

GENERAL CONDITIONS – REVERSE AUCTIONS

ALL BIDS SUBMITTED SHALL BE IN COMPLIANCE WITH ALL CONDITIONS SET FORTH HEREIN. THE BID PROCEDURES FOLLOWED BY THIS OFFICE WILL BE IN ACCORDANCE WITH THESE CONDITIONS. THEREFORE, ALL BIDDERS ARE URGED TO READ AND UNDERSTAND THESE CONDITIONS PRIOR TO SUBMITTING A BID.

1. DEFINITIONS

The use of the word “agency” in any Bid Invitation solicitation or specification shall be intended to mean state agencies only. The words “governing authority” when used shall be intended as meaning city, county or other local entities.

2. PREPARATION OF BIDS

- 2.1 Bids and/or Quotes may be submitted through the State of Mississippi’s e-procurement system (MAGIC) or in person to the Mississippi Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management (“OPTFM” or “the State”). Paper bids are allowed. All prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid.
- 2.2 To submit bids electronically, bidders must ensure they are registered in the MAGIC system and have received a login, password, and supplier number and that all technical requirements have been met.
- 2.3 If a bidder is unwilling or unable to participate through MAGIC, an OPTFM representative can enter the Vendor’s bid(s) manually (i.e. Surrogate bidding).
- 2.4 Bidders participating in person by surrogate bidding must so indicate in their response to the initial Request for Quote-Formal (RFQF).
- 2.5 Failure to examine any drawings, specifications, and instructions will be at bidder's risk.
- 2.6 Price each item separately. Unit prices shall be shown. Bid prices must be net.
- 2.7 It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the bidder.
- 2.8 Bidders must furnish all information requested in the bid specifications. Further, when required, each bidder must submit for bid evaluation cuts, sketches, descriptive literature and technical specifications covering the product offered. Reference to literature submitted with a previous bid or on file with OPTFM will not satisfy this provision.
- 2.9 Samples of items, when requested, must be furnished free of expense, and if not destroyed in testing will, upon request, be returned at the bidder's expense. Request for the return of samples must be made within ten (10) days following opening bids. Each individual sample must be labeled with bidder's name, manufacturer's brand name and number, State of Mississippi commodity number, bid number and item reference.

2.10 Time of performance. The number of calendar days in which delivery will be made after receipt of order shall be indicated in the bid specifications.

3. BID SUBMISSION

3.1 When submitting a bid electronically, the authorized signature may be typed or be an electronic signature.

3.2 Bids and modifications or corrections received after the closing time specified will not be considered.

3.3 When submitting the response to the RFQF in MAGIC, bidder must ensure all questions have been answered within the RFQF and all proposed items in bid have a response.

3.4 Bidders submitting paper responses should submit responses to the OPTFM by the response deadline.

4. ACCEPTANCE OF BIDS

OPTFM reserves the right to reject any and all bids, to waive any informality in bids and unless otherwise specified by the bidders, to accept any items on the bid. The State reserves the right to modify or cancel in whole or in part its Invitation for Bids.

If a bidder fails to state the time within which a submitted will expire, it is understood and agreed that the OPTFM shall have 60 days to accept.

5. ERROR IN BID

If a vendor is participating in a Live Auction, the vendor can notify OPTFM in the event of an erroneous bid via the chat message feature. Erroneous bids, where the mistake is apparent to OPTFM, may be deleted during the live auction.

6. SPECIAL DISCOUNT PERIOD

Time in connection with a special discount offered will be computed from date of delivery at destination or from the date correct invoices are received, if the latter date is later than the date of delivery. Cash discounts will not be considered in the award process.

7. AWARD

7.1 Contracts and purchases will be made or entered into with the lowest responsible bidder meeting specifications, except as otherwise specified in the bid specifications. Where more than one item is specified in the specifications, the State reserves the right to determine the low bidder either on the basis of the individual item(s) or on the basis of all items included in its Invitation for Bids, or as expressly provided in the State's Invitation for Bids.

7.2 Unless the bidder specified otherwise in the bid, the State may accept any item or group of items of any kind.

7.3 A written purchase order or contract award furnished to the successful bidder within the time of acceptance specified in the Invitation for Bid results in a binding contract without further action by either party. The contract shall consist solely of these General Conditions, the Instructions and Special Conditions, the successful bidder's bid, and the written purchase order or contract award. The contract shall not be assignable in whole or in part without the written consent of the State.

8. INSPECTION

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 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.

9. TAXES

The State is exempt from federal excise taxes and state and local sales or use taxes and bidders 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.

10. GIFTS, REBATE, GRATUITIES

- 10.1 Acceptance of gifts from bidders is prohibited. No officer or employee of the OPTFM, 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.
- 10.2 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 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.

11. BID INFORMATION

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

12. PRECEDENCE

Bids 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 Instructions and Special Conditions, the Instructions and Special Conditions shall take precedence.

13. COMPETITION

There are no federal or state laws that prohibit bidders from submitting a bid lower than a price or bid given to the U.S. Government. Bidders 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 bidders whereby a lower price to the State must automatically be given to the U.S. Government.

14. WAIVER

OPTFM reserves the right to waive any General Condition, Special Condition, or minor specification deviation when considered to be in the best interest of the State.

15. CANCELLATION

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 Contractor 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 Contractor within a period of 30 days following the date of expiration or cancellation. Cancellation by the State does not relieve the Contractor of any liability arising out of a default or nonperformance. If a contract is canceled by the State due to a Contractor's request for increase in prices or failure to perform, that Contractor will be disqualified from bidding for a period of 24 months. The Contractor may cancel a contract for cause with the giving of 30 days written notice of intent to cancel. Cause for the Contractor to cancel may include, but is not limited to the item(s) being discontinued and/or unavailable from the manufacturer.

16. SUBSTITUTIONS DURING CONTRACT

During the term of a contract, if adequate documentation is provided that supports the claim that the contract item(s) are not available, items which meet the minimum specifications may be substituted if approved by OPTFM and the substitutions are deemed to be in the best interest of the State.

17. APPLICATION

It is understood and agreed by the bidder that any contract entered into as a result of this Invitation for Bids is established for use by state agencies and all purchases made by these agencies for products included under the provisions of the contract shall be purchased from the bidder receiving the award unless exempt by special authorization from the OPTFM.

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 OPTFM 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.

18. ADDENDA

Addenda modifying plans and/or specifications may be issued if time permits. No addendum will be issued within a period of two (2) working days prior to the time and date set for the bid opening. Should it become necessary to issue an addendum within the two (2) day period prior to the bid opening, the bid date will be reset to a date not less than five (5) working days after the date of the addendum, giving bidders ample time

to comply with the addendum. When replying to a bid request on which an addendum has been issued, and the specifications require acknowledgement, the bid shall indicate that provisions of the addendum have been noted and that the bid is being offered in compliance therewith. Failure to make this statement may result in the bid being rejected as not being in accordance with the revised specifications or plans.

19. NONRESPONSIVE BIDS

Nonresponsive bids will not be considered. A non-responsive bid is considered to be a bid that does not comply with the minimum provisions of the specification. Any bidder found to repeatedly offer alternated products that are not compliant with specifications in an attempt to obtain a contract on the basis of pricing only will be disqualified from bidding for a period of 24 months.

20. SPECIFICATION CLARIFICATION

It shall be incumbent upon all bidders to understand the provisions of the specifications and to obtain clarification prior to the time and date set for the live auction or bid opening. Such clarification will be answered only in response to a written request submitted in the specified amount of time set by the OPTFM. The OPTFM reserves the right to specify a time frame in which clarification request shall be made.

21. PRE-QUALIFICATION PROCESS

- 22.1 The purpose of the RFQF is to advertise the competitive procurement for solicitation of formal quotes from potential bidders to participate in the Reverse Auction. The OPTFM will be responsible for defining product categories, adding bidders, and publishing all bid related documents to the procurement portal. Once the responses have been received and the Opening Date has been reached, the OPTFM will review the submissions to qualify bidders and determine a starting price for reverse auction items.
- 22.2 The Invitation for Bids/RFQF shall be advertised in accordance with Section 3.106.05.4 of the Mississippi Procurement Manual. The OPTFM shall advertise for 14 consecutive days in accordance with Section 31-7-13(c)(i)(1) of the Miss. Code Ann. Responses to the RFQF will be due on the 8th working day after the last day of advertisement.
- 22.3 Responses to the RFQF will be reviewed by the OPTFM for responsiveness to specifications. Price quotes received will be evaluated in conjunction with other market research to determine the starting price for the Auction.
- 22.4 The OPTFM will accept bidder responses in MAGIC who have qualified meeting RFx specifications. Bidders not meeting specifications will not be allowed to participate in the Auction.
- 22.5 Once qualified, the OPTFM will notify the vendor of Qualification and the date of the Live Auction via email. After receiving the confirmation email, bidders should review/ensure technical requirements for MAGIC have been met or confirm participation in person.
- 22.6 It is requested that bids be submitted on the basis of statewide distribution. Contractors must maintain adequate distribution capabilities and adequate stock of all items to insure prompt delivery.

23. FIRM BID PRICE

Prices accepted from bidder submissions shall be firm for the term of the contract except that the State shall receive the benefit of any price decrease in excess of five (5) percent. The contractor must provide written price reduction information within ten (10) days of its effective date.

24. CONTRACT EXTENSION

- 24.1 Automatic contract renewals or extensions are not allowed. Contracts must be extended or renewed with the proper documents signed or approved by the OPTFM.
- 24.2 The OPTFM reserves the right to extend the term of a contract, when necessary, to continue a source of supply whenever new or replacement contracts are not completed prior to the expiration date. Such extensions are dependent upon the agreement of the Contractor and shall not exceed three (3) months.

25. SUSPENSION AND DEBARMENT

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

26. ASSIGNMENT

The Contractor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the OPTFM.

27. INDEMINIFICATION

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.

28. LIVE AUCTION

- 28.1 Notification of Auction Start date and time will be sent via email to qualifying bidders. If a bidder is unwilling or unable to participate through MAGIC, a representative from the OPTFM can enter the Vendor's bid(s) manually (i.e. Surrogate Bidding). If a bidder elects to participate via Surrogate Bidding, the bidder must be physically present at the public bidding location, with the means to submit written bids for each offer made and signed by an authorized agent of the Vendor. A Bid Form will be provided to the Vendor at the start of the auction. This form will not be returned to the bidder but will become a part of the Bid Documentation for Evaluation by the OPTFM.

- 28.2 The Auction time may be extended at the discretion of the OPTFM. Examples of reasons to extend an auction include, but are not limited to, technical difficulties experienced by the OPTFM or bidder, the need to pause the Auction, or bids placed within the last few moments of bidding.
- 28.3 Communication with bidders participating electronically during the Auction may be done via the Live Chat Feature. The OPTFM has the ability to send messages to particular bidders or broadcast to all bidders. Bidders can ONLY communicate with the OPTFM, not other bidders.
- 28.4 Bidders may be removed from a Live Auction for improper conduct, including but not limited to profanity, threats, consistently entering erroneous or extremely low bids, or other disruptive behavior.

29. FORCE MAJEURE

If the OPTFM is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening as set forth herein. The OPTFM shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the OPTFM as a result of a Force Majeure Event. Each bidder shall be required to ensure the delivery and receipt of its bid by the OPTFM prior to the new date and time of the live auction or bid opening.