**Section 4.2050 Specifications and Samples**

a) Responsibilities Regarding Specifications

The university shall write the necessary specifications, including the statement of work, subject to the SPO's review and approval. Any dispute with the SPO regarding the statement of work or scope of specifications can be escalated to the CPO-HE.

b) Procedures for the Development of Specifications

1) Specifications shall accurately reflect the university's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements without being unduly restrictive or having the effect of 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 incorporated by reference.

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

4) Article 45 of the Code shall be considered and applied when required or appropriate, including language on reducing barriers to participation by small and diverse vendors.

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, economic investment, or other prohibited conduct as an explicit or implied term or condition for awarding or completing the contract.* [30 ILCS 500/20-50]

6) *As used in this Section, "prohibited conduct" includes requested payments or other consideration by a third party to the university or State agency that is not part of the solicitation or that is unrelated to the subject matter or purpose of the solicitation. "Prohibited conduct" does not include a payment from the vendor that is supported by additional consideration (such as exclusive rights to sell items or rights to advertise), other than the consideration of the State's awarding a contract to purchase goods and services.* [30 ILCS 500/20-50]

7) The solicitation shall identify what specifications are essential and what optional specifications may be included in the project. All options must be identified in the invitation for bid or request for proposal as optional work.

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 university's requirement makes use of a brand name or equal specification suitable for the procurement; or

D) when the university determines that circumstances show this to be the most reasonable type of specification.

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 university determines in writing 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) Where 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 vendor.

d) Brand Name Only Specification

1) A brand name only specification may be used in a competitive solicitation provided the university makes a written request justifying that only the identified brand name item will satisfy the university'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 university retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the SPO. A university 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 university 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. If only one source can supply the requirement, the procurement shall be made under Section 4.2025 (Sole Economically Feasible Source Procurement).

4) The SPO shall provide a quarterly report to the CPO-HE of solicitations conducted using brand name only.

e) Qualified Products List

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

2) When developing a qualified products list, 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 government or commercial venues for a specified period of time to be considered.

g) University 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 and compliance with specifications. Submission of samples will not limit the university'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.

4) Unsolicited 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 university.

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 university's discretion and will not entitle the vendor 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 demonstration period except as agreed to in advance. If the price exceeds the small purchase amount, the product must be acquired under Section 4.2025 of this Part. The product demonstrated 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 University Personnel

As provided in Section 4.2005(v), specifications may be prepared by other than university personnel, including, but not limited to, consultants, architects, engineers, designers and other drafters of specifications for public contracts provided there is no conflict of interest or an exception has been approved in accordance with Section 4.2005(v)(4)(B). Contracts for the preparation of specifications by other than university personnel shall require the specification writer to adhere to university requirements and the terms of the Code, particularly Section 50-10.5, and this Part. The university must inform the SPO of specifications prepared by anyone other than university personnel. The SPO retains the authority for final approval of the specifications. Any dispute with the SPO regarding the statement of work or scope of specifications can be escalated to the CPO-HE.

j) Pre-Solicitation Request for Information

When the university does not have sufficient information about available supplies or services to issue a solicitation, the university, in consultation with the SPO, may issue a pre-solicitation request for information inviting vendors to submit information about the availability of specified types of supplies and services. 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 university 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 part of the publicly available procurement file. An RFI is to be used for information gathering only and is not a vehicle for procuring supplies or services.

k) *When procuring freight, small package delivery, and other forms of cargo shipping and transportation services, appropriate weight shall be given to the requirements of the Transportation Sustainability Procurement Program Act* [30 ILCS 530]*.* [30 ILCS 500/20-165]

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