

## General Conditions and Instructions to Bidders

### 1. Submission of Bids

- a. Bids are requested for the item(s) described in the Invitation For Bids and all the documents referenced in the form (collectively called the IFB). Bidders must complete and properly sign, in ink, the Invitation For Bids form. Bid prices must be typewritten or in ink. Bids that are priced or signed in pencil will be rejected.
- b. The completed and signed Invitation For Bids form, as well as the other documents required by the IFB (collectively referred to as the "Bid"), shall be enclosed and sealed in an envelope which is clearly marked "Bid" and includes the assigned Bid Invitation Number (Shown on the Invitation For Bids form) and the Bidder's vendor number as well as the bid opening date and time. It is the responsibility of each bidder to ensure that its Bid is received at the return address shown on the Invitation For Bids form ("Bid Opening Room") prior to the date and time set for the opening of bids ("Bid Opening Time"), regardless of method of delivery used. No Bid shall be considered if it arrives at the Bid Opening Room after the Bid Opening Time, regardless of reason for the late arrival. In the event that, due to inclement weather, natural disaster, or other cause, the Commonwealth offices are officially closed on the date scheduled for Bid opening, the Bid Opening date shall be automatically postponed until the next Commonwealth business day, unless the Bidders are otherwise notified by the Issuing Office. The Bid Opening time shall remain the same.

All envelopes containing Bids should be clearly marked "Bid" and should include the address of the Bid Opening Room (not the agency central processing location), the assigned Collective Number and the Bid Opening Time. Bids that are timely received in the Bid Opening Room prior to the Bid Opening Time shall be opened publicly in the presence of one or more witnesses at the time and place designated in this IFB for the Bid opening.

- c. Bids must be firm. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB Form, it shall be rejected. The Bid shall also be rejected if the items offered by the Bidder are not in conformance with the specifications as determined by the Commonwealth.
- d. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded items at the price(s) set forth in this Bid at the time(s) and place(s) specified.

### 2. Questions

All questions regarding the IFB must be submitted in writing to the email address of the Issuing Officer provided in the solicitation. While there is no set timeline for the submittal of questions, questions received within 48 hours prior to the bid due date and time will be answered at the discretion of the Commonwealth. All questions received will be answered, in writing, and such responses shall be posted to eMarketplace as an addendum to the IFB. The Issuing Officer shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the IFB or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.

**3. Bidder's Representation and Authorization**

- a. Each Bidder, by making its Bid, understands, represents, and acknowledges that:
- 1) The Bidder has read and understands the terms and conditions of the IFB and the Bid is made in accordance with those terms and conditions.
  - 2) The item(s) offered in the Bid will be in conformance with the specifications referenced on the IFB without exceptions.
  - 3) The price(s) and amount of the Bid have been arrived at independently and without consultation, communication, or agreement with any other contractor, bidder, or potential bidder.
  - 4) Neither the price(s) nor the amount of the bid, and neither the approximate price(s) nor the approximate amount of the Bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before Bid opening.
  - 5) No attempt has been made or will be made to induce any firm or person to refrain from bidding on the contract, or to submit a bid higher than the Bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
  - 6) The Bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
  - 7) To the best of the knowledge of the person signing the Bid for the Bidder, the Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as disclosed by the Bidder in its Bid.
  - 8) Neither the bidder, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth, or any governmental entity, instrumentality, or authority, and if the bidder cannot so certify, then it shall submit, along with the Bid, a written explanation of why such certification cannot be made.
  - 9) To the best of the knowledge of the person signing the Bid for the Bidder, and except as otherwise disclosed by the Bidder in its Bid, the Bidder has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Bidder that is owed to the Commonwealth.
  - 10) The Bidder has not, under separate contract with the Department of General Services, made any recommendations to the Department of General Services concerning: the IFB, the need for the item(s) described in the IFB, or the specifications for the item(s) described in the IFB.

- 11) All information provided by, and representations made by, the Bidder in the Bid are material and important and will be relied upon by the Commonwealth in awarding the contract. Any misstatement shall be treated as fraudulent concealment from the Commonwealth of the true facts relating to the submission of the Bid. A misrepresentation shall be punishable under Section 4904 of Title 18 P.C.S.A.
- b. Each Bidder, by making its Bid, authorizes all Commonwealth agencies to release to the Commonwealth information related to liabilities to the Commonwealth including, but not limited to taxes, unemployment compensation, and workers' compensation liabilities.
- c. If an award is made to the Bidder, the Bidder agrees that it intends to be legally bound to the contract which is formed between the Commonwealth and the Bidder.

#### **4. Prices**

The bid submitted by the successful Bidder will be incorporated into any resulting Contract and the Bidder will be required to provide the awarded item(s) at the prices quoted in its Bid.

#### **5. Approved Equal**

Whenever an item is defined in this IFB by trade name and catalogue number of a manufacturer or vendor, the term 'or approved equal,' if not inserted therewith shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, the Issuing Office will consider Bids for the referenced product only. The term 'or approved equal' is defined as meaning any other make which, in the sole opinion of the Issuing Office, is of such character, quality, and performance equivalence as to meet the standard of quality of products specified for which it is to be used equally as well as that specified. A Bidder quoting on a product other than the referenced product shall: a) furnish complete identification in its Bid of the product it is offering by trade name, brand and/or model number; b) furnish descriptive literature and data with respect to the substitute product it proposes to furnish; and c) indicate any known specification deviations from the referenced product.

#### **6. Alternates**

A Bidder who wants to offer an alternate must notify the Issuing Office in writing, at least five (5) days prior to the scheduled Bid opening, that the Bidder intends to offer an alternate in its Bid. An "alternate" is a product that deviates from the requirements of the specifications in its composition, qualities, performance, size dimension, etc. The written notification from the Bidder must include a complete description of the alternate and must identify the product's deviations from the specifications. Upon receipt of the notification, the Issuing Office will determine whether the alternate is acceptable. If the Issuing Office, in its discretion, determines that the alternate is acceptable, the Issuing Office will issue a change notice to the invitation for bids that revises the specifications. If no change notice is issued revising the specification, a Bid offering the alternate will not be considered for award. If an item or items in the IFB are designated "no substitute," this provision does not apply and no alternate may be proposed by a bidder nor will any alternate be considered by the Issuing Office.

#### **7. New Equipment**

Unless otherwise specified in this invitation for bids, all products offered by Bidders must be new or remanufactured. A 'new' product is one that will be used first by the Commonwealth after it is manufactured or produced. A 'remanufactured' product is one which: 1) has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item; 2) does not, in the opinion of the Issuing Office, differ in appearance from a new item; and 3) has the same warranty as a new item. Unless otherwise specified in this invitation for bids, used or reconditioned products are not acceptable. This clause shall not be construed to prohibit Bidders from offering products with recycled content, provided the product is new or remanufactured.

## **8. Modification Or Withdrawal Of Bid (March, 2007)**

- a. Bid Modification Prior to Bid Opening. Bids may be modified only by written notice or in person prior to the exact hour and date specified for Bid opening.
  - 1) If a Bidder intends to modify its Bid by written notice, the notice must specifically identify the Bid to be modified and must be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the modification to modify the Bid on behalf of the Bidder. The Bid modification must be received in a sealed envelope. The sealed envelope must identify the assigned Collective Number and the Bid Opening Time, and should state that enclosed in the envelope is a Bid modification
  - 2) If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to modify the Bid on behalf of the Bidder. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of an agency employee. (The agency employee will observe the actions taken by the individual to modify the Bid, but will not read the Bid or the modification).
- b. Bid Withdrawal Prior to Bid Opening. Bids may be withdrawn only by written notice or in person prior to the exact hour and date specified for Bid opening.
  - 1) If a Bidder intends to withdraw its Bid by written notice, the notice shall specifically identify the Bid to be withdrawn and shall be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the bid withdrawal to withdraw the bid on behalf of the Bidder. Except as provided in Subparagraph c, below, bid withdrawals received after the exact hour and date specified for the receipt of Bids shall not be accepted.
  - 2) If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to withdraw the Bid on behalf of the Bidder.
- c. Bid Withdrawal After Bid Opening. Bidders are permitted to withdraw erroneous Bids after Bid opening only if the following conditions are met:
  - 1) The Bidder submits a written request for withdrawal.
  - 2) The Bidder presents credible evidence with the request that the reason for the lower Bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an

unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the Bid.

- 3) The request for relief and supporting evidence must be received by the Issuing Office within three (3) business days after Bid opening, but before award of the contract.
  - 4) The Issuing Office shall not permit a Bid withdrawal if the Bid withdrawal would result in the award of the contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the bidder has a substantial interest.
  - 5) If a Bidder is permitted to withdraw its Bid, the Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.
- d. Firm Bid. Except as provided above, a Bid may not be modified, withdrawn, or cancelled by any Bidder for a period of sixty (60) days following the time and date designated for Bid opening, unless otherwise specified by the Bidder in its Bid. If the lowest responsible Bidder, as determined by the Issuing Office, withdraws its Bid prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to the Commonwealth for all costs and damages associated with the re-award or re-bid including the difference between the Bidder's price and the actual cost that the Commonwealth pays for the awarded items.
- e. Clarification and Additional Information. After the receipt of Bids, the Issuing Office shall have the right to contact Bidders for the purpose of seeking:
- 1) Clarification of the Bid which confirms the Issuing Office's understanding of statements or information in the Bid or;
  - 2) Additional information on the items offered; provided the IFB does not require the rejection of the Bid for failure to include such information.

## **9. Rejection of Bids**

The Issuing Office reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid if the best interests of the Commonwealth are thereby served.

## **10. Awards**

Unless all Bids are rejected, and except as otherwise provided by law, award will be made through the issuance of a contract/purchase order in accordance with the method of award. Unless otherwise specified by the Issuing Office in the IFB form the Commonwealth reserves the right to award by item or on a total Bid basis, whichever is deemed more advantageous to the Commonwealth. In cases of discrepancies in prices, the unit price will be binding unless the unit price is obviously in error and the extended price is obviously correct, in which case the erroneous unit price will be corrected. As a condition for receipt of award of a contract/purchase order, the Bidder must be registered in the Commonwealth of Pennsylvania's Vendor Master file. In order to register, bidders must visit the Pa Supplier Portal at

## **11. Tie Bids**

All tie bids will be broken by the Issuing Office.

## **12. Prompt Payment Discounts**

Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Bidder, however, the Issuing Office will take advantage of such offer.

## **13. Bid Protest Procedure**

- a. **Who May File the Protest.** Any Bidder or prospective bidder who is aggrieved in connection with the IFB or award of the contract solicitation or award of a contract may file a protest. Protests relating to cancellation of invitations for bids and protests relating to the rejection of all bids are not permitted. A Bidder is a person that submits a bid in response to the IFB. A prospective bidder is a person that has not submitted a bid in response to the IFB.
- b. **Time for Filing.**
  - 1) If a protest is submitted by a prospective bidder, the protest must be filed before bid opening time or proposal receipt date.
  - 2) If a protest is filed by a Bidder, the protest must be filed within seven days after the protesting Bidder knew or should have known of the facts giving rise to the protest EXCEPT THAT IN NO EVENT MAY A PROTEST BE FILED LATER THAN SEVEN (7) DAYS AFTER THE DATE THE CONTRACT OR PURCHASE ORDER WAS AWARDED. Date of filing is the date of receipt of protest.
  - 3) Untimely filed protests shall be disregarded.
- c. **Form of Protest.**
  - 1) A protest must be in writing and filed with the agency head (or designee) of the purchasing agency.
  - 2) A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal.
  - 3) The protesting party may submit with the protest any documents or information deemed relevant.
- d. **Notice of Protest.** If award has been made, the agency head (or designee) shall notify the successful Bidder or contractor of the protest. If the protest is received before award and substantial issues are raised by the protest, all Bidders who appear to have a substantial and reasonable prospect of winning the award shall be notified and may file their

agreement/disagreement with the purchasing agency within three (3) days after receipt of notice of the protest.

- e. **Stay of Procurement.** The head of the purchasing agency (or designee) shall immediately decide, upon receipt of the protest, whether or not the solicitation or award shall be stayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended. The Issuing Office shall not proceed further with the IFB or with the award of the contract, and shall suspend performance under the contract if awarded, unless the agency head of the purchasing agency makes a written determination that the protest is clearly without merit or that award of the contract/purchase order without delay is necessary to protect the substantial interests of the Commonwealth.
- f. **Procedures.**
- 1) **Contracting Officer Response.** Within fifteen (15) days of the receipt of a protest, the contracting officer may submit a written response to the head of the purchasing agency (or designee). The response may include any documents or information that the contracting officer deems relevant to the protest.
  - 2) **Protesting Party Reply.** Within ten (10) days of the date of the contracting officer response, the protesting party may file a written reply.
  - 3) **Review.** The head of the purchasing agency (or designee) shall:
    - a) Review the protest and any response or reply.
    - b) Request and review any additional documents or information he deems necessary to render a decision.
    - c) Give the protesting party and the contracting officer reasonable opportunity to review and address any additional documents or information requested by the agency head.
    - d) In his sole discretion, conduct a hearing.
    - e) Within sixty (60) days of the receipt of the protest, issue a written determination stating the reasons for the decision.
    - f) If additional time is required to investigate the protest, inform the protesting party of the additional time needed to render a determination and obtain the protesting party's consent.
  - 4) **"Clearly Without Merit" Determinations.** If the head of the purchasing agency (or designee) determines, upon receipt, that the protest is clearly without merit and does not stay the procurement, the head of the purchasing agency (or designee) shall immediately issue the decision as required by Subparagraph h below.
- g. **Settlement.** The Issuing Office has the authority to settle and resolve bid protests.

- h. **Decision.** The head of the purchasing agency (or designee) shall promptly, but in no event later than sixty (60) days from the filing of the protest, issue a written decision. The decision shall:
- 1) State the reasons for the decision.
  - 2) If the protest is denied, inform the protesting party of its right to file an appeal in Commonwealth Court within fifteen (15) days of the mailing date of the decision.
  - 3) If it is determined that the solicitation or award was contrary to law, enter an appropriate order.

The agency head (or designee) shall send a copy of the decision to the protesting party and any other person determined by the agency head (or designee) to be affected by the decision.