**Section 500.600 Specifications**

a) Responsibilities Regarding Specifications

The Procurement Officer is authorized to write specifications for procurements for the OAG.

b) Procedures for the Development of Specifications

1) All procurements shall be based on specifications that accurately reflect the OAG's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.

2) Specifications shall not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate OAG needs. All specifications shall be written in such a manner as to describe the requirements to be met, without 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.

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

4) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the OAG's requirements.

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 when the Procurement Officer determines in writing that:

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, not including a brand name specification;

C) the nature of the product or the nature of the OAG'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 OAG'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 Procurement Officer 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 vendor.

d) Brand Name Only Specification

1) Determination. A brand name only specification may be used only when the Procurement Officer makes a written determination that only the identified brand name item or items will satisfy the OAG's needs.

2) Use. 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 Procurement Officer. The OAG 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) Competition. The Procurement Officer 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 500.340 (Sole Economically Feasible Source Procurement).

4) Small and Emergency Procurements. Brand name only specifications may be used when procuring items under the small (Section 500.330) and emergency (Section 500.350 of this Part) provisions.

e) Qualified Products List

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

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

3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.

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) Product Demonstration

Any vendor may request time and space to demonstrate a product or service. Agreement to allow these demonstration will be solely at the OAG'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.

h) Prohibition on Incentives

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 for awarding or completing the contract.

i) Prohibited Bidders and Contractors

1) *No person or business shall bid, offer, or enter into a contract* with the OAG *if the person or business* *assisted an employee of the* OAG*, who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award* an OAG *contract,* *by reviewing, drafting, directing or preparing any invitation for bids, a 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.*

2) *This subsection* (i) *does not prohibit a person or business from submitting a bid or offer or entering into a contract if the person or business:*

A) *initiates a communication with an employee to provide general information about products, services, or industry best practices;*

B) *responds to a communication initiated by an employee of the* OAG *for the purposes of providing information to evaluate new products, trends, services or technologies;*

C) *asks for clarification regarding a solicitation, so long as there is no competitive advantage to the person or business and the question and answer, if material, are posted to the* Auditor General *Bulletin as an addendum to the solicitation* [30 ILCS 500/50-10.5(e)];

D) receives or possesses 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; or

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

3) *Nothing in this Section* *prohibits a vendor developing technology, goods, or services from bidding or offering to supply that technology or those goods or services if the subject demonstrated to the State represents industry trends and innovation and is not specifically designed to meet the State's needs.*

4) *No person or business shall submit specifications to a State agency unless requested to do so by an employee of the State. No person or business who contracts with a State agency to write specifications for a particular procurement need shall submit a bid or proposal or receive a contract for that procurement need.*

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

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