



## A. GENERAL PROVISIONS

### A.1. Definitions

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1. "Acquisition" means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act;
- A.1.2. "Bid" means an offer in the form of a bid, proposal, or quote a bidder submits in response to a solicitation;
- A.1.3. "Bidder" means an individual or business entity that submits a bid in response to a solicitation;
- A.1.4. "Solicitation" means a request or invitation by the Chief Procurement Officer or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal, or a request for quotation;
- A.1.5. "Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions to state agencies.
- A.1.6. "Best Value" means tradeoff price between price and performance that provides the greatest overall value benefit under the specified selection criteria.
- A.1.7. "Lowest and Best" means an acquisition based on criteria which include, but are not limited to the following: The lowest total purchase price, the quality and reliability of the product, and the consistency of the proposed acquisition with the OSU/A&M Board of Regents planning documents and announced strategic program direction.

### A.2. Bid Inquiries

All inquiries during the bid and evaluation process must be directed to the Buyer of Record, OSU and the A&M Systems Purchasing Department, by phone at 405-744-5984, fax 405-744-5187, email [purchase@okstate.edu](mailto:purchase@okstate.edu), or if you are responding to an online solicitation please use the associated Question and Answer Board. Contact with the end user, department, or contracted parties during the bid and evaluation process may disqualify bid.

### A.3. Bid Submission

- A.3.1. Submitted bids shall be in strict conformity with the instructions to bidders and shall be submitted with completed information and any other forms required by the solicitation.
- A.3.2. Bidders shall submit only **ONE** response per item and guarantee unit price to be correct
- A.3.3. Any separate agreement that will be required by the bidder must be returned with the initial bid response.

### A.4. Solicitation Amendments

- A.4.1. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the Purchasing Department.

- A.4.2. It is the Bidder's responsibility to check the public website and your registered SciQuest supplier portal frequently for any possible amendments that may be issued. The OSU and A&M System is not responsible for a bidder's failure to download and complete any amendment documents required to complete a solicitation.

#### **A.5. Bid Change**

If the bidder needs to change a bid prior to the solicitation response due date, a new bid shall be submitted to the Purchasing Department with the following statement "This bid supersedes the bid previously submitted" in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

#### **A.6. Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

By submitting a response to this solicitation:

- A.6.1. The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
- A.6.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
  - A.6.1.2. Have not within a three-year period preceding this proposal been convicted of or pled guilty or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - A.6.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.6.1.2. of this certification; and
  - A.6.1.4. Have not within a three-year period preceding this application/proposal had one or more public (Federal, State, or local) contracts terminated for cause or default.
- A.6.2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

#### **A.7. Bid Opening**

- A.7.1. Sealed bids related to Title 61 of the Oklahoma Statutes will be opened by the Oklahoma State University Purchasing Department at the office of the Chief Procurement Officer or designee, 1224 N Boomer Rd, Stillwater, OK 74078 (unless otherwise specified), at the time and date shown on this bid.
- A.7.2. When a public bid opening is requested for sealed bids other than that of Title 61 of the Oklahoma Statutes, the opening will be held at a predetermined location, and only the responding bidder(s) names will be disclosed.

#### **A.8. Open Bid / Open Record**

Pursuant to the Oklahoma Open Records Act, a public bid opening does not make the bid(s) immediately accessible to the public. The procurement or contracting agency shall keep the bid(s) confidential, and provide prompt and reasonable access to the records only after a contract is awarded or the solicitation is cancelled. This practice protects the integrity of the competitive bid process and prevents excessive disruption to the procurement process. The interest of achieving the best value for Oklahoma State University and the A&M System outweigh the interest of vendors immediately knowing the contents of competitor's bids. [51 O.S. § 24A.5(5) and 24A.10]

Additionally, financial or proprietary information submitted by a bidder may be designated by the Chief Procurement Officer as confidential and the procurement entity may reject all requests to disclose information designated as confidential pursuant to 62 O.S. § 34.11.1(H)(2) and 74 O.S. § 85.10. Bidders claiming any portion of their bid as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. It is suggested that the confidential sections be identified in the bid document and those items submitted under separate cover. The Chief Procurement Officer shall make the final decision as to whether the documentation or information is confidential. Otherwise, documents and information a bidder submits as part of or in connection with a bid are public records and subject to disclosure after contract award or the solicitation is cancelled.

#### **A.9. Late Bids**

Bids received by the Purchasing Department after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

## **A.10. Legal Contract**

- A.10.1. Submitted bids are rendered as a legal offer and any bid, when accepted by the OSU and A&M System Procurement Office, shall constitute a contract.
- A.10.2. The Contract resulting from this solicitation may consist of the following documents in order of preference:
  - A.10.2.1. Purchase order, as amended by Change Order (if applicable);
  - A.10.2.2. Solicitation, as amended (if applicable); and
  - A.10.2.3. Successful bid (including required certifications), to the extent the bid does not conflict with the requirements of the solicitation or applicable law.
- A.10.3. Any contract(s) awarded pursuant to the solicitation shall be legibly written or typed.
- A.10.4. Oklahoma law requires each bidder submitting a response to an agency of the State of Oklahoma for goods or services to furnish a signed statement of non-collusion, therefore this bid is INVALID if not signed. This requirement may be satisfied by electronic signature or acknowledgement as permitted by the Chief Procurement Officer.

## **A.11. Pricing**

- A.11.1. Bids shall remain firm for a minimum of one hundred eighty days (180) days from the solicitation closing date.
- A.11.2. Bidders guarantee unit prices to be correct.

## **A.12 Manufacturers' Name and Approved Equivalents**

Unless otherwise specified in the solicitation, manufacturers' names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. Bidder may offer any brand for which they are an authorized representative, and which meets or exceeds the specification for any item(s). However, if bids are based on equivalent products, indicate on the bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their bid. Reference to literature submitted with a previous bid will not satisfy this provision. The bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection.

## **A.13. Clarification of Solicitation**

- A.13.1. Clarification pertaining to the contents of this solicitation shall be directed in writing to the Purchasing Department and the Buyer as specified in the solicitation, and must be prior to the closing date of the solicitation.
- A.13.2. If a bidder fails to notify the Buyer of an error, ambiguity, conflict, discrepancy, omission or other error in the SOLICITATION, known to the bidder, or that reasonably should have been known by the bidder, the bidder shall submit a bid at its own risk; and if awarded the contract, the bidder shall not be entitled to additional compensation, relief, or time, by reason of the error or its later correction. If a bidder takes exception to any requirement or specification contained in the SOLICITATION, these exceptions must be clearly and prominently stated in their response.
- A.13.3. Bidders who believe proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a written request for administrative review to the Buyer listed on the solicitation. This request must be made prior to the closing date of the solicitation.

## **A.14 Negotiations**

- A.14.1. When the solicitation evaluation criteria is Best Value, the OSU/A&M Chief Procurement Officer reserves the right to negotiate with one, selected, all or none of the vendors responding to this solicitation to obtain the best value for the OSU/A&M Universities. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that will mitigate risk. All issues will be considered negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more vendors, for any and all items in the bidder's proposal.

## **A.15. Rejection of Bid**

The Chief Procurement Officer reserves the right to reject any bids that do not comply with the requirements and specifications of the solicitation. A bid may also be rejected when the bidder imposes terms or conditions that would modify requirements of the solicitation or limit the bidder's liability.

#### **A.16. Award of Contract**

- A.16.1. The Chief Procurement Officer may award the Contract to more than one bidder by awarding the Contract(s) by item or groups of items, or may award the Contract on an ALL OR NONE basis, whichever is deemed by the Chief Procurement Officer to be in the best interest of The OSU and A&M Systems.
- A.16.2. Contract awards will be made to the best value bidder(s) unless the solicitation specifies that lowest and best criteria is being used.
- A.16.3. In order to receive an award or payments from the OSU and the A&M Systems, suppliers must be registered. The vendor registration process can be completed electronically through the OSU and A&M Systems Purchasing website at the following link: <http://purchasing.okstate.edu>

#### **A.17. Contract Modification**

- A.17.1. The Contract is issued under the authority of the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges as delegated to the Chief Procurement Officer who signs the Contract. The Contract may be modified only through a written Contract Modification, signed by the Chief Procurement Officer.
- A.17.2. Any change to the Contract, including but not limited to the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Purchasing Department in writing, or made unilaterally by the supplier, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the supplier shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant Contract.

#### **A.18. Delivery, Inspection and Acceptance**

- A.18.1. Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The bidder(s) awarded the Contract shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the bid shall include all such charges. All products and/or services to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the requesting department at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. OSU and the A&M Systems assume no responsibility for goods until accepted by the requesting department at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the supplier until accepted by the receiving agency. The supplier(s) awarded the Contract shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.18.2. Supplier(s) awarded the Contract shall be required to deliver products and services as bid on or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the Purchasing Department.

#### **A.19. Invoicing and Payment**

- A.19.1. Pursuant to 74 O.S. §85.44B, invoices will be paid in arrears after products have been delivered or services provided.
- A.19.2. Payment terms are Net 30 after receipt of goods or services and invoice.

#### **A.20. Tax Exemption**

OSU and A&M acquisitions are exempt from sales taxes and federal excise taxes. Bidders shall not include these taxes in price quotes.

#### **A.21. Audit and Records Clause**

- A.21.1. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with OSU and the A&M Systems, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.21.2. The successful bidder(s) awarded the Contract(s) is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

## **A.22. Non-Appropriation Clause**

The terms of any Contract resulting from this solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the department may terminate its obligations under the contract if sufficient appropriations are not made by the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) department's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.

## **A.23. Choice of Law**

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

## **A.24. Choice of Venue**

Venue for any action, claim, dispute or litigation relating in any way to the Contract shall be in Payne County, Oklahoma or other as designated by the OSU and A&M Systems.

## **A.25. Termination for Cause**

- A.25.1. The supplier may terminate the Contract for default or other just cause with a minimum 30-day written request and upon written approval from the Purchasing Department. OSU and the A&M Systems may terminate the Contract for default or any other just cause upon a 30-day written notification to the supplier.
- A.25.2. OSU and the A&M Systems may terminate the Contract immediately, without a 30-day written notice to the supplier, when violations are found to be an impediment to the function of a department and detrimental to its cause, when conditions preclude the 30-day notice, or when the Chief Procurement Officer determines that an administrative error occurred prior to Contract performance.
- A.25.3. If the Contract is terminated, OSU and the A&M Systems shall be liable only for payment for products and/or services delivered and accepted.

## **A.26. Termination for Convenience**

- A.26.1. OSU and the A&M Systems may terminate the Contract, in whole or in part, for convenience if the Chief Procurement Officer determines that termination is in the OSU and the A&M Systems' best interest. The Chief Procurement Officer shall terminate the Contract by delivering to the supplier a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the Chief Procurement Officer.
- A.26.2. If the Contract is terminated, OSU and the A&M Systems shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the supplier.

## **A.27. Insurance**

When applicable, the successful bidder will be required to maintain such insurance as will protect themselves as well as OSU and the A&M Systems from its contingent liability from claims under Worker's Compensation acts and from any other claims for damage as public liability from operations under this contract, whether such operations are by themselves or any subcontractor or anyone directly or indirectly employed by them. Certificates of such insurance shall be filed with OSU and the A&M Systems before a Purchase Order can be issued, and shall be subject to OSU and the A&M Systems approval of adequacy of protection per the following:

- A.27.1. The Certificate of Coverage will be made to: Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, 1224 N. Boomer Road, Stillwater, OK 74078 unless otherwise specified.
- A.27.2. Minimum coverages will include: General Liability \$1,000,000. Automotive Liability \$1,000,000. Workers Compensation coverage as required by the State of Oklahoma. Other levels of coverage may be required or approved by the Chief Procurement Officer.

## **A.28. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007**

By submitting a bid for services, the bidder certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security and available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

### **A.29. Affidavit of Completion**

When applicable, any contract shall, in lieu of bond, demonstrate by means of an affidavit of payment, of all indebtedness incurred by such contractor or their subcontractor who performs work in performance of such contract, for labor and materials and repairs to and parts for equipment used and consumed in the performance of said contract. The required affidavit will be attached to the purchase order issued to the successful bidder and must accompany the invoicing for final payment.

### **A.30. Compliance with Applicable Laws**

The products and services supplied under the Contract shall comply with all applicable Federal, State, and local laws, and the supplier shall maintain all applicable licenses and permit requirements.

A.30.1. Pursuant to Executive Order 11246 (as amended) Equal Employment Opportunity, all bidders shall complete the "Certificate of Compliance with Executive Order 11246 (as amended)" form for all bids exceeding \$10,000.

**A.30.2. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

A.30.3. If services include the use or disclosure of Patient Health Information (PHI) then a HIPAA Business Associates Agreement will be required prior to the beginning of services.

### **A.31. Requirements for Criminal Background Checks**

The contractor awarded this Solicitation shall be fully responsible for the provision and support of goods and services required hereunder. Any subcontractors shall be approved in writing and in advance by Owner. Contractors and subcontractors and all visitors on campus related to this Contract shall conduct themselves in a professional and courteous manner at all times with Owner's faculty, staff, and students, as well as any other customers, contractors, visitors or other individuals with whom the contractor comes in contact as a result of this contract or in the course of providing goods or services hereunder while working on or visiting the Owner's campus.

A.31.1. If Owner, in its sole discretion, reasonably believes that an employee, agent, or subcontractor of the Contractor assigned to provide goods or services to Owner hereunder has engaged in conduct inconsistent with the requirements herein, Owner may notify the Contractor and the Contractor shall promptly reassign said employee, agent, or subcontractor so that he or she will no longer provide goods or services pursuant to this Contract.

A.31.2. The contractor warrants that it will only assign employees who have passed a criminal background check to perform work hereunder. The background check shall demonstrate the worker has no convictions or pending criminal charges which would render the worker unsuitable to be present on Owner's campus. Disqualifying convictions or charges include, but are not limited to, sexual offenses, violent offenses, and drug offenses.

A.31.3. The contractor warrants it is supplying employees who have passed a background check. Contractor agrees to defend, indemnify, and hold harmless Owner, its officers, directors, agents, and employees for any claims, suits, or proceedings alleging a breach of this warranty.

### **A.32. Information Technology**

A.32.1. If this purchase involves information technology products or services, they must be in compliance with the accessibility to information standard of Section 508 of the Rehabilitation Act of 1973

A.32.2. Pursuant to OAC 260:15, electronic and information technology procurements, solicitations, agreements, and contracts shall comply with applicable Information Technology Accessibility Standards, issued by the Oklahoma Office of Management and Enterprise Services, in effect on the date of issuance of the contract.

### **A.33. Special Provisions**

Special Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

**[END OF SECTION A. GENERAL PROVISIONS]**