**Section 1.2050 Specifications and Samples**

a) Responsibilities Regarding Specifications

Subject to the SPO's direction, the State agency shall draft the necessary specifications.

b) Procedures for the Development of Specifications

1) All procurements shall be based on specifications that accurately reflect the State's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements and shall be written in such a manner as to describe the requirements to be met, without being unduly restrictive or having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.

2) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.

3) A specification may provide alternate descriptions when two or more design, functional or performance criteria will satisfactorily meet the State's requirements.

4) Article 45 of the Code shall be considered and applied when required or appropriate.

5) *A solicitation or specification for a contract, or a contract, may not require, stipulate, suggest or encourage a monetary or other financial contribution or donation, cash bonus or incentive, or economic investment as an explicit or implied term or condition of awarding or completing the contract.* [30 ILCS 500/20-50]

c) Brand Name or Equal Specification

1) Brand name or equal specifications may be used in a competitive solicitation when:

A) no specification for a common or general use specification or qualified products list is available;

B) time does not permit the preparation of another form of specification;

C) the nature of the product or the nature of the State's requirement makes use of a brand name or equal specification suitable for the procurement; or

D) use of a brand name or equal specification is in the State's best interest.

2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.

3) Unless the State agency determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional or performance characteristics that are required.

4) When a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.

d) Brand Name Only Specification

1) A "brand name only" specification may be used in a competitive solicitation or a request to place an order with a vendor who has a contract that was the result of a multiple award, provided the State agency makes a written request justifying that only the identified brand name item will satisfy the State's needs and the SPO approves in writing the use of the brand name only specification.

2) Brand name alone may be specified in order to fill medical prescription needs, to stock State retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the SPO. A State agency may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.

3) The SPO shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit those sources to achieve whatever degree of competition is practicable. Except in a request to place an order with a vendor who has a contract that was the result of a multiple award, if only one source can supply the requirement, the procurement shall be made under Section 1.2025 (Sole Source or Sole Economically Feasible Source Procurement).

e) Qualified Products List

1) A qualified products list may be developed by the SPO when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy State requirements.

2) When developing a qualified products list, a notice shall be posted to the Bulletin soliciting potential suppliers to submit products for testing and examination to determine acceptability for inclusion in a qualified products list.

3) Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements.

f) Proven Products

The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year prior to the notice date of a solicitation. Specifications may require that the supply or services must have been used in governmental or commercial venues for a specified period of time to be considered.

g) State Required Samples

1) Samples or descriptive literature may be requested when it is necessary to evaluate required characteristics of the items bid. Any required samples must be submitted as instructed in the solicitation, with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.

2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality. Submission of samples will not limit the State's right to require adherence to specifications.

3) No payment will be made for samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. The request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples. If the vendor does not request return of samples not destroyed or consumed by examination or testing, the State agency may use, donate or destroy unused or leftover samples.

4) Unsolicited bid samples or descriptive literature are submitted at the vendor's risk, may or may not be examined or tested, will not be deemed to vary any of the provisions of the solicitation, and may not be utilized by the vendor to contest a decision or understanding with the State agency.

h) Product Demonstration

Subject to the requirements of Section 50-39 of the Code, a vendor may request to demonstrate a product or service. Agreement to allow a demonstration will be solely at the State's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration. No payment will be made for the product demonstration period. The product demonstration will be returned upon request and at the vendor's expense. The request must be made prior to the time of product demonstration with return collect or prepayment provisions and instructions for return accompanying the product demonstration.

i) Specifications Prepared by Other Than State Personnel

Specifications may be prepared by other than State agency personnel, including, but not limited to, consultants, architects, engineers, designers or other drafters of specifications for public contracts when the SPO determines that there will be no conflict of interest involved and is otherwise in the best interest of the State agency. The SPO retains the authority for final approval of the specifications. Contracts for the preparations of specifications by other than State agency personnel shall require the specification writer to adhere to State agency requirements and the terms of the Code and this Part.

j) Pre-Solicitation Request for Information

When the SPO does not have sufficient information about available supplies or services to issue a solicitation, he or she may issue a pre-solicitation request for information inviting vendors to submit non-price information about the availability of specified types of supplies and services. Vendors may be provided an opportunity to comment on the RFI itself and make non-proprietary suggestions as to the scope and information being requested that would facilitate the best possible responses from the vendor community. Public notice of the pre-solicitation request for information shall be published in the Bulletin at least 14 days before the date set for the receipt of information. The submission of information by a vendor in response to a pre-solicitation request for information is not a prerequisite for that vendor to respond to a subsequent solicitation for the types of supplies and services for which information was solicited, and the issuance of a pre-solicitation request for information does not commit the State agency to make any procurement of supplies or services of any kind. Confidential information will not be accepted from a vendor in response to a pre-solicitation request for information. All information received through a pre-solicitation request for information will be available for public review.

k) *State contracts for the procurement of freight, small package delivery, and other cargo shipping and transportation services shall require providers to report, using generally accepted reporting protocols adopted by the Illinois Environmental Protection Agency for that purpose:*

1) *the amount of energy the service provider consumed to provide those services to the State and the amount of associated greenhouse gas emissions, including energy use and greenhouse gases emitted as a result of the provider's use of electricity in its facilities;*

2) *the energy use and greenhouse gas emissions by the service provider's subcontractors in the performance of those services.* [30 ILCS 530/10]

l) Optional Supplies or Services

1) The solicitation shall identify which parts or features of the work are essential and which optional supplies or services may be included in the project.

2) All optional supplies or services must be clearly identified in the solicitation as optional work.

3) The solicitation shall identify how the State agency will evaluate bids, offers, or responses to determine the lowest price bid or most advantageous proposal, for award purposes, by identifying whether optional supplies or services will or will not be included in the price evaluation.

4) A bid, offer, or response may be rejected if the prices, including optional supplies or services, are significantly or materially unbalanced. A bid or offer is significantly or materially unbalanced:

A) when it is based on prices significantly less than the cost for some work and prices that are significantly overstated in relation to the cost for other work; and

B) if there is a reasonable doubt that the bid will result in the lowest overall cost or the best overall value to the State agency, even though it may be the low bid or best value offer.

5) Evaluation of optional supplies or services does not obligate the State agency to use those optional supplies or services. If the State agency adds optional supplies or services not accepted at the time of contract award, a change order must be executed based on the price provided in the bid, offer, or response. Notice of the intent to exercise any optional supply or service must be published in the Bulletin 14 days in advance of exercise of the optional supplies or services.

6) Pricing for any renewal terms identified in the solicitation shall be applied in determining the price. A renewal term is not an optional supply or service.

7) Negotiations are permitted with the lowest responsible bidder or the best value offeror to obtain a reduction in the price of the bid or offer.

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