

## **GENERAL CONDITIONS FOR NEGOTIATED CONTRACTS**

**ALL PROPOSALS SUBMITTED SHALL BE IN COMPLIANCE WITH ALL CONDITIONS SET FORTH HEREIN AND IN ACCORDANCE WITH THE PROPOSAL FORMAT AND GUIDELINES. THE PROCEDURES FOLLOWED BY THIS OFFICE WILL BE IN ACCORDANCE WITH THESE CONDITIONS. THEREFORE, ALL SUPPLIERS ARE URGED TO READ AND UNDERSTAND THESE CONDITIONS PRIOR TO SUBMITTING A PROPOSAL.**

### **1. PREPARATION OF PROPOSALS**

- 1.1 Proposals may be submitted through the Office of Purchasing, Travel and Fleet Management's State of Mississippi's e-procurement system.
- 1.2 Failure to examine the Proposal Format and Guidelines; any internal catalog spreadsheets; drawings; specifications; and/or instructions will be at supplier's risk.
- 1.3 Commodity. It is understood that only commodities referenced in the Proposal Format and Guidelines will be included on the awarded contract.
- 1.4 Information and Descriptive Literature. Suppliers must furnish all information requested in the Proposal Format and Guidelines. Further, when required, each supplier must submit for all required documentation covering the commodity offered. Reference to literature submitted with a previous proposal on file with the Office of Purchasing, Travel and Fleet Management will not satisfy this provision.
- 1.5 Samples. Samples of items, when requested, must be furnished free of expense, and if not destroyed in testing will, upon request, be returned at the supplier's expense. Request for the return of samples must be made within ten (10) days after the final proposal's submission date, if applicable.
- 1.6 Time of performance. The number of calendar days in which delivery will be made after receipt of order shall be indicated in the Proposal Format and Guidelines, if applicable.

### **2. SUBMISSION OF PROPOSALS**

- 2.1 When submitting a proposal electronically, the authorized signature may be typed or be an electronic signature.
- 2.2 Proposals and modifications or corrections received after the specified deadline will not be considered.

### **3. ACCEPTANCE OF PROPOSALS**

- 3.1 The Office of Purchasing, Travel and Fleet Management reserves the right to reject any and all proposals, to waive any informality in proposals and unless otherwise specified by the supplier, to accept any items on the proposals as well as remove any items from the proposal that do not fall into the specified category.

### **4. AWARD**

- 4.1 Contracts and purchases will be made or entered into with suppliers that meet the Proposal Format and Guidelines.
- 4.2 A contract award will be made upon a signed contract being received from the supplier. The contract shall not be assignable in whole or in part without the written consent of the State.

### **5. INSPECTION**

- 5.1 Final inspection and acceptance or rejection may be made at delivery destination, but all materials and workmanship shall be subject to inspection and test at all times and places, and when practicable. During manufacture, the right is reserved to reject articles which contain defective material and workmanship. Rejected material shall be removed by and at the expense of the contractor promptly after notification or rejection. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the State of Mississippi or any subdivision thereof for such materials or supplies as are not in accordance with the specification. In the event necessity requires the use of materials or supplies not conforming to the specification, payment therefore may be made at a proper reduction in price.

## 6. TAXES

- 6.1 The State is exempt from federal excise taxes and state and local sales or use taxes and suppliers must quote prices which do not include such taxes. Exemption certificates will be furnished upon request. Contractors making improvements to, additions to or repair work on real property on behalf of the State are liable for any applicable sales or use tax on purchase of tangible personal property for use in connection with the contracts. Contractors are likewise liable for any applicable use tax on tangible personal property furnished to them by the State for use in connection with their contracts.

## 7. GIFTS, REBATE, GRATUITIES

- 7.1 Acceptance of gifts from suppliers is prohibited. No officer or employee of the Office of Purchasing, Travel and Fleet Management, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of materials, supplies, or equipment for the State of Mississippi may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future rewards or compensation.
- 7.2 Bidding by state employees is prohibited. It is unlawful for any state official or employee to bid on, or sell, or offer for sale, any merchandise equipment or material, or similar commodity to the State of Mississippi during the tenure of his or her office or employment, or for the period prescribed by law thereafter, or to have any interest in the selling of the same to the State.

## 8. PROPOSAL INFORMATION

- 8.1 Proposal Format and Guidelines information and documents may be examined pursuant to the Mississippi Public Records Act of 1983, MS Code 25-61-1 et seq.

## 9. DEFINITIONS

- 9.1 The use of the word agency in any Proposal Format and Guidelines shall be intended to mean state agencies only. The words "governing authority" when used in any of the above documents shall be intended as meaning county or local entities.

## 10. PRECEDENCE

- 10.1 This proposal shall be made and the contract shall be entered into in accordance with the General Conditions as hereinafter amended and modified. Should a conflict exist between the General Conditions and the Proposal Format and Guidelines the Proposal Format and Guidelines shall take precedence.

## 11. COMPETITION

- 11.1 There are no federal or state laws that prohibit suppliers from submitting a bid lower than a price or bid given to the U.S. Government. Suppliers may bid lower than U.S. Government contract price without any liability as the State is exempt from the provisions of the Robinson-Patman Act and other related laws. In addition, the U.S. Government has no provisions in any of its purchasing arrangements with suppliers whereby a lower price to the State must automatically be given to the U. S. Government.

## 12. WAIVER

- 12.1 The Office of Purchasing, Travel and Fleet Management reserves the right to waive any Proposal Format and Guidelines deviation when considered to be in the best interest of the State.

## 13. CANCELLATION

- 13.1 Any contract or item award may be canceled with or without cause by the State with the giving of 30 days written notice of intent to cancel. Cause for the State to cancel may include, but is not limited to, cost exceeding current market prices for comparable purchases; request for increase in prices during the period of the contract; or failure to perform to contract conditions. The supplier will be required to honor all purchase orders that were prepared and dated prior to the date of expiration or cancellation if received by the Supplier within a period of 30 days following the date of expiration or cancellation. Cancellation by the State does not relieve the Supplier of any liability arising out of a default or nonperformance. If a contract is canceled by the State due to a Supplier's request for increase in prices or failure to perform, that Supplier will be disqualified from bidding for a period of 24 months. The Supplier may cancel a contract for cause with the giving of 30 days written notice of intent to cancel. Cause for the Supplier to cancel may include, but is not limited to the item(s) being discontinued and/or unavailable from the manufacturer.

14. APPLICATION

- 14.1 It is understood and agreed by the Supplier that any contract entered into as a result of this Proposal Format and Guidelines is solely for the convenience of the state agencies and all purchases made by these agencies for products included under the provisions of the contract shall be purchased from the suppliers receiving the award unless exempt by special authorization from the Office of Purchasing, Travel and Fleet Management.

Under the provisions of Section 31-7-7 Mississippi Code of 1972, Annotated, the prices offered herein shall be extended to the governing authorities. However, the governing authorities, by provisions of

Section 31-7-12 Mississippi Code, may purchase products covered by state contracts from any source offering an identical product at a price that does not exceed the state contract price.

Employees of the Office of Purchasing, Travel and Fleet Management have acted exclusively as agents of the State for the award, consummation, and administration of the contract and are not liable for any performance or nonperformance by the state agencies that utilize the contract.

15. NONRESPONSIVE PROPOSALS

- 15.1 Nonresponsive proposals will not be considered. A non-responsive proposal is considered to be a proposal that does not comply with the minimum provisions of the Proposal Format and Guidelines. Any supplier found to repeatedly offer alternate products that are not compliant with the Proposal Format and Guidelines in an attempt to obtain a contract on the basis of pricing only will be disqualified from bidding for a period of 24 months.

16. SPECIFICATION CLARIFICATION

- 16.1 It shall be incumbent upon all bidders to understand the provisions of the Proposal Format and Guidelines and to obtain clarification prior to the time and date set for proposals to be received. Such clarification will be answered only in response to a written request.

17. STATEWIDE AVAILABILITY

- 17.1 It is requested that proposals that are submitted be on the basis of statewide distribution. Suppliers must maintain adequate distribution capabilities and adequate stock of all items to insure prompt delivery.

18. CONTRACT EXTENSION

- 18.1 Automatic contract renewals or extensions are not allowed. Contracts may be extended or renewed with the proper documents signed or approved by the Office of Purchasing, Travel and Fleet Management

19. SUSPENSION AND DEBARMENT

- 19.1 By submitting a proposal, the supplier is certifying that neither the supplier nor any potential subcontractors are debarred or suspended or are otherwise excluded from or ineligible for participation in federal assistance programs.

20. ASSIGNMENT

- 20.1 The Supplier shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the Office of Purchasing, Travel and Fleet Management.

21. INDEMINIFICATION

- 21.1 Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor's and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State; Contractor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.