source selection that it is not, by law, required to use (e.g., use of a competitive sealed bid for a small purchase or a sole source for a small purchase with sole source conditions), the purchasing agency is bound to compliance with the Code and this Part governing the method of source selection used.

r) Vendor Signature

A bid or proposal submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the SPO within the time specified by the SPO.

s) Stringing

1) Stringing of procurements is prohibited.

2) "Stringing" includes:

A) Dividing or planning procurements, including treatment of different facilities of the State agency as having separate procurements for the same need, with the intent to avoid use of competitive procedures.

B) Dividing the procurement of supplies or services that comprise a system, project, or other foreseeable need with the intent to avoid competitive procurement requirements.

3) Periodic purchases of similar supplies from several different vendors to maintain inventory is not stringing unless the purchases are planned to avoid the use of competitive procedures.

t) Confidential Data

A vendor must clearly identify, by page and paragraph, any information submitted to the State claimed to be exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] (FOIA), including information the vendor claims is a trade secret or other competitively sensitive, confidential or propriety information belonging to the vendor.

1) The vendor must identify the basis of the claim of confidentiality or exemption from FOIA and show how that basis applies to the request for confidentiality or exemption. Information submitted without a claim of confidentiality or exemption from FOIA may be disclosed to the public without notice or permission.

2) A State agency in receipt of a FOIA request shall attempt to provide reasonable notice and opportunity to a vendor claiming an exemption under FOIA or claiming the information should not be provided due to trade secret or competitively sensitive, confidential or proprietary information to object prior to disclosure of any material.

3) Information submitted with a claim of confidentiality or exemption from FOIA may still be disclosed to the public if determined by a court or the Public Access Counselor for the Illinois Attorney General that the claim of confidentiality or exemption from FOIA does not meet the requirements for withholding the information under FOIA.

u) Notice of Subcontractor

1) *Any contract entered into under this* Part *shall state whether the services of a subcontractor will be used. The contract shall include the names and addresses of all known subcontractors with subcontracts with an annual value of more than $50,000, the general type of work to be performed by each subcontractor, and the expected amount of money each will receive under the contract.* [30 ILCS 500/20-120(a)]

2) If, at any time during the term of the contract, a contractor desires to add or change any subcontractors with subcontracts with an annual value of more than $50,000, the contractor shall promptly notify the State agency, in writing, of the names and addresses of the proposed subcontractors, the general type of work to be performed by the proposed subcontractor, and the expected amount of money each new or replaced subcontractor will receive under the contract.

3) No contractor shall change a subcontractor listed in the original bid or proposal, except for documented good cause and with the consent of the SPO.

A) Good cause may include, but is not limited to:

i) failure of the subcontractor to execute a written contract after a reasonable period of time after the written contract is presented to the subcontractor by the contractor;

ii) bankruptcy of the subcontractor;

iii) death or disability of the subcontractor, if the subcontractor is an individual;

iv) dissolution of the subcontractor, if the subcontractor is a corporation or partnership;

v) failure of the subcontractor to meet bond requirements as specified in the solicitation;

vi) subcontractor becomes ineligible to perform on the subcontract because the subcontractor is suspended, debarred or otherwise ineligible to perform;

vii) a series of failures by the subcontractor to perform in accordance with the specifications, terms and conditions of its subcontract;

viii) failure of the subcontractor to comply with a requirement of law applicable to the subcontractor; or

ix) failure or refusal of the subcontractor to perform the subcontract.

B) A request of a contractor for a substitution of a listed subcontractor shall be submitted in writing to the State agency and SPO and shall include the reasons for the request. Approval of the SPO for a subcontractor substitution shall be made in writing and be included in the procurement file.

C) Failure of a contractor to comply with this Section may result in cancellation of its contract or be considered grounds for suspension.

v) Pre-Solicitation Assistance

1) *For purposes of this subsection (v), "business" includes all individuals with whom a business is affiliated, including, but not limited to, any officer, agent, employee, consultant, independent contractor, director, partner, manager or shareholder of a business.* [30 ILCS 500/50-10.5(e)]

2) Prohibited Bidders. Except as provided in subsection (v)(5), Section 50-10.5(e) of the Code prohibits any person or business from bidding or entering into a contract *if the person or business* *assisted an employee of* *the State of Illinois, who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract by reviewing, drafting, directing, or preparing any invitation for bids, request for proposal or request for information or provided similar assistance except as part of a publicly issued opportunity to review drafts of all or part of these documents*. [30 ILCS 500/50-10.5(e)]

3) Non-Prohibited Acts. This Section does not prohibit a person or business from submitting a bid or proposal or entering into a contract if the person or business:

A) Initiated a communication with an employee of the State to provide general information about industry trends and innovations, products, services or industry best practices.

B) Responded to a communication initiated by an employee of the State for the purposes of providing information to evaluate new products, services or technologies.

C) Received or possessed written material obtained from a State employee from public sources, such as through an internet search, or literature packets obtained in conjunction with an event such as a trade show.

D) Provided, at the request of the State, general marketing material or makes a general sales presentation to show the person's qualifications or product capabilities. Material may be personalized for the procuring agency provided any personalization is obtained from publicly available sources.

E) Provided technology supplies or services demonstrated to the State that represent industry trends and innovation and is not specifically tailored to meet the State's needs.

4) Prohibited Acts

A) Specifications. A person or business may not submit specifications to a State agency unless requested to by a State employee. With the exception of standard specifications that a vendor makes available to any potential purchaser, a State purchasing officer or person designated by the SPO must approve a State employee's request for specifications for a particular transaction.

B) Assistance to State Employees. A person or business is prohibited from bidding on a solicitation and from having a contract or subcontract if the person or business assisted an employee of the State agency who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract. Assistance to a State employee may include any of the following:

i) Draft (writes or assists the State with writing all or part of the procurement document);

ii) Review (reads the document or comments on the procurement document or signified approval or disapproval);

iii) Direct (any activity relating to giving instructions or commands or in supervising or overseeing the preparation of the procurement document);

iv) Prepare (any activity relating to organizing or distributing the documents, including through the Bulletin); or

v) Provides similar assistance, e.g., conducting research or providing any advice used in drafting, reviewing, directing or preparing procurement documents.

C) A person (and its affiliated or related entities) that contracts with a State agency to write specifications for a particular procurement may not submit a bid or proposal or receive a contract or subcontract for that procurement.

5) Exceptions. Any person or business who responds to an advertised request for information or other publicly available opportunity to provide information related to the procurement need or to review drafts of all or part of proposed procurement documents shall not be disqualified by virtue of responding to the State's publicly advertised request.

w) Pre-Submission Conference

A pre-submission conference may be conducted to enhance potential vendors' understanding of the procurement requirements. The pre-submission conference shall be announced as part of the solicitation notice. The conference may be designated as "attendance mandatory" or "attendance optional". If there is a reason to limit who may attend the mandatory pre-submission conference, the reason shall be clearly explained in the Pre-submission Conference section of the solicitation document. The pre-submission conference shall be held long enough after the solicitation has been issued to allow potential vendors to become familiar with it, and sufficiently before solicitation opening to allow consideration by vendors of pre-submission conference results in preparing their responses. Supporting documentation of the pre-submission conference shall be supplied to all prospective vendors known to have received a solicitation by posting the information on the Bulletin. Nothing stated at the pre-submission conference shall change the solicitation unless a change is made by written modification to the solicitation. Information conveyed in pre-submission conferences is not reportable under Section 50-39 of the Code, but any amendments resulting from the conference shall be supplied to all those prospective vendors through posting on the Bulletin.

x) Federally Funded Purchases

For purchases funded in whole or in part by United States Government funds, the solicitation will identify the federal statutes and regulations with which the vendor must comply.

y) Evaluation Team. Evaluation team members shall be determined by the State agency, tailored to the particular solicitation, and include, as appropriate, technical or other personnel with expertise to ensure a comprehensive evaluation of offers. Evaluation team members must not have any conflicts of interest or apparent conflicts of interest and must commit to the time to complete all evaluations and attend any necessary evaluation meetings. The State agency's selection of the evaluation team members must be approved by the SPO, taking into consideration any conflicts of interest or apparent conflicts of interest. The evaluation team members may be removed by the SPO for good cause, such as failure to comply with instructions or directions of the SPO or to ensure the integrity of the procurement. The SPO shall state in writing his or her reasons for removing a team member.

z) The procurement file shall include the contract file required by the Code.

(Source: Amended at 46 Ill. Reg. 10208, effective June 2, 2022)