**Section 1300.2010 Competitive Sealed Bidding**

a) Application

Competitive sealed bidding is the required method of source selection except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

b) The Invitation for Bids

1) Use. The IFB is used to initiate a competitive sealed bid procurement.

2) Content. The IFB shall include, at a minimum, the following:

A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information such as the time and place of any pre-bid conference;

B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and

C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

3) Incorporation by Reference. The IFB may incorporate documents by reference provided that the IFB specifies where such documents can be obtained.

c) Bidding Time

Bidding time is the period of time between the date of notice or distribution of the IFB and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is allowed in this Part.

d) Bidder Submissions

1) Bid Form. The IFB shall provide a form that shall include space in which the bid price shall be inserted and that the bidder shall sign and submit along with all other necessary submissions.

2) Bid Samples and Descriptive Literature

A) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

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

e) Public Notice

1) Publication. Every procurement for goods and services in excess of $25,000 that must be procured using an IFB shall be publicized in the Bulletin (see Section 1300.1510).

2) Public Availability. A copy of the IFB shall be made available for public inspection.

3) Distribution. IFB or Notices of the Availability of IFB may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall indicate where IFB may be obtained; generally describe the supply or service desired; and indicate the due date for bids; and may contain other appropriate information such as pre-bid conference data. Where appropriate, the Procurement Officer may require payment of a fee or a deposit for the supplying of the IFB.

f) Pre-Bid Conferences

Pre-bid conferences may be conducted to enhance understanding of the procurement requirements. They shall be announced to all prospective bidders known to have received an IFB. The conference may be designated as attendance mandatory or attendance optional. The conference should be held long enough after the IFB has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparation of bids. Nothing stated in the pre-bid conference shall change the IFB unless a change is made by written amendment to the IFB. Minutes of the conference shall be supplied to all those prospective bidders known to have received an IFB. If the conference is mandatory, the minutes shall be supplied to attendees only.

g) Amendments to Invitations for Bids

1) Form. Amendments to IFB shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the IFB it amends.

2) Distribution. Amendments shall be sent to all prospective bidders known to have received an IFB.

3) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by fax or telephone and confirmed in the amendment.

h) Pre-Opening Modification or Withdrawal of Bids

1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the IFB prior to the time and date set for bid opening. A fax modification or withdrawal, or withdrawal received by telephone prior to the time and date set for bid opening, will be effective if followed in writing.

2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

i) Receipt, Opening and Recording of Bids

1) Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.

2) Opening and Recording

A) Bids and modifications shall be opened publicly or through an electronic procurement system, in the presence of one or more witnesses, at the time, date, and place designated in the IFB. Opening shall be witnessed by a State employee or any other person present, but the person opening bids shall not serve as witness. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer shall be recorded and the name of each bidder read aloud or otherwise made available. The names of required witnesses shall also be recorded at the opening.

B) The winning bid shall be available for public inspection after award, along with the record of the other bids.

3) Confidential Data. The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data or other information, the bid shall be rejected as nonresponsive.

j) Bid Evaluation and Award

1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB, except as permitted in this Section. The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the IFB.

2) Responsibility. Responsibility of prospective contractors is covered by Section 1300.2046.

3) Responsiveness. Section 15-85 of the Code defines *responsive bidder* as *a person who has submitted a bid that conforms in all material respects to the Invitation for Bids.*

A) Product or Service Acceptability. The IFB shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:

i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;

ii) examination of such elements as appearance, finish, taste, or feel; or

iii) other examinations to determine whether it conforms with any other purchase description requirements.

B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the IFB. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (j), bids will be evaluated to determine which bidder offers the lowest cost to the OAG in accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas. While evaluation factors need not be precise predictors of actual future costs, they should be, to the extent possible, reasonable estimates based upon information the OAG has available concerning future use and shall provide for equitable treatment of all bids. Pricing for optional goods or services or for renewal terms may be considered particularly when the pricing for such items or terms is unbalanced when compared to other pricing in the bid.

5) Price Negotiation. This Section permits negotiations with the low bidder to obtain a lower price for the item bid.

k) Documentation of Award

Following award, a record showing the successful bidder shall be made a part of the procurement file.

l) Award to Other Than Low Bidder

1) The Procurement Officer may award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest. The written explanation must be published in the appropriate volume of the Bulletin.

2) This action may be appropriate when the difference in quality of goods or services or speed of delivery is so great as compared to the difference in price, and considering the needs of the OAG, that a best value award is justified. However, if the difference in price is significant, the Procurement Officer may not utilize this provision.

3) The explanation must include:

A) a description of the OAG's needs;

B) a determination that the anticipated cost will be fair and reasonable;

C) a listing of all reasonable and responsive bidders; and

D) the name of the bidder selected, pricing and the reasons for selecting that bidder.

4) The explanation shall be filed with the Legislative Audit Commission and the OAG PPCMB.

m) Publicizing Award

The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. In procurements over the small purchase limit set in Section 1300.2020 of this Part, notice of award shall be published in the Bulletin.

(Source: Amended at 42 Ill. Reg. 13585, effective June 29, 2018)