**Section 1300.2050 Specifications and Samples**

a) Responsibilities Regarding Specifications

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

2) When a written determination is made by the Procurement Officer authorized to prepare the specifications that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, a contract to prepare specifications for OAG use in procurement of supplies or services may be entered into provided the Procurement Officer retains the authority to finally approve the specifications.

3) If a specification for general or common use or a qualified products list exists for an item to be procured under Section 20-20 of the Code (Small Purchases), it shall be used except as otherwise authorized by the CPO. If no such specification exists, the Procurement Officer is hereby granted the authority to prepare specifications for use in such purchases. In an emergency under Section 20-30 of the Code (Emergency Procurements), any necessary specification may be utilized by the Procurement Officer without regard to the provisions of this Subpart.

b) Procedures for the Development of Specifications

1) If a specification for a common or general use item has been developed or a qualified products list has been developed in accordance with this Section for a particular supply or service, it shall be used unless the CPO authorizes use of another specification.

2) 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.

3) 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.

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

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

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 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) Required Characteristics. 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) Nonrestrictive Use of Brand Name or Equal Specifications. 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 bidder.

d) Brand Name Only Specification

1) Use. 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. Brand name alone may be specified in order to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the Procurement Officer.

2) Competition. The Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 1300.2025 (Sole Source Procurement).

e) Qualified Products List

1) Use. A qualified products list may be developed with the approval of the Procurement Officer authorized to develop qualified products lists, 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 representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.

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. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.

g) OAG Required Samples

1) 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 OAG's right to require adherence to specifications.

3) No payment will be made for OAG Required Samples. Samples not destroyed or consumed by examination or testing will be returned upon request at vendor's expense. The request must be made at time of submission with return collect or prepayment provisions and instructions for return of the samples.

h) Product Demonstration

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

i) Specifications Prepared by Other Than OAG Personnel

1) Specifications may be prepared by other than OAG personnel, including, but not limited to, other State personnel, consultants, architects, engineers, designers, and other drafters of specifications for public contracts. Contracts for the preparation of specifications by other than OAG personnel shall require the specification writer to adhere to the Code and OAG requirements.

2) The person who prepared the specifications shall not submit a bid or proposal to meet the procurement need unless the Procurement Officer determines in writing that it would be in the best interest to accept such a bid or proposal from that person and a notice to that effect is provided to the CPO and is published in the Bulletin. The CPO may disapprove that determination.

j) Pre-solicitation Assistance/Specifications Prepared by Other Than OAG Personnel

1) Prior to issuing a solicitation, a Purchasing Officer may issue an RFP to obtain services of any person or business to conduct research, analyze requirements or provide general design or other assistance to help the OAG develop its procurement strategy, specifications and documents and to identify and address other related needs. No services can be obtained to assist the OAG in reviewing, drafting or preparing an RFP or to provide similar assistance.

2) Notice. An RFP shall be published in the Bulletin for at least 7 calendar days. All information received in response to an RFP shall be published in the Bulletin for at least 7 calendar days.

3) The RFP shall contain at least the following:

A) A statement that the OAG is issuing an RFP;

B) A brief description of the office's need; and

C) A statement that the RFP is not a solicitation.

(Source: Amended at 48 Ill. Reg. 2790, effective February 7, 2024)