**Section 4.2005 General Provisions**

a) Method of Source Selection. *Unless otherwise authorized by law, all State contracts shall be awarded by competitive sealed bidding, in accordance with Section 20-10* of the Code, *except as provided* elsewhere in the Code. The CPO‑HE *may determine the method of solicitation and contract for all procurements pursuant to the Code.* The CPO-HE *shall have the sole authority to develop and distribute uniform documents for the solicitation, review and acceptance of all bids, offers and responses and the award of contracts.* [30 ILCS 500/20-5, 20-155]

b) 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 those forms as instructed.

1) All bids/offers received shall be date and time-stamped and stored in a secure manner (e.g., locked file cabinet, safe, locked room, secure electronic portal, or other secure location) by the person responsible for receiving bids and offers.

2) No information regarding bids/offers received shall be disclosed to anyone prior to opening, except as authorized by the SPO. The SPO, in consultation with the university purchasing director, shall determine who is authorized to have information prior to opening. The name and title of the person authorized to have this information and the name and title of the person disclosing the information shall be documented in the procurement file. University personnel may confirm receipt of the bid or offer to the bidder or offeror, but no information is to be given otherwise.

3) If a bid or offer 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 bid or offer shall be re-sealed until the time set for the opening of the solicitation.

c) Late Bids or Proposals, Late Withdrawals and Late Modifications

1) Any bid or proposal (include any modification, withdrawal or other procurement-related submission) received after the time and date for receipt, or at other than the specified location, is late. A submission that is delivered to the wrong location but 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. Delivery at the specified location and time shall be the sole responsibility of the bidder or offeror.

2) No late submission will be considered unless the SPO 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). It is the responsibility of the bidder or offeror to ensure delivery at the time and to the place specified. Vendors submitting a late response 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 or proposal, late modification, or late withdrawal.

4) Any other submission that has a time or date deadline shall be treated in the same manner as a late bid or late proposal.

d) Solicitation Modifications

1) The SPO may, prior to the date or time for submitting a bid or proposal, approve an extension of the date or time for the convenience of the university.

2) The SPO may approve modification to the bid or proposal for reasons other than extending the date or time.

3) If notice cannot be made at least 72 hours in advance of the time the responses are due, the SPO shall approve an extension of time to respond for a reasonable period of time or shall authorize cancellation of the solicitation. The SPO, after consultation with the university, shall determine which action best meets the needs and interests of the university and best promises transparency, competitiveness and other policies of the Code.

4) All notices under this subsection (d) shall be published in the Bulletin.

e) Bid/Proposal Firm Time

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

2) After opening bids or proposals, the SPO may request bidders or offerors to extend the time during which the university may accept the bids or proposals, provided that, with regard to bids, no other change is permitted. This extension does not provide an opportunity for others to submit bids or proposals.

f) Electronic and Fax Submissions and Communications

1) Solicitation responses, notices and other official procurement-related communications may be made in electronic form if stated in the solicitation. The CPO-HE shall establish or approve the use and method of electronic submission. Submissions that must be secure will be opened at the designated date, time and place only by an authorized person.

2) Procurement-related communications that reflect final agreements or settlements in relation to protests, suspensions, debarments or contract matters must be signed by submitting a scanned copy of an original signature or by digital signature using an approved security process. Electronic communications must meet the same substantive requirements as paper communications except as allowed to reflect the different means of communication.

3) *Electronic signatures must meet the minimum security requirements established by the Department of Central Management Services* [5 ILCS 175/25-101(c)] and the accompanying regulations (14 Ill. Adm. Code 105).

4) Fax or email submissions are acceptable for small purchases.

g) Only One Bid or Proposal Received

1) If only one bid or proposal is received, the SPO may award to the single bidder or offeror if the SPO finds:

A) the price submitted is fair and reasonable, and other prospective bidders or offerors had reasonable opportunity to respond; or

B) there is not adequate time for resolicitation.

2) Otherwise the SPO may cancel the procurement.

h) Alternate or Multiple Bids or Proposals

1) Alternate bids or proposals may be accepted if permitted by the solicitation and in accordance with instructions in the solicitation.

2) Multiple bids or proposals 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.

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 or Offers

An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part.

m) Clarification of Bids and Proposals

The university may request that a vendor clarify its bid or proposal as a part of the evaluation process. A copy of the clarification request must be provided to the SPO. A clarification is not an opportunity to make material changes or for submission of best and final offers as authorized elsewhere in this Part.

n) Assignment, Novation or Change of Name

1) Assignment and Novation. All assignments and novations must be in writing. No university contract may be assigned or novation entered into without the prior written consent of the CPO-HE or SPO, provided, however, that a vendor may assign money receivable under a contract after due notice to the State. The assignee or transferee, except in the case of assignment of payment only, must meet all requirements for contracting with the university. Any purported assignment or novation without prior written consent shall be null and void.

2) Recognition of a Successor in Interest; Novation. When in the best interest of the university, a successor in interest may be recognized in a written 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 university;

C) the transferor waives all rights under the contract as against the university, and it is understood that the university does not waive any applicable right or remedy against the transferor unless expressly stated in the Novation Agreement; and

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

3) Change of Name. A vendor may submit to the university a written request to change the name in which it holds a contract with the university. The name change shall not alter the parties, 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

For procurements that are subject to the Procurement Code, if a university 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), the university 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

Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited. Periodic purchases of similar supplies from several different vendors to maintain inventory is not stringing unless the purchases are planned to avoid use of competitive procedures. When the university or SPO identifies three or more purchases of the same item or similar items with a total value exceeding the small purchase limit during any12 month period, the university purchasing director and the SPO shall jointly determine whether the circumstances, including, but not limited to, frequency of purchases, cost of individual purchases and future needs, warrant issuing a competitive or other consolidated procurement.

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 proprietary information belonging to the vendor.

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

2) Information submitted with a claim of confidentiality or exemption from FOIA may still be disclosed to the public if determined under applicable law that the claim or exemption 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)] A subcontract shall include all certifications required by Article 50 of the Code.

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 university, 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. Any substitute subcontractor must meet all requirements of the Code applicable to subcontractors.

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 university and shall include the reasons for the request. Consent of the university for a substitution shall be made in writing and be included in the procurement file.

C) Any substitution of an approved BEP subcontractor must be approved in accordance with 30 ILCS 575 and 44 Ill. Adm. Code 10 as it applies to universities.

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

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) 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 university to provide general information about products, services or industry best practices.

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

C) Provided written material to a university employee obtained 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 university, 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 university that represent industry trends and innovation and is not specifically tailored to meet the university's needs.

F) Asked for clarification on a published solicitation provided:

i) the response did not provide a competitive advantage to the person or business who asked for clarification; and

ii) the question and answer were published to the Bulletin as an addendum to the solicitation.

G) Provided market costs or production time to a person performing construction-related services to help determine the estimated costs and time to complete a construction project.

3) Prohibited Acts

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

B) Assistance to University 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 university who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a contract. Assistance to a university employee may include any of the following:

i) Drafting (writes or assists the university with writing all or part of the procurement document);

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

iii) Directing (giving instructions or commands or in supervising or overseeing the preparation of the procurement document);

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

v) Providing 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 university to write specifications for a particular procurement may not submit a bid or proposal or receive a contract or subcontract for that procurement.

4) Exceptions.

A) 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.

B) The CPO-HE may permit a university to accept a bid or enter into a contract or subcontract with a business that assisted a university in determining need or that assisted in reviewing, drafting or preparing documents related to a bid or contract, provided:

i) The bid or contract is essential to research administered by the university;

ii) The CPO-HE determines it is in the best interest of the university to accept the bid or contract; and

iii) Written approval is provided by the Executive Ethics Commission.

w) Pre-Submission Conference

1) 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". For mandatory pre-submission conferences, a university shall document attendance on a form prescribed by the CPO-HE, which shall include the name of the attendee, the business represented, and the attendee's position within the business.

2) The 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 conference results in preparing their responses.

3) Supporting documentation of the conference shall be supplied to all prospective vendors known to have received a solicitation by posting the information on the Bulletin.

4) Nothing stated at the pre-submission conference shall change the solicitation unless a change is made by written modification to the solicitation. Amendments 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 agency providing the funds, the name of the fund and contact information where interested parties can obtain requirements for contracting in relation to those funds.

y) Evaluation Committee

1) Evaluation committee members shall be determined by the university, tailored to the particular solicitation, and include, as appropriate, technical or other personnel with expertise to ensure a comprehensive evaluation of offers.

2) Evaluation committee members and any technical or other personnel with expertise assisting with the evaluation must not have any conflicts of interest or apparent conflicts of interest and must commit to the time necessary to complete all evaluations and attend any necessary evaluation meetings.

3) Scoring and recommendation of any committee member who does not complete the entire evaluation and scoring will not be considered in determining the final scores.

4) After consultation with the university purchasing director, evaluation committee members may be removed by the SPO for failure to comply with instructions or directions or to ensure the integrity of the procurement. The SPO shall state in writing the reasons for removing a committee member.

5) The SPO has the right to attend all evaluation meetings.

z) Confidentiality and Conflicts

1) To protect the integrity of the procurement process, persons having access to confidential procurement information or participating in the procurement process may be required to execute a confidentiality and conflict of interest form as prescribed by the CPO-HE.

2) Bids and offers and any modifications shall be opened in a manner to avoid disclosing contents to competitors. Until an award recommendation is made, no university personnel or contractual agents, other than the evaluation committee and those assigned to the procurement, may review the bids or offers, except with justification from the purchasing director and approved by the SPO.

3) While the procurement is on-going, a university shall not disclose any information related to the procurement to any other bidder, offeror, or any other person not assigned to the procurement, other than information that was recorded, read and made publicly available at the opening of the bids or offers. After completion of the evaluation and award recommendation, the university may conduct discussions with management and the board of trustees if necessary to obtain approval for award prior to publishing the award in the Bulletin.

(Source: Amended at 43 Ill. Reg. 1781, effective February 15, 2019)