



# New York State Procurement Guidelines

**State Procurement Council**

David A. Paterson  
Governor

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# NEW YORK STATE PROCUREMENT COUNCIL

As of July 2009

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# CONTENTS

<b>I. OVERVIEW .....</b>	<b>1</b>
A. Introduction and Purpose .....	1
B. Terminology.....	1
C. Application and Scope of Guidelines .....	2
D. Competition and Maintaining a Fair and Open Process .....	2
<b>II. PROCUREMENT BASICS .....</b>	<b>4</b>
E. Overview of Procurement Tools.....	4
F. Choosing a Procurement Vehicle and the Order of Purchasing Priority .....	4
G. Preferred Source Offerings .....	6
H. Contracts.....	6
OGS Centralized Contracts.....	7
OGS or Less.....	7
Backdrop Contracts.....	8
Agency or Multi-Agency Established Contracts .....	8
I. Discretionary Purchases .....	9
J. Procurement Card Program .....	10
K. Purchase Orders .....	11
L. Purchase Authorizations.....	11
M. Interagency Memorandum of Understanding .....	11
<b>III. GENERAL GUIDANCE FOR SOLICITATIONS.....</b>	<b>12</b>
A. Introduction .....	12
B. Procurement Ethics .....	12
C. Mandatory Requirements .....	12
D. State Reserved Rights .....	13
E. Gathering and Exchanging Information Prior to Solicitation .....	14
Request for Information.....	14
Request for Comment .....	15
Draft Request for Proposals.....	15
Roundtable Session .....	15
F. Procurement Lobbying Law .....	15
G. Advertising Procurement Opportunities .....	16
H. Determination of Vendor Responsibility .....	16
I. Workers' Compensation Insurance and Disability Benefits Requirements.....	17

J.	<b>Bidder Debriefings .....</b>	<b>18</b>
K.	<b>Contract Administration and Monitoring.....</b>	<b>18</b>
<b>IV.</b>	<b>SPECIFIC GUIDANCE: INVITATIONS FOR BIDS.....</b>	<b>19</b>
A.	<b>Introduction .....</b>	<b>19</b>
B.	<b>Steps for Conducting an IFB.....</b>	<b>19</b>
	Step 1: Develop Specifications .....	19
	Step 2: Prepare the Solicitation Document.....	20
	Step 3: Advertise the Procurement Opportunity .....	21
	Step 4: Distribute the IFB.....	21
	Step 5: Conduct Site Visits and Pre-Bid Conferences.....	21
	Step 6: Answer Questions.....	21
	Step 7: Receive Bids.....	22
	Step 8: Conduct Bid Opening.....	22
	Step 9: Conduct Administrative Review of Bid Submission.....	22
	Step 10: Verify Responsiveness and Responsibility of Apparent Low Bid.....	22
	Step 11: Make Award.....	22
	Step 12: Obtain Approvals .....	23
	Step 13: Issue Purchase Order or Contract.....	23
<b>V.</b>	<b>SPECIFIC GUIDANCE: REQUESTS FOR PROPOSALS.....</b>	<b>24</b>
A.	<b>Introduction .....</b>	<b>24</b>
B.	<b>Essential RFP Contents.....</b>	<b>24</b>
	Table of Contents.....	24
	Description of Program Objectives and Background .....	24
	Scope of Services .....	24
	Detailed Requirements/Specifications .....	25
	Performance Standards .....	25
	Mandatory Versus Optional Elements in the Response .....	25
	Overview of the Solicitation Process.....	25
	Timeline and Calendar of Events.....	25
	Anticipated Start Date and Term of Contract.....	26
	Method of Award.....	26
	Evaluation Criteria.....	27
	Offerer's Minimum Qualifications .....	27
	Mandatory Requirements.....	27
	Reserved Rights.....	27
	Method for Issuing Clarifications or Modifications to the RFP .....	27
C.	<b>Additional Content Considerations.....</b>	<b>28</b>
	Prequalification Criteria .....	28
	Risk Management / Required Assurances.....	28
	Cost Adjustments .....	28

References .....	28
<b>D. RFP Distribution and Receipt of Proposals .....</b>	<b>28</b>
Advertisement of the Solicitation.....	28
Distribution of the RFP .....	28
Receipt of Proposals .....	29
<b>E. Evaluation of Proposals – Overview .....</b>	<b>29</b>
<b>F. Evaluation Team.....</b>	<b>29</b>
Separate Team Approach.....	30
Single Team/Evaluator Approach .....	30
<b>G. Conducting the Administrative Review .....</b>	<b>30</b>
<b>H. Conducting the Technical Evaluation.....</b>	<b>31</b>
Development of the Technical Evaluation Criteria .....	31
Assignment of Values to Technical Evaluation Criteria .....	31
The Technical Evaluation Instrument.....	32
Evaluating Technical Proposals.....	33
<b>I. Conducting the Cost Evaluation.....</b>	<b>34</b>
Conversion of Price to a Weighted Point Score.....	34
Comparison of Life Cycle Costs.....	34
<b>J. Determining the Final Score .....</b>	<b>35</b>
<b>K. Agency-Recommended Award and Notification.....</b>	<b>35</b>
Agency-Recommended Award .....	35
Notification of Award .....	35
<b>L. Contract Negotiation.....</b>	<b>35</b>
<b>M. Documentation Requirements for Control Agency Review and Approval .....</b>	<b>36</b>
<b>VI. BEST PRACTICES .....</b>	<b>37</b>
<b>A. Knowing the Business Needs.....</b>	<b>37</b>
<b>B. Proper Planning .....</b>	<b>37</b>
<b>C. Thorough Information Gathering.....</b>	<b>37</b>
<b>D. Conducting Pre-Bid Conferences .....</b>	<b>37</b>
<b>E. Providing for Site Visits.....</b>	<b>38</b>
<b>F. Discussion with the Office of the State Comptroller.....</b>	<b>38</b>
<b>G. Use of FOB Destination .....</b>	<b>38</b>
<b>H. Review of Terms and Conditions Proposed by Vendors.....</b>	<b>38</b>
<b>I. Negotiating Effectively .....</b>	<b>39</b>
<b>J. Involving Upper Management.....</b>	<b>39</b>
<b>K. Documenting .....</b>	<b>39</b>
<b>L. Adapting Standard Formats to the Specific Procurement.....</b>	<b>40</b>

<b>VII. GLOSSARY</b> .....	<b>41</b>
<b>VIII. EXHIBITS</b> .....	<b>47</b>
<b>A. SAMPLE OUTLINE FOR AN “INVITATION FOR BIDS”</b> .....	<b>48</b>
<b>B. SAMPLE OUTLINE FOR A “REQUEST FOR PROPOSALS”</b> .....	<b>50</b>

# I. OVERVIEW

## A. Introduction and Purpose

State agencies must procure commodities, services, and technology in accordance with Article 11 of the New York State Finance Law.

The Procurement Guidelines presented in this document are established by the State Procurement Council pursuant to State Finance Law §161(2)(d). The Guidelines are designed to assist state agencies in making procurements efficiently and effectively by providing agency program and fiscal staff with a source of basic, systematic guidance about state procurement policies and practices.

State procurement must facilitate each agency's mission while protecting the interests of the state and its taxpayers, on the one hand, and promoting fairness in contracting with the business community, on the other. The Guidelines are intended to advance these goals by encouraging agencies to adopt and implement appropriate procurement practices consistent with state policies.

The state's procurement policies form a framework for conducting procurements and establishing contracts. Policies address such issues as ensuring sufficient competition, preserving fair and open competition, and establishing vendor responsibility. When conducting procurements, each agency may have supplemental policies and requirements that should also be reviewed and followed.

## B. Terminology

Becoming familiar with the vocabulary is fundamental to understanding and properly performing ***procurements***. In these Guidelines, important terms will appear in blue italicized bold face upon first use (as demonstrated in this paragraph) and are defined in Chapter VII: Glossary.

Some terms are used interchangeably. For example, an entity that provides ***commodities, services, or technology*** may be variously, and often interchangeably, referred to as a "***vendor***," "***offerer***," "***bidder***," "***proposer***," or "***contractor***." Similarly, the words "service" or "services," when used in these Guidelines, are meant to include both services and technology (as each term is separately defined in the Glossary), unless the context indicates that the meaning is expressly directed at one or the other term.

## C. Application and Scope of Guidelines

The Guidelines are designed to apply to a wide range of procurements, from the very routine to the very complex. The applicability of specific chapters, sections, and provisions will vary depending on the nature, objectives, and particular circumstances of each procurement.

The Guidelines presented in this document do not govern the following types of **contracts**, for which different, distinct procurement laws, rules and processes are in place:

- **Revenue contracts**;
- Printing contracts covered by the New York State Printing and Public Documents Law;
- Construction contracts covered by §8 of the New York State Public Buildings Law, §38 of the New York State Highway Law, and §376 of the New York State Education Law;
- Contracts with not-for-profit organizations covered by Article 11-B of the New York State Finance Law;
- Contracts for architectural, surveying or engineering services covered under §136-a of the New York State Finance Law;
- Transactions that are covered under the New York State Real Property Law; and
- Purchases made under the SUNY Flex legislation (Education Law §§355.5 and 355.16) and CUNY Flex legislation (Education Law §6218).

## D. Competition and Maintaining a Fair and Open Process

As mentioned above, the state's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet **agency** needs;
- Provide for checks and balances to regulate and oversee agency procurement activities; and
- Protect the interests of the state and its taxpayers.

Competition in the procurement process serves both state agencies and potential offerers by ensuring that the procurement process produces an optimal solution at a reasonable **price**; and allowing qualified vendors an opportunity to obtain state business.

The primary responsibility for procurement rests with state agencies. In addition to complying with existing statutory and regulatory requirements, state agencies must conduct procurements in accordance with the following general principles:

- Make reasonable efforts to ensure that vendors are aware of opportunities to compete for state business;
- Define the process by which the procurement is being conducted;
- Disclose the general process to potential offerers;
- Adhere to the process while conducting the procurement; and
- Document the process, including information gathering and decisions made relating to the procurement.

## II. PROCUREMENT BASICS

### E. Overview of Procurement Tools

State agencies purchase commodities, services, and technology to address needs or solve problems in the performance of agency mission. Needs and problems vary with respect to how well they can be defined. Some are highly standardized and are common among most, if not all, agencies. Others are unique to a given agency and range from simple, routine concerns to complicated problems requiring complex solutions.

To address this array of conditions, a variety of procurement tools and techniques are available. Among the most common are: *preferred source* offerings; *Office of General Services* (OGS) *centralized contracts*; *agency or multi-agency established contracts* resulting from competitive bids conducted by state agencies; *sole source* contracts; *single source* contracts; *piggyback* contracts; *emergency* contracts; and *discretionary purchases*. These and other procurement tools are discussed in greater detail later in this chapter.

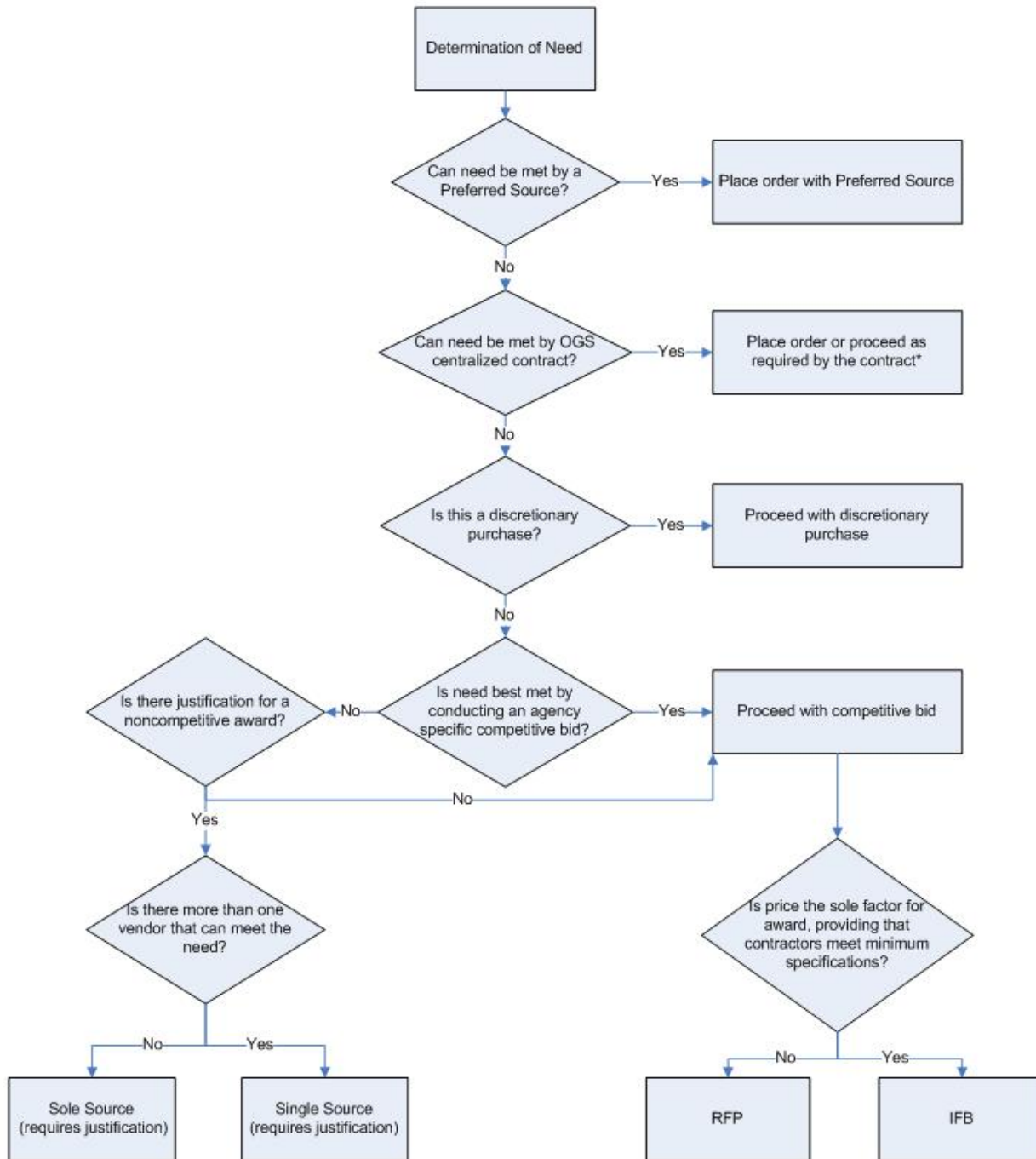
### F. Choosing a Procurement Vehicle and the Order of Purchasing Priority

As noted, state agencies undertake procurements to address a wide range of needs. To meet their varying needs and their form, function and utility requirements, agencies must follow the following order of precedence when choosing the proper procurement vehicle:

- First: Preferred source offerings;
- Second: OGS centralized commodity contracts;
- Third: Agency or multi-agency established contracts; and
- Fourth: OGS centralized service or technology contracts or an “open market” procurement that can either be discretionary or result from a formal, competitive bidding process based on the total value of the procurement.

A diagram titled “**Selecting a Procurement Method**” follows. When there is no established contract available that would meet an agency’s particular need, the agency should use the decision path depicted to choose the proper procurement method.

# Selecting A Procurement Method



\* Agencies are not required to use centralized contracts to acquire services and technology

## G. Preferred Source Offerings

When a commodity or service desired by a state agency, political subdivision or public benefit corporation (including most public authorities) is available from a preferred source in the **form, function and utility** required, and the price, as determined by OGS, is no more than 15 percent above the prevailing market rate (or, in the case of Correctional Industries, the price of the commodity does not exceed a reasonable, fair market rate as determined by the Department of Correctional Services), the state agency must purchase that commodity or service from a preferred source. When doing so, agencies must adhere to the priority that has been accorded to the preferred sources in State Finance Law §162, as follows:

With respect to commodities, agencies must purchase from preferred sources in the following prioritized order, if available:

- First: From the Department of Correctional Services' Correctional Industries Program (CORCRAFT);
- Second: From the approved, charitable, non-profit making agencies for the blind; and
- Third: Equal priority is accorded to approved, charitable, non-profit making agencies for the severely disabled, qualified special employment programs for mentally ill persons, and qualified veterans workshops.

With respect to services, if more than one preferred source meets the agency's form, function and utility **requirements**, equal priority shall be accorded to the services rendered and offered for sale among the approved charitable, non-profit making agencies for the blind, other severely disabled persons, qualified special employment programs for mentally ill persons, and qualified veterans workshops. If more than one preferred source meets the agency's requirements, **cost** shall be the determining factor.

**NOTE:** The Department of Correctional Services' Correctional Industries Program (CORCRAFT) is not a preferred source option for the purchase of services.

Products or services purchased from preferred sources do not require competitive **bids**. For more information and the list of approved preferred sources offerings, see:

[www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf)

## H. Contracts

Contracts are written agreements between a buyer (the state) and a seller (the vendor). These documents specify various terms and conditions to which the parties must adhere. Some examples of these terms and conditions include the following:

- Price;
- Delivery terms;
- Description of the commodity or service being procured;
- Payment terms;
- Duration of the contract; and
- Liability clauses and any other requirements of either the buyer or seller.

Contracts may be issued by the OGS on behalf of all agencies or may be issued by one or more agencies for their unique needs. The following provides a general description of various types of contracts used by state agencies:

### ***OGS Centralized Contracts***

OGS creates centralized contracts for commodities or services. There are more than 2,500 such contracts in place. Once these contracts are established and approved, agencies may purchase from them. For the purchase of commodities or services available from an OGS contract (for example, a P-contract, PC-contract, PS-contract or PT-contract), the agency may issue a purchase order directly to the contractor without prior approval by the ***Office of the State Comptroller*** (OSC). Agencies are encouraged to attempt to negotiate more favorable prices.

The State Finance Law requires that agencies use an OGS centralized contract (i.e., a P-contract or PC-contract) to purchase commodities that meet the agency's requirements with respect to form, function and utility. Agencies are encouraged but not required to use an OGS centralized contract (e.g., CMS-contract, PT-contract, etc.) to purchase services or technology.

### ***OGS or Less***

In addition, pursuant to State Finance Law § 163(3)(a)(v), OGS centralized commodities contracts that contain a clause known as "OGS or Less" may allow an agency to obtain needed commodities from a non-contract vendor in order to take advantage of non-contract savings that may develop in the marketplace. "OGS or Less" purchases may not be made if the commodities are available from:

- Legally established preferred sources in the form, function and utility required;
- State contracts based on filed requirements (e.g., fuel, oil, etc.); or
- Agency-specific contracts.

After determining that the needed commodity cannot be obtained from these sources, the agency must determine, and document in the procurement record, that the purchase price, including delivery, warranty and other relevant terms, offered by the non-contract vendor is more economically beneficial than what is offered on OGS centralized contract(s) for a commodity substantially similar in function, form and utility. Agencies must not solicit multiple offers from the same vendor and must not create a bidding war. State contractors must be

allowed a minimum of two business days to match the lower non-contract price. If the state contractor provides written confirmation that it will match the lower price, the agency proceeds with the purchase in accordance with agency purchasing procedures. If the state contractor is unable or unwilling to match the lower price, the agency must document this in the procurement record, and in lieu of purchasing the commodity from the OGS centralized contractor at the OGS centralized contract price, may procure through either a discretionary or competitive procurement, as applicable.

### ***Backdrop Contracts***

Additionally, OGS establishes **backdrop contracts** that prequalify vendors for provision of services. These contracts establish standard terms and conditions, set maximum not-to-exceed prices, and satisfy many legal requirements associated with state procurements, such as advertisement in the New York State Contract Reporter, vendor responsibility determination, and sales tax certification. [OGS identifies its backdrop contracts as either “CMS” (Central Management - Services), “CMT” (Centralized Management – Technology) or “CMU” (Centralized Management – Unknown).]

Utilization of backdrop contracts may require additional competitive procurement processes at the agency level (e.g., a **Mini-Bid**) and as applicable, approval of OSC, prior to the purchase of services. An authorized user may conduct a formal mini-bid process by developing a project definition that outlines its specific requirements and solicits bids from qualified backdrop contractors to determine the best value solution. The best value may also be the lowest price. The exact processes to be followed are set forth either in the OGS backdrop contract or the guidelines associated with that contract on the OGS website.

An authorized user and contractor cannot amend the terms and conditions of the backdrop contract, but may, through the mini-bid process, agree to pricing or terms more favorable to the state or the authorized user only (e.g., delivery terms, longer warranty period, no-cost maintenance). Under no circumstances can the authorized user and the contractor trade off terms for pricing. For example, the authorized user cannot agree to a waiver of indemnity or agree to indemnify the contractor in return for better pricing.

### ***Agency or Multi-Agency Established Contracts***

These are contracts established by an agency or multiple agencies to procure on an ongoing basis. They enumerate the specific terms and conditions binding both the vendor and the state. These contracts are usually in effect for multiple years. More guidance on establishing a contract is provided in Chapters III, IV and V. An agency may also use an agency or multi-agency established contract to purchase commodities, but typically these items can be obtained through use of a purchase order or a purchase authorization.

- **Competitively Bid Contract** – A contract awarded pursuant to an IFB or RFP. More guidance is provided in Chapters IV and V.
- **Sole Source Contract** – A sole source procurement is one in which only one vendor can supply the commodities or services required by an agency. The agency must document why the proposed vendor is the only viable source for the commodities and/or services needed by the agency. OSC approval must be

obtained for a sole source contract if the contract's value is over the State Finance Law §112 discretionary threshold. In addition, if the agency is seeking a waiver from advertising in the New York State Contract Reporter, OSC must approve the exemption.

- **Single Source Contract** – A single source procurement is one in which, although there are two or more potential offerers, the agency has determined that it is in the best interest of the state to procure from a particular vendor. (A typical example would be where an agency needs maintenance for a particular piece of equipment, and that maintenance must be provided by a particular vendor to maintain the warranty.) OSC approval must be obtained for a single source contract if the contract's value is over the State Finance Law §112 discretionary threshold. In addition, if the agency is seeking a waiver from advertising in the New York State Contract Reporter, OSC must approve the exemption.
- **Piggyback Contract** – At times, an agency may find it more efficient to establish a contract based on another governmental entity's contract. This is known as "piggybacking" and may be used in accordance with the criteria established in the Procurement Council Guidelines Piggybacking Purchasing Memorandum CL-288, available at:

[www.ogs.state.ny.us/procurecounc/pdfdoc/pgbcl288.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/pgbcl288.pdf)

The agency must seek approval for the use of a piggyback contract from OGS. Finally, the agency must create a New York State contract and obtain all approvals necessary for the specified contract value.

- **Emergency Contracts** – An emergency procurement is one in which an urgent and unexpected situation occurs where health and public safety or the conservation of public resources is at risk. Where an emergency exists, an agency may issue procurement contracts without complying with formal competitive bidding requirements. However, an agency should make a reasonable attempt to obtain at least three oral quotes. An agency's failure to properly plan in advance – which then results in a situation where normal practices cannot be followed – does not constitute an emergency. OSC approval must be obtained for an emergency contract if the contract's value is over the State Finance Law §112 discretionary threshold. In addition, if the agency is seeking a waiver from advertising in the New York State Contract Reporter, OSC must approve the exemption.

## I. Discretionary Purchases

Discretionary purchases are procurements made below statutorily established monetary levels and at the discretion of the agency, without the need for a formal competitive procurement process. Use of discretionary purchasing streamlines the procurement process. Discretionary purchasing also improves opportunities for **Minority or Women-Owned Business Enterprise** (M/WBE) vendors and New York State **Small Businesses** to secure business with the state and promotes the use of **recycled** or **remanufactured commodities**.

When contemplating a discretionary purchase, the agency must first undertake an analysis to determine whether its needs can best be met by acquiring through the preferred source program. If that is not possible, and if the acquisition is for a commodity, the agency must make the purchase using an OGS centralized commodity contract, if available. The agency must also determine that the purchase falls within their discretionary purchasing authority. A chart setting forth the discretionary buying thresholds is available on the OGS website at:

[www.ogs.state.ny.us/purchase/spg/pdfdocs/PnpDiscretionaryThresholds.pdf](http://www.ogs.state.ny.us/purchase/spg/pdfdocs/PnpDiscretionaryThresholds.pdf)

In addition, the chart provides information on purchases above certain thresholds which, while not subject to the formal competitive procurement process requirements, may require approval by OSC and/or advertisement in the New York State Contract Reporter.

The agency may proceed to exercise its discretionary purchasing authority only after it has verified that the discretionary purchasing method is appropriate. Further, when making a discretionary purchase, an agency must:

- Ensure that the commodities and services acquired meet their form, function and utility needs;
- Document and justify the selection of the vendor;
- Document and justify the reasonableness of the price to be paid;
- Buy from a **responsible** vendor; and
- Comply with the agency's internal policies and procedures.

## **J. Procurement Card Program**

The State's Procurement Card (P-Card) Program is a procurement and payment method designed to expedite purchases and payments. When properly used, the P-Card is an efficient and cost-effective alternative to a variety of traditional labor-intensive procurement and payment tools. Some purchases and payments that can be made with a P-Card include:

- Commodities or services from preferred sources;
- Commodities or services from an OGS centralized contract; and
- Supplies and materials.

Employees must be authorized by their agency to have a P-Card. The maximum single transaction limit for a P-Card holder cannot exceed the agency's Quick Pay threshold, which can be determined by contacting an agency's finance office. Agencies may set lower limits for specific employees and can impose additional limits in order to control P-Card activity.

P-Card holders should familiarize themselves with the OGS Bulletin "Procurement Card Guidelines," found at:

[www.ogs.state.ny.us/purchase/pdfdocument/CreditCardGuidelines.pdf](http://www.ogs.state.ny.us/purchase/pdfdocument/CreditCardGuidelines.pdf)

P-Card holders should also review their agency's policies and procedures pertaining to P-Card use. Ultimately, it is the P-Card holder who is responsible for the proper use and safekeeping of a P-Card.

## **K. Purchase Orders**

Purchase Orders (PO) are basic contractual documents, issued by an agency's finance office or other authorized individuals, and are generally for "one time" purchases. POs usually consist of the vendor's name/address, a description of the item, quantity, cost per item, shipping terms, total cost and some data for state use (cost center, object code, and the applicable OGS or purchase authorization contract number). The PO solidifies the terms of the purchase. POs are used to procure from preferred sources, OGS centralized contracts, and agency open market purchases. Appendix A must be incorporated in the agency's purchase orders.

## **L. Purchase Authorizations**

Purchase Authorizations (PA) are issued by a state agency and are similar in both form and function to OGS centralized commodity contracts, in that once the PA is approved, agencies can issue purchase orders against the PA without further approval of OSC. An example is when an agency knows that a particular product, not available through a preferred source or an OGS centralized contract, will be needed over an extended period of time, but the exact quantity is not known at the time of establishing the PA.

The primary benefit of the PA is that it allows an agency to establish terms and pricing of a product without needing to encumber funds at the time of submission of the PA to OSC. Additional information, as well as a standard format for the PA and award letter, is available through the OSC Bulletin G-191 at:

[www.osc.state.ny.us/Agencies/gbull/g-191.htm](http://www.osc.state.ny.us/Agencies/gbull/g-191.htm)

## **M. Interagency Memorandum of Understanding**

An Interagency Memorandum of Understanding (MOU) is an informal agreement entered into between two or more New York State agencies that outlines matters of substance, such as budget and reporting responsibilities, but does not include formal standard contract terms. Since MOUs are not legally binding contracts, they do not require the approval of OSC. Additional information on these documents can be obtained from OSC Bulletin G-228 at:

[www.osc.state.ny.us/Agencies/gbull/g-228.htm](http://www.osc.state.ny.us/Agencies/gbull/g-228.htm)

# III. GENERAL GUIDANCE FOR SOLICITATIONS

## A. Introduction

This chapter is intended to provide guidance to agencies on the following key considerations that apply to most solicitations:

- Procurements ethics;
- Mandatory requirements that must be considered and included in procurements;
- Methods for gathering information before developing the solicitation document and *specifications*;
- Advertisement of procurement opportunities;
- Determination of vendor responsibility; and
- Contract administration and monitoring.

Building on this base, Chapters IV and V will provide further detailed guidance to agencies on conducting procurements using two of the most common types of solicitations: *Invitation for Bids* (IFB) and *Request for Proposals* (RFP).

## B. Procurement Ethics

Procurements are an expenditure of public monies, and public employees must always ensure that all procurements are conducted so as to not cause any concern that special considerations have been shown to a vendor. Actions such as providing a vendor with information that is not available to other vendors, accepting a gift, or having lunch with a potential vendor could be construed as showing favoritism to a vendor, and may violate state law. Questions regarding procurement ethics should be directed to the Agency Ethics Officer and/or the New York State Commission on Public Integrity.

## C. Mandatory Requirements

State procurements, whether using an Invitation for Bids, Request for Proposals, or other method, must comply with a number of different statutes, regulations, and policy requirements. Principal among these are:

- Procurement Lobbying Law;
- Sales tax certification;
- Vendor responsiveness and responsibility;

- Office for Technology approval of the “Plan to Procure” (PTP);
- **Prevailing wage** schedules;
- Consultant disclosure;
- Workers’ compensation insurance and disability benefits insurance; and
- Bidders’ right to a **debriefing**.

More information on a number of these areas is provided in subsequent sections.

Additional information can also be found at:

<http://www.ogs.state.ny.us/procurecounc/Bulletins.asp>

In addition, there are standard clauses that must be included in every state contract. This body of clauses is commonly referred to as “**Appendix A**.” It can be found at:

[www.ogs.state.ny.us/procurecounc/pdfdoc/appendixa.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/appendixa.pdf)

It should be noted that, depending on the nature of the procurement, additional requirements may apply. Check with your agency counsel or contracts management office.

## D. State Reserved Rights

In addition to mandatory requirements, there are a number of **state reserved rights** that are typically included to provide additional protections to the agency conducting the procurement. These should be clearly stated in the solicitation. The following is the most common set:

The [name of agency] reserves the right to:

- Reject any or all proposals received in response to the IFB/RFP;
- Withdraw the IFB/RFP at any time, at the agency’s sole discretion;
- Make an award under the IFB/RFP in whole or in part;\*
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB/RFP;
- Seek clarifications and revisions of proposals;\*
- Use proposal information obtained through site visits, management interviews and the state’s investigation of a bidder’s qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency’s request for clarifying information in the course of evaluation and/or selection under the IFB/RFP;
- Prior to the **bid opening**, amend the IFB/RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;

- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB/RFP amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB/RFP in the best interests of the state;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.\*

**\*NOTE:** Failure to include these specific reserved rights (marked with an asterisk) in the solicitation precludes their use in that procurement.

Depending on the nature of the procurement, there may be additional state reserved rights beyond those presented here.

## **E. Gathering and Exchanging Information Prior to Solicitation**

Procurement staff have several methods available to them for gathering and exchanging information with potential bidders, prior to issuing a solicitation or making a purchase. These methods enable information-gathering while promoting openness, fairness, and transparency. The most common information-gathering options are described below.

As a best practice when gathering information, it is suggested that an agency issue a notice in the New York State Contract Reporter to ensure that a level playing field among potential bidders is provided. Other means of identifying potential bidders, such as market-based research and newspaper/trade journal advertisements, may be used depending upon the nature of the agency's need.

### ***Request for Information***

A ***Request for Information*** (RFI) is a research and information gathering document used when an agency seeks to learn about the options available for addressing a particular need or wants to obtain information to help create viable requirements for a potential solicitation. For example, an agency needs to buy decals to affix to the exterior of a vehicle, but does not

know how various materials (such as stock or ink) withstand long-term exposure to the elements. Issuing an RFI to potential bidders would elicit responses that would enable the agency to write specifications to provide the agency with the best solution.

### ***Request for Comment***

A Request for Comment (RFC) is used to solicit input from all potential bidders about a solicitation's structure and language to assess its impact on potential bidders. For example, an agency has drafted a Request for Proposals (RFP), but is unsure if potential bidders will find the language too restrictive or the requirements unclear. The RFC allows the agency to gather information, revise the RFP as appropriate, and issue a document to which potential bidders would be more likely to respond. This practice differs from sending a Draft RFP, in that the agency is only sending the sections of the RFP that are open for discussion.

### ***Draft Request for Proposals***

An agency may submit a ***Draft RFP*** to all potential bidders for remarks/comments prior to issuance. The cover letter releasing the draft RFP should state for which sections of the document the agency is requesting feedback. It should be noted that certain sections of the RFP are not subject to amendment (e.g., Appendix A, which sets forth the standard clauses for New York State contracts).

### ***Roundtable Session***

A roundtable session generally is an open meeting among all potential bidders and the agency(ies) involved in the procurement before the release of a competitive solicitation. These meetings allow potential vendors and agency staff to ask questions of each other and allow for an open exchange of information. It is suggested that these meetings be moderated to ensure that all attendees are provided an equal opportunity to participate. Techniques that can be used include: agendas detailing the topics to be discussed; prior submission of questions; and restricting time allowed for responses.

**NOTE:** Requests for Information, Requests for Comments, and Draft Requests for Proposals generally do not commence the restricted period under State Finance Law §139-j, commonly referred to as the Procurement Lobbying Law, because the documents do not request a proposal intended to result in a procurement contract (see the following section, Procurement Lobbying Law).

## **F. Procurement Lobbying Law**

State Finance Law §§139-j and 139-k impose certain restrictions on communications between an agency and an offerer/bidder during the procurement process. An offerer/bidder is restricted from making "***contacts***" (defined in the law as communications intended to influence the procurement) from the date of the earliest notice of intent to solicit offers/bids through the date of the final award and if applicable, approval of the contract by the Office of the State Comptroller to other than designated staff (as identified by the agency). The interval between

these points is known as the “**restricted period.**” Certain exceptions to this restriction are set forth in State Finance Law §139-j (3) (a). An example of an exception would be communication during contract negotiations.

Employees are also required to obtain certain information when contacted during the restricted period and to make a determination of the responsibility of the offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award. In the event of two such findings within a four-year period, the offerer/bidder is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found on the OGS website:

[www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html](http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html)

## **G. Advertising Procurement Opportunities**

An agency has a statutory obligation to advertise a procurement opportunity in the New York State Contract Reporter when the procurement exceeds the agency’s advertising threshold. If the agency seeks a waiver from this requirement, OSC must approve the exemption. The publication is available online at:

[www.nyscr.org](http://www.nyscr.org)

Advertising thresholds for agencies are defined in the chart that is available at:

[www.ogs.state.ny.us/purchase/spg/pdfdocs/PnpDiscretionaryThresholds.pdf](http://www.ogs.state.ny.us/purchase/spg/pdfdocs/PnpDiscretionaryThresholds.pdf)

The intent of advertising is to promote competition. Advertisements should provide prospective bidders with an overview of the proposed procurement, including a brief description of the commodities or services sought, the contract period, the proposal due date, and contact information. In addition, as a best practice, an agency should also advertise its procurement opportunities in other sources such as trade publications, journals, newspapers, and agency websites and mailing lists. More information on advertising can be obtained from the Procurement Council bulletin at:

[www.ogs.state.ny.us/procurecounc/pdfdoc/bulletin-Contractreporterquarterlylistings\\_2\\_.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/bulletin-Contractreporterquarterlylistings_2_.pdf)

and from the OSC Bulletin No. G-107B at:

[www.osc.state.ny.us/Agencies/gbull/g-107b.htm](http://www.osc.state.ny.us/Agencies/gbull/g-107b.htm)

## **H. Determination of Vendor Responsibility**

State Finance Law §163(9)(f) requires that a state agency make a determination that a bidder is responsible prior to awarding that bidder a state contract. It is further recommended that the contract expressly obligate the contractor to maintain its responsibility throughout the

term of the agreement. The responsibility determination is based upon many factors, including, but not limited to, the bidder's:

- Financial and organizational capacity;
- Legal authority to do business in this state;
- Integrity of the owners/officers/principals/members and contract managers; and
- Past performance of the bidder on prior government contracts.

Review of these four elements is commonly known as the "FLIP" review.

Whether a bidder is "responsible" is a question of fact to be determined on a case-by-case basis after a comprehensive weighing of all factors. An unfavorable rating in one or more areas of evaluation does not need to result in a non-responsibility determination; however, it does require the agency to make a determination that it has reasonable assurance that the proposed contractor is indeed responsible or non-responsible, as applicable.

Before finding a bidder non-responsible, a state agency must ensure that the bidder was afforded due process rights and provided with the opportunity to explain its position in writing and, in some instances, in person, at a responsibility meeting. If responsibility issues cannot be resolved or explained to the satisfaction of the agency, the agency may issue a finding of non-responsibility to the bidder. This finding must be provided in writing. For more information, see New York State Procurement Council Bulletin "Best Practices, Determining Vendor Responsibility" at:

[www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf)

Additional information and links to more resources for verifying a vendor's responsibility are also located at:

[www.osc.state.ny.us/vendrep/webresources.htm](http://www.osc.state.ny.us/vendrep/webresources.htm)

## **I. Workers' Compensation Insurance and Disability Benefits Requirements**

As indicated in Section C above, Workers' Compensation Law (WCL) §57 & §220 requires that the heads of all municipal and state entities ensure that a business applying for permits, licenses, or contracts provides evidence of appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, and apply whether the governmental agency is having the work performed or is simply the entity issuing the permit, license, or contract.

In the context of state procurements, the solicitation must make it clear that the bidder/vendor will be required to provide proof of such coverage (or of having received a legal exemption) prior to being awarded a contract or receiving a contract renewal. Failure to do so will result in their bid being rejected or, in the case of contract renewals, their contract being allowed to expire. For more information, refer to the Workers' Compensation website at:

[www.wcb.state.ny.us](http://www.wcb.state.ny.us)

## **J. Bidder Debriefings**

The solicitation must include information advising bidders that a debriefing may be requested by any unsuccessful offerer, within a reasonable time frame after the contract award, regarding the reasons that the proposal or bid submitted by the unsuccessful offerer was not selected for an award. While a debriefing is typically conducted in person, it may be conducted by video conference, over the phone, or through written summaries, if agreed to by the bidder. During the debriefing, the state agency may do one or more of the following:

- Limit the discussion to the reasons why the bid was not successful;
- Discuss the reasons why the winning bid was selected; and
- Offer advice and guidance to the bidder to improve future bids.

## **K. Contract Administration and Monitoring**

The approved contract must be administered and monitored properly. Regular, diligent oversight of all activities and actions regarding the contract is an important part of the overall life cycle of a contract. The agency should assign a contract manager, who will be responsible for ensuring that the contractor performs the requirements of the contract in accordance with the contract's terms, conditions and specifications. Proper oversight and administration of the contract may entail educating and communicating with those agency personnel who will be direct users of the goods, services or technology acquired and who will therefore be in the best position to participate in monitoring the vendor's performance of contract provisions.

Additional guidelines for contract administration and monitoring can be found in the "Agency Receiving Inspection Guidelines" at:

[www.ogs.state.ny.us/procurecounc/pdfdoc/inspgdl.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/inspgdl.pdf)

and in the OSC Bulletin No. G-67 at:

[www.osc.state.ny.us/Agencies/gbull/g-67.htm](http://www.osc.state.ny.us/Agencies/gbull/g-67.htm)

## IV. SPECIFIC GUIDANCE: INVITATIONS FOR BIDS

### A. Introduction

An Invitation for Bids (IFB) is the appropriate solicitation to be used when the method of award is to be based on lowest price only. An IFB describes the administrative process; defines specifications; establishes required delivery terms, bidder qualifications, method of award, and terms and conditions; and provides instructions for responding.

For commodities, award shall be made on the basis of lowest price among responsible and **responsive** offers (State Finance Law §163(3)(a)(ii)). In the case of services, the award must be based on “**best value**” (State Finance Law §163(4)(d)). If it is determined that best value is demonstrated by lowest price alone, then an IFB should be used for the procurement of those services.

### B. Steps for Conducting an IFB

The following steps outline the process:

- Develop specifications for the commodity/service needed;
- Prepare the solicitation document;
- Advertise the procurement opportunity (New York State Contract Reporter);
- Distribute the IFB to all potential bidders;
- Conduct site visits and pre-bid conferences (as necessary);
- Receive questions and provide responses (as necessary);
- Receive bids;
- Conduct the bid opening;
- Conduct administrative review of bid submissions;
- Verify responsiveness and responsibility of apparent low bidder;
- Make award and, when necessary, obtain approvals; and
- Issue purchase order or contract.

More detail about each of these steps follows.

#### ***Step 1: Develop Specifications***

The specifications must ensure that bidders know exactly what is required. Specifications should be as clear, inclusive and informative as possible. Specifications should

be precise enough so that the agency will receive the commodity or service needed, yet broad enough to encourage competition. The agency should develop generic requirements that do not favor a particular vendor. However, the solicitation may incorporate any information obtained from research regarding the products and/or services available.

Specifications establish the minimum level of acceptable requirements. The level of detail required in the specification depends upon the complexity of the commodities and/or services being procured.

There are several methods for creating specifications. The most common are:

**Make and Model or Equal** – If an agency is not limiting the procurement to a specific brand, it may use a brand name and model as a reference to describe requirements such as functionality, style or capacity. The agency would award to the low bid offering the specified product or one of equal characteristics. (For example, “XYZ Corporation’s washing machine Model #123 or equal.)

**Make and Model Specific** – If an agency determines (and can justify in writing for inclusion in the *procurement record*) that only one product (specific brand) or certain products meet its needs, and where competition exists, the IFB must state that bids will be accepted on the specified items only and no substitutions will be considered. (For example, “XYZ Corporation’s Part #”.)

**Technical Specifications** – These describe the product, usually detailing the physical components, method of assembly and, in some cases, chemical composition. (For example, a chain must be made of a certain material, a particular gauge, and have a specific tensile strength.)

**Performance Specifications** – Describes the performance standards required for the product and/or service that is being procured. The bidder must ensure that the product or service offered will meet the performance specifications. (For example, a window washing contract on a set schedule.)

### ***Step 2: Prepare the Solicitation Document***

In addition to the product/service specifications, the solicitation informs potential bidders of the nature of the procurement, any statutory requirements, the deadline for submission of bids, the location where bids must be sent, delivery terms, any special delivery requirements, and the basis for the award (e.g., lowest price).

The solicitation may also include other terms that the procuring agency desires or requires to be in the contract. For example, if the agency chooses to allow for cost adjustments, the basis for the cost adjustment must be specified in the IFB. Cost adjustments may be based on standard measures such as the U.S Bureau of Labor Statistics Consumer Price Index (CPI) or the Producer Price Index (PPI).

Bid instructions should inform the potential bidder of the contract period, the price structure, (hourly, per item, per carton, square foot, etc.), the agency’s *bid protest* / dispute resolution policy (if applicable), performance requirements, contract monitoring, termination

rights and any optional requirements. The solicitation should also outline any bidder qualifications that the agency requires, such as licensing, if required, special equipment, financial viability, minimum years of experience, etc. If a specified qualification results in reduced competition, the agency may need to justify the requirement.

The document must inform potential bidders of the state's "reserved rights." A list of reserved rights is included in Chapter III and should be the minimum used. Agencies are encouraged to review the list and add to it, as needed.

The solicitation should inform potential bidders of the method of award – that is, whether the award will be by lot, item, region, or some other method.

The solicitation should also inform bidders of the requirements of Appendix A and depending on the nature and/or value of the contract, other requirements that must be included in the IFB.

### ***Step 3: Advertise the Procurement Opportunity***

Refer to Chapter III of these Guidelines.

### ***Step 4: Distribute the IFB***

Once the IFB has been completed and the advertisement(s) placed, the IFB should be distributed to all known potential bidders and any bidder that requests a copy as a result of the advertisement(s). Potential bidders can be identified through web searches, previous procurements, *bidder lists* maintained by the agency, and/or the Department of Economic Development list of New York State Certified M/WBEs. The IFB (or notice of the IFB) can be distributed via postal mail, e-mail, posting to agency website, and other means.

### ***Step 5: Conduct Site Visits and Pre-Bid Conferences***

Prior to the due date for bids, an agency may require site visits to ensure that bidders are aware of site conditions. The agency may also hold a pre-bid conference to allow bidders to ask questions and/or exchange information with agency staff. The solicitation must identify the date, time and location of such events, if planned, and whether attendance is mandatory in order to bid.

### ***Step 6: Answer Questions***

The agency should allow a period of time for bidders to submit written questions, and for the agency to provide written responses. All questions raised and answers provided, including those arising during site visits and pre-bid conferences, must be confirmed in writing and shared with all potential bidders.

### ***Step 7: Receive Bids***

The IFB must state the location, time and date for the submission of the bids. Any bid received must be kept in a secured area by the agency and not opened prior to the date and time of the bid opening. As a general rule, bids received after the deadline specified in the IFB cannot be accepted.

### ***Step 8: Conduct Bid Opening***

The bid opening should be conducted at the location and time stated in the IFB. At this time, all timely bids are opened and recorded. It is suggested that a minimum of two staff conduct the bid opening; one to open and announce the bids and one to record them. This will create a "bid tabulation," which must be kept as part of the procurement record and must accompany the bid package sent to OSC for approval, if necessary.

The bid tabulation must include all timely bids received. It should be signed and certified by the agency staff responsible for opening and recording the bids. Bid prices listed in the bid tabulation should state the prices required by the method of award.

### ***Step 9: Conduct Administrative Review of Bid Submission***

The agency must ensure that the bid submission is complete and accurate. This includes: confirming that the bidder understood the specifications and can perform/deliver at the bid price, particularly if there are large variances in the bid prices between the apparent low bid and the next low bid; and ascertaining that all materials are submitted and appendices are signed.

### ***Step 10: Verify Responsiveness and Responsibility of Apparent Low Bid***

Beginning with the apparent low bid, the agency must verify that: 1) the winning bid is responsive by meeting all mandatory requirements and specifications of the IFB; and 2) the winning bidder is responsible. If the apparent low bidder is not found to be responsive or responsible, the bid must be rejected and the next lowest price bid must be reviewed. In addition, notice should be provided to an apparent low bidder who is being rejected as non-responsive or non-responsible.

**NOTE:** In the event of a tie bid, the decision must be made in accordance with the State Finance Law §163(10)(a) and any policy stated in the IFB.

### ***Step 11: Make Award***

Once the agency has reviewed and verified the lowest responsive and responsible bidder(s), the award(s) shall be made in accordance with the method of award in the IFB. The agency must retain the supporting documentation as part of the procurement record.

### **Step 12: Obtain Approvals**

Contracts resulting from an IFB are subject to review and approval first by the **Office of the Attorney General** (OAG) (with certain exemptions for OGS centralized contracts), and second by the Office of the State Comptroller (OSC), in accordance with State Finance Law §112.

The OAG generally requires only the contract document for its review and approval, but may require the entire procurement record. The agency may choose to submit the entire procurement record to the OAG, and request that, upon OAG's approval of the contract, OAG forward the file to OSC for its review and approval.

As provided for in State Finance Law §112, procurements over certain thresholds must be approved by OSC. If the value of the procurement is below the agency's State Finance Law §112 discretionary purchasing authority, the agency may proceed to issue the purchase order or contract. However, when the contract's value exceeds the State Finance Law §112 discretionary threshold, the agency must prepare an award package to submit to OSC for prior approval.

The agency must complete an **AC-340 Form**, which provides essential contract information to record the contract on the OSC central accounting system and to encumber the funds for the current fiscal year. The completed form must be submitted with the procurement package provided to OSC.

### **Step 13: Issue Purchase Order or Contract**

Once the above steps have been completed and all necessary approvals have been obtained, the agency may proceed to issue the purchase order or contract to the vendor.

## V. SPECIFIC GUIDANCE: REQUESTS FOR PROPOSALS

### A. Introduction

A Request for Proposals (RFP) is generally used for the procurement of services or technology in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

Appropriate planning is essential for a successful RFP. The first step is to view the process as a project and to develop a timeline of events to meet the agency's programmatic needs and effectively budget staff time. It is also essential to focus on and develop the contract scope of service and deliverables that are required before proceeding to develop the methodology for evaluating proposals.

**NOTE:** If a vendor participates in the development or writing of the specifications for the RFP, that company is generally prohibited from participating in the procurement. (See State Finance Law §163(2) and for technology procurements; see also State Finance Law §163-a.)

### B. Essential RFP Contents

An RFP should clearly convey all the information needed for potential bidders to determine their interest in participating in the solicitation and to offer a competitive proposal. At a minimum, the RFP should include language addressing each of the following items:

#### ***Table of Contents***

A detailed and accurate Table of Contents improves the ability of potential bidders to grasp and keep track of all aspects of the RFP and to respond effectively.

#### ***Description of Program Objectives and Background***

This RFP section provides a general description of the agency's overall objectives and the underlying reasons for the procurement.

#### ***Scope of Services***

This section generally describes the scope of services necessary to meet the agency's needs. The section should include any strategic and tactical plans/direction of the agency to be affected by the required services.

### ***Detailed Requirements/Specifications***

This section details the technical specifications, which may be presented as specific, individual requirements or as a part of a deliverable. Specifications should not be written to favor a particular vendor and should clearly indicate the agency's needs as well as the performance standards to which the contractor will be held. This section should also describe the relative roles and responsibilities that the contractor and the agency are expected to undertake during the term of the contract.

### ***Performance Standards***

This section should describe the performance standards that will be used to assess the contractor's compliance with the contract requirements. If recommended by agency counsel, this section can include **liquidated damages** provision(s).

### ***Mandatory Versus Optional Elements in the Response***

The RFP should specify which aspects or features of the requested deliverables are critical to the agency, and therefore to the response the proposer provides, based on the following categories:

- **Mandatory** – Minimum required goods or services that the agency deems essential to the program.
- **Options** – Goods or services that the offerer must propose, but that the agency is not obligated to purchase.
- **Desirable** – Goods or services that the agency prefers, but that the offerer is not obligated to propose.
- **Alternative** – An approach proposed by the offerer that provides a different solution to the agency need.

### ***Overview of the Solicitation Process***

This section should provide information about how the agency will conduct the administrative aspects of the solicitation, selection, and contract development process. Procurements must be conducted in accordance with the process described in the RFP.

### ***Timeline and Calendar of Events***

This section should provide a specific timetable for the procurement process. Important milestones to be specified typically include:

**Dates for Question Submission and Agency Response** – The RFP should provide the time frames for submission of questions and responses to those questions. The method for submitting questions should be stated. The question and answer process may be multiphased, allowing for questions and answers prior to, during, and/or after the pre-bid conference. If no

pre-bid conference will be held, the agency should still provide for a question and answer period. Answers provided must be vendor neutral and provided in writing to all potential offerers.

**Date for Pre-Bid Conference** – The schedule should provide the date for the pre-bid conference if the agency decides to conduct one. Pertinent details such as time, specific location, security sign-in procedures, and parking arrangements should be included. Attendance must be defined as optional or mandatory; if attendance is mandatory, proposals may only be considered from offerers who participated.

**Date for Notice of Intent to Bid (optional or mandatory)** – The RFP may require a vendor to provide, by a specified date, notice of its intent to submit a bid. This notice may be optional or mandatory, at the agency's discretion, although agencies are encouraged to provide maximum flexibility for receipt of bids from all interested offerers.

If the notice of intent to bid is made mandatory, the agency should only consider proposals from those vendors who have submitted the notice of intent to bid on or before the date specified. Furthermore, the agency should distribute any amendments to the RFP and other communications only to such vendors. An exception would be if the amendment constitutes a material change that could have affected the ability of potential vendors to bid. In that event, the agency should provide the amendment to all potential vendors including those who did not submit a notice of intent to bid by the required deadline.

**Date for No Bid Reply Form** – Agencies may choose to include in the RFP a form that vendors will submit indicating their intention not to bid. The form should include space for vendors to explain why a bid is not being submitted. The form should indicate that a no bid response will not impact participation in future solicitations. A date for its return should be specified. Return of this form is usually requested no later than the proposal due date and time. The no bid reply form helps the agency demonstrate that proposals were shared with others besides those responding, and to understand why a company did not bid.

**Date for Submission of Proposals** – The earliest possible due date for submission of proposals is 15 business days after the advertisement appears in the New York State Contract Reporter. However, when selecting the submission date, consideration should be given to time frames necessary for intervening activities, such as the pre-bid conference and the question and answer period. Other factors, such as the complexity of the RFP, the time needed for vendors to prepare an effective response and obtain necessary internal approvals, and holidays that may impact availability of the agency and offerers, should also be taken into account.

### ***Anticipated Start Date and Term of Contract***

The term of the contract and any renewal/extension provisions must be specified in the RFP and the resultant contract.

### ***Method of Award***

This section should identify the method of award as best value. State Finance Law mandates that a contract for services (including technology) be awarded on the basis of best

value which takes into consideration cost as well as technical or non-cost factors. For certain service and technology procurements, however, best value can be equated to low price.

The RFP should indicate whether the agency anticipates making a single or multiple award pursuant to the solicitation. If there will be multiple awards, it should also state whether awards will be made by lot, region, type of service, or some other characteristic.

### ***Evaluation Criteria***

The RFP must present the criteria that will be used for the evaluation of proposals. At a minimum, the agency must disclose in the RFP the relative weights that will be applied to the cost and technical components of the proposals. An example would be: 30 percent for cost and 70 percent for technical.

An agency may elect to include in the RFP a more detailed breakdown of the evaluation criteria, such as specifying the relative weights for detailed categories (e.g., Experience = 20 percent, Staffing = 15 percent, and so forth). Additional information about developing and using evaluation criteria can be found in subsequent sections of this chapter.

### ***Offerer's Minimum Qualifications***

The RFP should state any qualifications that the offerer must meet to be eligible for consideration. Minimum qualifications may address characteristics of the business such as company capacity, staffing, licenses or certifications, experience (firm and/or employee), recently completed projects of similar scope/size, and references.

### ***Mandatory Requirements***

Refer to Chapter III.

### ***Reserved Rights***

The RFP must inform potential bidders of the agency's "reserved rights." A list of reserved rights is included in Chapter III, and represents the minimum that should be used. Agencies are encouraged to review the list and add to it as needed.

### ***Method for Issuing Clarifications or Modifications to the RFP***

This section should specify how the agency will issue any clarifications or modifications to the RFP that may arise after it is first issued.

## **C. Additional Content Considerations**

### ***Prequalification Criteria***

An agency may establish minimally acceptable qualifications that an offerer must meet in order to be deemed responsive. These may include but are not limited to: adequacy of resources, experience, and past performance. If the agency elects to apply a prequalification screening, it must disclose in the RFP both the prequalification criteria and that offerers not meeting these criteria will be eliminated without further evaluation. Typically, prequalification criteria are scored on a pass/fail basis.

### ***Risk Management / Required Assurances***

An agency may opt to mitigate risk by requiring some form of financial assurance such as a letter of credit, performance bond or insurance coverage.

### ***Cost Adjustments***

If the agency chooses to allow for cost adjustments (whether up or down), the basis must be specified in the RFP. Cost adjustments may be based on standard measures such as the Consumer Price Index (CPI).

### ***References***

If the agency requires a bidder to submit references as part of the response, the agency must, at a minimum, verify the references provided as part of its evaluation process. If the agency opts to score reference checks, the scoring methodology must be disclosed in the RFP.

## **D. RFP Distribution and Receipt of Proposals**

### ***Advertisement of the Solicitation***

The requirement to advertise solicitations in the New York State Contract Reporter is discussed in Chapter III.

### ***Distribution of the RFP***

Once the RFP is finalized, it should be distributed to all known potential bidders and any bidder that requests a copy as a result of the advertisement. Potential bidders may be identified through lists maintained by the agency, web searches, previous procurements, and/or the Department of Economic Development's list of M/WBEs. The RFP (or notice of the RFP) can be distributed via postal mail, e-mail, and/or posting to the agency website, among other means.

## ***Receipt of Proposals***

As noted above, the agency must state in the RFP the date and time that proposals are due. As a general rule, late bids cannot be accepted. However, if permitted by agency policy and if no timely and responsive bids are received, a late bid may be accepted. Before accepting a late bid, agencies should contact OSC. The agency must certify that proposals were received in accordance with the RFP.

## **E. Evaluation of Proposals – Overview**

The objective of the evaluation process is to develop and apply criteria that will ensure that proposals are evaluated objectively, fairly, equally and uniformly and that the agency selects the best value solution among the submitted proposals.

Typically, evaluations are an analysis of the technical proposals, a separate comparative analysis of the cost proposals, and a method for combining the results of the technical and cost proposal evaluations to arrive at the selection of the proposal deemed to be the best value to the state. Thus, there are up to three distinct parts to the evaluation process:

- Administrative review of prequalification criteria (optional);
- Technical evaluation – An examination of the non-cost elements that were not considered during the administrative review, such as the functional specifications (e.g., hardware requirements, scheduling); and
- Cost evaluation – A comparison of the price proposed (and, at the agency's option, other costs of the project) to the prices and costs of other competing proposals.

More detail is provided in subsequent sections of this chapter.

## **F. Evaluation Team**

It is strongly recommended that the agency establish an evaluation team. The agency may also establish various oversight roles to provide policy, guidance, and direction for the evaluation process and team, and to ensure the integrity of the procurement. An individual may be designated a lead role to coordinate all activities within the process.

The number and selection of evaluators should be based on many factors including the complexity of the procurement and the level of knowledge possessed by the potential evaluators available to analyze the proposals. There may be rare instances where a single evaluator must be used for the entire technical evaluation, or a portion of it, such as when available expertise for evaluating the technical considerations is limited.

It is strongly recommended that technical and cost proposals be reviewed by different evaluation sub-teams although it is recognized that in limited situations separate teams may not be feasible. Both approaches are addressed briefly below.

### ***Separate Team Approach***

Under this approach, the technical and cost evaluation teams may conduct their reviews simultaneously.

**Technical Proposal Review Team** – This team is typically comprised of program and technical experts, and may conduct its evaluation under the direction of a technical evaluation manager or a team leader. The team is responsible for all aspects of the evaluation of the technical proposal. This may include review of vendor qualifications, such as the number of past projects performed of a similar size and scope and proposed personnel resources, such as staff capacity. Depending on the nature of the RFP, the team would also be responsible to perform such activities as benchmark tests, site visits, and reference checks.

**Cost Proposal Review Team** – The cost proposal team is typically comprised of one individual, but may be a team of people, responsible for evaluating and scoring the cost proposals submitted in response to the RFP. The cost team works under the direction of a procurement director or coordinator.

**NOTE:** While it may be necessary for the cost team to obtain technical information to clarify the association between costs and technical components, the technical evaluators must not be provided with the proposed costs until after selection is made.

### ***Single Team/Evaluator Approach***

Under this model, one team or one individual evaluator conducts all evaluations. When a single team/evaluator is used, the cost proposals must remain sealed until completion of the technical evaluation.

## **G. Conducting the Administrative Review**

At its discretion, the agency may conduct an administrative review of proposals to:

- Ensure that all required documents and forms are included in the submission. Proposals found to be materially incomplete may be disqualified as provided for in the RFP.
- Determine on a pass/fail basis that certain minimum mandatory qualifications (e.g., minimum experience requirements) set forth in the RFP have been met.

Depending on the number and complexity of proposals expected to be submitted, the agency should designate an individual or team to conduct this review.

## H. Conducting the Technical Evaluation

The technical evaluation measures the extent by which a proposal would meet the agency's needs and relies upon the evaluators' expertise in assessing the strengths and weaknesses of each response. The technical evaluation is a critical part of the ultimate goal of determining which proposal presents the best value to the state. The main steps for performing the technical evaluation are discussed below.

### ***Development of the Technical Evaluation Criteria***

The criteria selected for evaluation must reflect the agency's objectives, scope of services, and requirements as set forth in the RFP. Examples of typical technical criteria include, but are not limited to:

- Work plan and methodology to achieve desired end results;
- Experience of the offerer in providing the required services and/or technology;
- Management capability of the offerer;
- Offerer's overall past performance;
- Qualifications and experience of the offerer's proposed staff;
- Conformance with the schedule of work set forth in the RFP; and
- Offerer references.

**NOTE:** Agencies are reminded that the criteria and sub-criteria may, but are not required, to be disclosed in the RFP.

### ***Assignment of Values to Technical Evaluation Criteria***

Once the technical evaluation criteria have been determined, values must be assigned to the criteria and any sub-criteria. Following are three examples of the ways in which values are typically assigned:

**Example 1:** Points are assigned to each technical criterion. Evaluators review the technical proposals and assign a score up to the maximum points for each evaluation criteria category. Illustration:

- Work plan and methodology to achieve desired end results = 25 points
- Offerer's experience in providing the required services and/or technology = 15 points
- Offerer's management capability = 15 points
- Proposed staffing plan = 10 points
- Conformance with the schedule of work set forth in the RFP = 5 points

**Example 2:** The technical criteria may be further broken down into sub-criteria and a subset of points is assigned to each sub-criterion. Evaluators review the technical proposals and score each sub-criterion. Illustration:

- Proposed Staffing Plan = 10 points
  - Staffing Plan proposes at least ten Programmer I positions = 2 points
  - Staffing Plan proposes at least four Programmer II positions = 2 points
  - Staffing Plan proposes at least three Analyst I positions = 2 points
  - Staffing Plan proposes at least one Analyst II position = 2 points
  - Staffing Plan proposes at least three Trainer positions = 2 points

**Example 3:** The technical criteria may be considered according to a pre-established scale. Evaluators grade the technical proposals and assign points for each criterion within the scale. Illustration:

- Excellent Staffing Plan = 8-10 points
- Good Staffing Plan = 5-7 points
- Fair Staffing Plan = 3-4 points
- Poor Staffing Plan = 0-2 points

In rare instances, due to the nature of the procurement, alternative concepts for assigning value to the technical criteria may be permissible. In such instances, it is recommended that the agency consult with the OSC Bureau of Contracts before beginning the procurement.

**NOTE:** The evaluation criteria and the values assigned must be consistent with any information provided in the RFP.

### ***The Technical Evaluation Instrument***

The nature, scope, and complexity of evaluation methods vary widely. However, in accordance with State Finance Law §§163(9)(a) and (b), the evaluation criteria and methodology for evaluating proposals must be completed and secured prior to the initial receipt of proposals. This principle applies to both technical and cost components.

The evaluation instrument is the tool that will be used by the evaluators to apply the evaluation criteria to the proposals and includes the breakdown of the relative weights (for technical versus cost) into more detailed categories (for example, experience = 20%, staffing = 15%, and so forth). This tool consists of a series of documents used during the evaluation process. This series may include, but is not limited to:

- Evaluator instructions;
- Evaluator confidentiality/conflict of interest statement;
- Rating sheet which defines allocation of points;
- Evaluator forms and summary evaluation sheet;

- Scripted interview questions;
- Scripted reference checks; and
- Oral/product presentation/agenda.

### ***Evaluating Technical Proposals***

As a preliminary step, proposals should be reviewed for compliance with the minimum mandatory technical requirements set forth in the RFP. After the preliminary review, the technical proposal evaluation must be conducted as documented in the RFP and the evaluation instrument. The evaluation team members apply scores to the pre-determined criteria and sub-criteria if applicable. Scoring is based on information provided in the submitted proposal. However, additional factors, as established in the RFP and/or the evaluation instrument, may be considered. Examples include:

- Product or service demonstrations and presentations;
- Reference checks (staff and/or company performance);
- Vendor site inspections;
- Interviews of key proposed managers and technical experts;
- Written proposal clarifications; and
- Rating services (such as Moody's or Dun & Bradstreet)

The above factors may be used for non-scored validation purposes, as cumulative information to be considered together with submitted information, or as separately scored criteria. For example:

- A reference check might be used to verify submitted information (e.g., the proposer has in fact successfully completed three jobs of similar size/scope). A reference check might also be used as a separately scored criterion (e.g., the average satisfaction rating from three references is 7 on a scale of 0 – 10).
- Presentations and interviews might be used as cumulative information along with submitted documentation for scoring a criterion (e.g., experience, work plan). A presentation might also be used as a separately scored criterion.

The agency has the authority to waive mandatory requirements that are not material provided that:

- The RFP discloses to the offerers the agency's reserved right;
- The mandatory requirements are not met by all offerers;
- The waiver does not disadvantage the state;
- The waiver does not benefit the proposed contractor; and
- The waiver does not prejudice any non-winning bidder or potential bidder.

Following completion of the initial technical proposal review, evaluation scores are adjusted and finalized, as provided for in the evaluation instrument.

Regardless of the scoring methodology utilized, evaluators must document the basis for the rating using narrative to explain the proposal's strengths and weaknesses, thereby justifying the score. For example:

"The offerer's proposed Project Director was given the maximum number of points because this individual has successfully managed a project of similar complexity and he/she will be critically important to the success of our project."

## **I. Conducting the Cost Evaluation**

Methods for calculating costs vary depending on a mix of factors concerning the nature and extent of the services, the costs associated with utilizing the services, and the impact of the services on agency programs and operations (State Finance Law §§160(5) and (6)).

The two most common methods for comparing the cost proposals are:

### ***Conversion of Price to a Weighted Point Score***

Points = (Lowest bid divided by the bid being evaluated) x cost points

### ***Comparison of Life Cycle Costs***

Procurements that entail the expenditure of funds for both the fees associated with the services to be procured (i.e., price) and costs associated with the introduction of the services into the environment (i.e., indirect costs) could be evaluated by analyzing total life cycle costs, defined as the sum of the fees and indirect costs.

An example of life cycle costs for a computer system conversion would be the offer price of the new system combined with other expenses, such as, but not limited to, upgrades to existing infrastructure and additional staff requirements if necessary.

Once the total life cycle costs for competing proposals have been determined, the life cycle costs associated with each proposal must be converted to a weighted point score using the formula above.

**NOTE:** If an agency wishes to use a cost evaluation method other than those described above, such as "banding" or "competitive cost range," it should contact OSC for further discussion before proceeding.

## **J. Determining the Final Score**

The agency should weigh the technical and cost evaluation results as two components, which together total 100 percent of the evaluation. For example, the technical evaluation could be weighted at 70 percent and the cost evaluation weighted at 30 percent. After the technical evaluation has yielded a technical score and the cost evaluation has yielded a cost score, the scores are weighted and combined to produce a final score for the proposal.

## **K. Agency-Recommended Award and Notification**

### ***Agency-Recommended Award***

The agency's selection of the vendor must be in accordance with evaluation criteria developed prior to the initial receipt of proposals. The agency may reject all proposals or – if provided for in the RFP – may reject separate parts of the scope of services. (State Finance Law §163(9)(d)).

The agency may award a contract to an offerer if only one proposal was submitted, provided that the agency documents that the RFP did not restrict competition and that the cost is reasonable.

### ***Notification of Award***

Upon completion of the evaluation and vendor selection, the agency must send notification of award to all successful and non-successful offerers. Notification to the selected offerer(s) should indicate that the award is subject to approval by control agencies before the contract is finalized. The agency must provide non-successful bidders the opportunity for a debriefing, if requested.

## **L. Contract Negotiation**

In cases where the RFP has specifically provided for negotiation of terms and conditions, the agency may engage in negotiation with the successful bidder prior to settling on the contract terms. Revisions must not substantially alter the requirements or specifications set out in the RFP. To assess whether a potential revision constitutes a substantial change, the question should be asked: "Would other bidders or non-bidders have responded differently if the term or condition to be revised as a result of negotiation had been included in the RFP?" If the answer is "yes" or "possibly," then the provision may not be revised.

## M. Documentation Requirements for Control Agency Review and Approval

Contracts resulting from an RFP are subject to review and approval first by the Office of the Attorney General, and second by the Office of the State Comptroller, in accordance with State Finance Law §112. Depending on the nature of the procurement, approval from other control agencies may be required.

Generally, when OAG approval is required, only the contract itself needs to be submitted for review. However, OAG may, for any particular contract, request the entire procurement record. The agency may also ask OAG if the entire procurement record can be submitted for forwarding on to OSC upon OAG's approval of the contract.

The OSC Bureau of Contracts conducts the final review and provides its approval. OSC conducts its review to ensure that:

- The procurement was conducted in accordance with the process established by the agency;
- The procurement and resulting contract complies with all relevant laws; and
- The contract terms and conditions are in the best interests of the state.

(State Finance Law §112 and State Finance Law §163(9)(g)).

**NOTE:** The agency must include a completed AC-340 Form along with the procurement package that is provided to OSC. This form provides essential contract information that is used to record the contract on the OSC central accounting system and to encumber the funds for the current fiscal year.

## **VI. BEST PRACTICES**

This chapter highlights practices that experience has shown will make a procurement easier to manage, help ensure that the appropriate goods/services are obtained, increase the ability to receive control agency approval, and minimize the likelihood of a bid protest.

### **A. Knowing the Business Needs**

Know what the “end result” needs to be. Before starting the procurement process, have a good understanding of what the agency needs, what a product will be used for, whether there will be a need for modifications to existing equipment or facilities, and what is available in the marketplace. Identification of the business needs may require meeting with end-users to bring added clarity to the scope of the transaction and the various components of the transaction, such as the intended product usage, what services are needed, or site conditions.

### **B. Proper Planning**

Proper planning is the single most important factor in conducting a successful procurement. Proper planning includes allowing adequate time for advertisement, writing a clear and concise solicitation, allowing sufficient time for potential bidders to ask questions and prepare a proposal (taking into account the complexity of the solicitation), reviewing the bids/proposals, and conducting internal/ external reviews of the final contract.

### **C. Thorough Information Gathering**

Consider using a Request for Information (RFI), as discussed in Chapter IV, to gather information about the types of goods/services that are available. Certain types of products evolve rapidly; therefore, sending an RFI to vendors may provide insight on newer, more efficient products or services that better address the needs of the agency. It is also strongly recommended that an RFI be advertised in the New York State Contract Reporter to provide additional vendors with an opportunity to respond to the RFI.

### **D. Conducting Pre-Bid Conferences**

Pre-bid conferences can be very helpful to both agency staff and prospective bidders, particularly with respect to complex procurements. A pre-bid conference provides the prospective bidders and agency staff an opportunity to ask questions and obtain a better understanding of what is needed and what might be offered. Participation by potential bidders in a pre-bid conference can be deemed mandatory or optional. The conference can be conducted via a conference call, in-person, or as a combination of both. If a pre-bid conference is held, the agency must document who attended, the questions raised, the location, time, and

other salient information. Questions and answers must be provided to all potential bidders after the conference is conducted. Questions should remain “vendor neutral” – that is, the identity of the vendor asking the question should not be revealed in the presentation of either the question or the answer.

## **E. Providing for Site Visits**

Site visits can be very beneficial for both potential bidders and agency staff. These can be deemed mandatory or optional. For example, a site visit may be useful in a procurement for janitorial services so potential bidders can know exactly what the equipment and/or facility looks like, whether there is access for vehicles, what the security procedures are, and other factors. Consideration may also be given to visiting the bidders’ sites to ensure that they have the necessary equipment and/or facilities to meet the contract requirements.

## **F. Discussion with the Office of the State Comptroller**

Prior to issuing the IFB/RFP, consideration should be given to discussing complicated and/or sensitive solicitations or unique evaluation methodologies with the OSC Bureau of Contracts to ensure that the procurement is undertaken in an appropriate manner.

## **G. Use of FOB Destination**

When buying goods, the recommended practice is to require that quotes or bids be based on “**Free on Board (FOB) Destination**,” meaning that there is no additional delivery charge and the title (ownership) does not transfer until the product reaches its destination. This requirement ensures that bids can be evaluated in an equal manner. Further, it ensures that the agency does not assume risk of loss until the product is delivered to the agency and any problems during transport are the vendor’s responsibility. By contrast, title to items purchased **Free on Board (FOB) Origin** (a/k/a “FOB Shipping Point”) transfers upon shipping and the agency is therefore responsible for any risk of loss or problems during transport.

## **H. Review of Terms and Conditions Proposed by Vendors**

Carefully read all terms and conditions that are proposed by the vendor to ensure that nothing conflicts with Appendix A. In addition, any terms proposed by the vendor such as limits of liability, indemnification, and warranties, or those that may be detrimental to the state, should be discussed with agency counsel.

**NOTE:** Material terms of a contract awarded pursuant to a competitive bid cannot be negotiated.

**NOTE:** When issuing a purchase order on an OGS centralized contract, agencies and vendors are not authorized to change the terms and conditions of that contract, unless such changes are more favorable to the state.

## I. Negotiating Effectively

The following are suggestions for negotiating contracts that are most commonly awarded via an RFP, or under a single or sole source theory:

- Prior to negotiating, the agency should identify all known issues and outline its position and acceptable alternatives.
- To the maximum extent possible, negotiations should be conducted at the agency's office. Always allow sufficient time to discuss the issues fully.
- Look for a "win-win." Often, it is possible for vendors and procurement staff to agree on terms that are beneficial to both parties. Making any necessary concessions incrementally will aid in working towards a "middle ground" that is satisfactory to all.
- Notes should be kept of all negotiation discussions and all revisions should be tracked in writing to ensure that the contract being signed contains all agreed upon terms and conditions.

**CAUTION:** Material terms of a contract awarded pursuant to a competitive bid cannot be negotiated.

## J. Involving Upper Management

Even procurements that are limited in scope or are relatively simple have the potential to become controversial. It is recommended that the final selection of a contractor be reviewed by a manager who both has a broad perspective of the agency's operations and knows the strategic considerations related to the procurement. Management may: 1) concur with the selection; 2) request a re-evaluation in accordance with the pre-established evaluation methodology; or 3) determine that all offers should be rejected and a new procurement conducted. Management may not, however, direct an award to a specific vendor who is not the low bidder or who has not offered the best value in accordance with the pre-established evaluation methodology.

## K. Documenting

Documentation of all phases of the procurement, including communications with bidders or agency program staff, should be included in the procurement record. Note that contacts with bidders must also be documented in accordance with the requirements of the Procurement Lobbying Law.

## **L. Adapting Standard Formats to the Specific Procurement**

In general, previously issued solicitations and/or solicitation templates can be very helpful when creating a solicitation document for a new procurement. However, it is important to recognize that such models must often be adapted to suit the particular circumstances. Be aware that changes in law may have occurred since the example was created, which in turn may alter the provisions that must be included. Some amount of tailoring is typically necessary to construct an appropriate and effective solicitation package.

Sample outlines for developing an IFB and an RFP are included in these Guidelines in Chapter VIII. Exhibits. Consistent with the point made above, depending on the scope and nature of the specific procurement project, not all of the sections and clauses in these samples may apply. Similarly, the scope and nature of the procurement may require sections and clauses that are not listed in the respective samples.

For additional guidance in adapting a template or a previously used format to suit the procurement situation at hand, it is advisable to refer to the agency's policy and procedures and consult with experienced procurement personnel.

## VII. GLOSSARY

**AC-340 Form** – The contract encumbrance request form that an agency prepares to record a new contract or an amendment onto the OSC Central Accounting System and encumber funds from the current year to ensure that payments can be made.

**Agency (State Agency)** – All state departments, boards, commissions, offices or institutions. This term excludes, however, for the purposes of subdivision five of §355 of the Education Law, the State University of New York and excludes, for the purposes of §6218 (a) of the Education Law, the City University of New York. Furthermore, the term does not include the Legislature or the Judiciary.

**Agency Specific Contract** – A contract where the specifications for the product and/or service are described and defined by an agency to meet its needs.

**Appendix A** – The document containing standard clauses required in all New York State contracts.

**Attorney General (OAG)** – The Office of the Attorney General of the State of New York. The duties of this office are set forth in Executive Law § 63. With regard to procurement, the OAG reviews contract terms to ensure that the interests of New York State are protected. This office also reviews complaints of improper conduct and may conduct examinations into the performance of a contract.

**Backdrop Contract** – A contract resulting from a process in which vendors respond to specifications in order to prequalify for a later solicitation. Such later solicitation will usually be conducted through a competitive mini-bid process. Prices offered under backdrop contracts are generally established as "maximum not to exceed prices." Where a mini-bid is not required, state agencies are encouraged to negotiate lower prices than the "maximum not to exceed prices" contained in the backdrop contract. The backdrop contracts may be awarded by the Office of General Services for use by all state agencies or by an individual agency for its own use.

**Best Value** – The basis for awarding all service and technology contracts to the offerer that optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall be, wherever possible, quantifiable (State Finance Law §163 (1) (j)).

**Bid** – An offer or proposal submitted by a bidder to provide a product or service at a stated price for the stated contract term.

**Bid Opening** – The formal process in which sealed bids are opened, usually in the presence of one or more witnesses, at the time and place specified in the solicitation.

**Bid Protest (also known as a Bid Dispute)** – A formal written complaint made against the methods employed or decisions made by a state agency in the process leading to the award of a contract.

**Bidder (also referred to as an offerer or proposer)** – Any individual, business, or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a bid in response to a bid solicitation.

**Bidder List** – A list of names and addresses of vendors from whom bids, proposals, or quotations are solicited. This may also apply to a list of potential bidders that is maintained by an agency.

**Centralized Contract** – Any contract let by the OGS Procurement Services Group for use by state agencies or any other authorized user, for the purchase of commodities or services. Centralized contracts are established or approved by the Commissioner of General Services as meeting the state's requirements.

**Commodities** – Material goods, supplies, products, construction items or other standard articles of commerce (other than printing or technology) that are the subject of any purchase or exchange (State Finance Law §160 (3)).

**Contact** – Any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement (State Finance Law §§139-j (1) and 139-k (1) (c)).

**Contract** – A written agreement that formalizes the obligations of all parties involved.

**Contractor** – Any individual, business or other legal entity awarded a contract with a state agency to furnish commodities or services for an agreed-upon price.

**Cost** – The total dollar expenditure of a procurement. Article 11 of the State Finance Law requires costs of the given goods or services to be quantifiable. This must take into account the price; the administrative, training, storage, maintenance or other associated overhead expenses; the value of warranties, delivery schedules, financing costs and foregone opportunity costs; and the life span and associated life cycle costs of the given good or service being purchased (State Finance Law §160 (5)).

**Debriefing** – The practice whereby, upon the request of a bidder, the state agency advises such bidder of the reasons why its bid was not selected for an award. It is viewed as a learning process for the bidder to be better prepared to participate in future procurements.

**Discretionary Purchase** – Purchases below an established dollar level that are authorized by law to be made without a formal competitive process.

**Draft RFP** – An advance copy of the RFP that is sent to known potential bidders for remarks or comments prior to the RFP being issued by the agency.

**Emergency** – An urgent and unexpected situation where health and public safety or the conservation of public resources are at risk. Such situations may create a need for an emergency contract. (State Finance Law §163 (1) (b)) An agency's failure to properly plan in advance, which results in a situation where normal practices cannot be followed, does not constitute an emergency.

**F.O.B. Destination** – As defined in U.C.C. §2-319, “free on board (F.O.B.) destination” means there will be no additional charge for delivery to the agency’s specified location, and that the title is conveyed from the vendor to the agency at the destination of the shipment. The vendor owns the goods during transit and will file any damage claims.

**F.O.B. Origin** – As defined in U.C.C. §2-319, “free on board (F.O.B.) origin” means that the receiving agency pays the delivery charges and the title is conveyed at the origin of the shipment. Because the agency owns the goods during transit, it will file any damage claims. This may also be referred to as “F.O.B. Shipping Point.”

**Form, Function and Utility** – The minimum essential requirements that will meet the agency’s needs. These requirements are defined by the agency. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.

**Invitation for Bid (IFB)** – A competitive solicitation seeking bids for a specified commodity or service, pursuant to which award is made to the responsive and responsible bidder(s) submitting the lowest price.

**Liquidated Damages** – A monetary amount agreed to in the contract to provide for reasonable compensation to the state for the contractor’s failure to meet its contractual obligations.

**Mini-Bid** – An abbreviated bid process in which an authorized user develops a project definition outlining its specific requirements and solicits bids from existing prequalified backdrop contractors. When a mini-bid is required, the exact process is clearly outlined in the backdrop contract. The mini-bid award is made based on best value or lowest price.

**Minority or Women Owned Business Enterprise (M/WBE)** – A business certified under Article 15-A of the Executive Law that is independently owned, operated and authorized to do business in New York State; and is owned and controlled by at least fifty-one percent women or minority group members who are citizens of the U.S. or permanent resident aliens. Such ownership must be real, substantial and continuing; and the minorities or women must have and exercise the authority to control independently the day-to-day business decisions of the enterprise.

**Multiple Award** – A contract that is awarded to more than one responsive and responsible bidder who meets the requirements of a bid specification in order to satisfy multiple factors and needs as set forth in the bid document. These factors may include: complexity of terms; various manufacturers; differences in performance required to accomplish or produce required end results; production and distribution facilities; price; compliance with delivery requirements; and geographic location. (State Finance Law §163 (10) (c) and §9A-3 NYCRR 250.10 (c)).

**Office of General Services (OGS)** – The agency tasked with creating statewide centralized contracts for use by state departments and agencies, and other authorized users such as authorities, municipalities and not-for-profit organizations, as per State Finance Law §163.

**Office of the State Comptroller (OSC)** – The agency tasked with reviewing and approving contractual agreements and payments, as per §112 of State Finance Law, and granting exemptions from advertising requirements, as per State Economic Development Law §144.

**Piggyback Contract** – A newly created contract based upon a contract awarded by the United States government, or any state or any political subdivision thereof, in accordance with the requirements of the New York State Finance Law.

**Preferred Source** – In order to advance special social and economic goals, State Finance Law §162 requires that a governmental entity purchase select commodities and services from designated organizations when the commodities or services meet the "form, function and utility" requirements of the governmental entity. Under State Finance Law §163, purchases of commodities and services from preferred sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State preferred sources include: Corcraft; Industries for the Blind of New York State, Inc.; New York State Industries for the Disabled; and the Office of Mental Health. These requirements apply to a state agency, political subdivision and public benefit corporation (including most public authorities).

**Prevailing Wage** – The pay rate that is required to be paid to all private workers (non-government) on all New York State public works projects. Generally, prevailing wage rates apply to construction, repair or renovation of government facilities (state or local) or building service contracts. The New York State Department of Labor issues wage schedules on a county-by-county basis that contain minimum rates of pay for various job classifications. (State Labor Law Articles 8 and 9).

**Price** – Unless otherwise specified, the amount of money set as consideration for the sale of a commodity or service. When applicable and specified in the solicitation, it may include, but is not limited to, delivery charges, installation charges, and other costs (State Finance Law §160(6)).

**Procurement** – The acquisition of goods and/or services.

**Procurement Record** – Documentation of the decisions made and the approach taken in the procurement process (State Finance Law §163 (f)).

**Proposal** - A bid, quotation, offer or response to a governmental entity's solicitation relating to a procurement. In general, a proposal is submitted for an RFP and a bid is submitted for an IFB, but the terms are often used interchangeably.

**Recycled Commodity** – A product that is manufactured from secondary materials as defined in the State Economic Development Law §261 (1) and State Finance Law §165 (3) (a). The law creates a preference for purchases of recycled commodities when they meet the form, function, and utility of the authorized user after the cost of the commodity has been considered.

**Remanufactured Commodity** – A commodity that has been restored to its original performance standards and function and is thereby diverted from the solid waste stream, retaining, to the extent practicable, components that have been through at least one life cycle and replacing consumable or normal wear components. (State Finance Law §165 (3) (a)). The law creates a preference for purchases of remanufactured commodities when they meet the form, function, and utility of the authorized user after the cost of the commodity has been considered.

**Request for Information (RFI)** – A research and information gathering document used when an agency is seeking to learn about the options available to address a particular need and wants to obtain information to help create viable requirements for a potential solicitation.

**Request for Proposals (RFP)** – A competitive solicitation seeking proposals for a specified service or technology, pursuant to which an award is made to the responsive and responsible proposer(s) offering the best value.

**Responsible** – The status afforded an individual or company based on factors such as: financial ability and organizational capacity; legal authority to conduct business in New York State; integrity as it relates to business related conduct; and past performance. (These four factors are sometimes summarized by the acronym “FLIP.”)

**Responsive** – Meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services by a state agency (State Finance Law §163 (d)).

**Restricted Period** – The period of time commencing with the earliest written notice, advertisement or release of an RFP, IFB or other solicitation from offerers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, OSC (State Finance Law §§139-j (1) (f) and 139-k (1) (f)). During this period, State Finance Law §139-k requires a governmental entity to collect and record certain information pertaining to those individuals who contact it in an attempt to influence a procurement. The law restricts the time frame and manner in which the business community may contact a governmental entity with regard to attempting to influence a procurement. Under the law, the business community is obligated to make only permissible contacts during the restricted period and may only contact those who are designated by the governmental entity regarding a procurement.

**Revenue Contract** – A binding agreement between a governmental entity and another party that defines the terms under which revenue will be received by the governmental entity. Individuals should familiarize themselves with their agency’s policies and procedures pertaining to revenue contracts.

**Service** – Except with respect to contracts for state printing, the performance of a task or tasks and may include a material good or a quantity of goods, and which is the subject of a purchase or other exchange. Procurements of technology are conducted in the same manner as are procurements of services.

**Single Source** – A procurement in which, although two or more offerers can supply the required commodities or services, the commissioner or state agency, upon written findings setting forth the material and substantial reasons therefore, may award the contract to one offerer over the other. The commissioner or state agency shall document in the procurement record the circumstances leading to the selection of the vendor, including the alternatives considered, the rationale for selecting the specific vendor, and the basis upon which it determined the cost was reasonable (State Finance Law §163 (h)).

**Small Business** – A business that is resident in this state, independently owned and operated, not dominant in its field, and employs no more than one hundred people (State Finance Law §160 (8)).

**Sole Source** – A procurement in which only one offerer is capable of supplying the required commodities or services (State Finance Law §163 (g)).

**Specifications (Requirements)** – Description of the physical or functional characteristics or the nature of a commodity, the work to be performed, the service or products to be provided, the necessary qualifications of the offerer, the capacity and capability of the offerer to successfully carry out the proposed contract, the process for achieving specific results and/or anticipated outcomes, or any other requirement necessary to perform the work. Specifications may include a description of any obligatory testing, inspection, or preparation for delivery and use. They may also include federally required provisions and conditions where the eligibility for federal funds is conditioned upon the inclusion of such federally required provisions and conditions. Specifications should be designed to enhance competition, ensuring that the commodities or services of any offerer are not given preference, except where required by the State Finance Law (State Finance Law §163 (1) (e)).

**State Procurement Council** – The policy-making body established under State Finance Law §161 that is responsible for the study, analysis and development of recommendations to improve state procurement policy and practices; and, for development and issuance of guidelines governing state agency procurement.

**Technology** – A good, either new or used, or service, or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity (State Finance Law §160 (10)). Procurements of technology are conducted in the same manner as are procurements of services.

**Vendor** – A supplier/seller of commodities or services.

## **VIII. EXHIBITS**

## **A. SAMPLE OUTLINE FOR AN “INVITATION FOR BIDS”**

The following provides a detailed example of sections and clauses that can be considered for inclusion in an Invitation for Bids (IFB). The scope and nature of the IFB may require sections or clauses that are not listed here. For additional information, refer to the agency’s policy and procedures.

### **1. OVERVIEW/COVER LETTER**

- 1.1 Designated Contact
- 1.2 Minimum Qualification
- 1.3 Key Events/Timeline
- 1.4 IFB Questions and Clarifications
- 1.5 Instructions for Bid Submission

### **2. ADMINISTRATIVE INFORMATION**

- 2.1 Issuing Office
- 2.2 Method of Award
- 2.3 Term of Contract
- 2.4 Price (Including Price Adjustment Provisions)
- 2.5 Method of Payment
- 2.6 Electronic Payment
- 2.7 Dispute Resolution
- 2.8 Prime Contractor Responsibilities
- 2.9 Prevailing Wage
- 2.10 Debriefing Information

### **3. SPECIFICATIONS/SCOPE OF WORK**

- 3.1 Operations Standards
- 3.2 Scope
- 3.3 Site Visit, as required
- 3.4 Resources and Specific Requirements
  - 3.4.1 What the Contractor Shall Provide
- 3.5 Contract Delivery/Contract Period
- 3.6 Contract Representative
- 3.7 Reporting Requirements
- 3.8 Performance Guarantees (i.e. Progress Payments, Letters of Credit)

### **4. CONTRACT CLAUSES AND REQUIREMENTS**

- 4.1 Order of Precedence
- 4.2 Procurement Lobbying Requirement
- 4.3 Contractor Insurance Requirements
- 4.4 Tax Law Section 5-A Clause
- 4.5 Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses
- 4.6 Freedom of Information Law/Trade Secrets
- 4.7 General Requirements

## **Attachments to an IFB**

Agency practices differ. However, the solicitation should set forth any required documents, such as those listed below, that the bidder should be aware of and should complete and submit as necessary.

- Appendix A: Standard Clauses for New York State Contracts
- Standard Vendor Responsibility Questionnaire (SVRQ)
- Taxation and Finance Form ST-220 CA,
- Procurement Lobbying Forms
- Cost Proposal Form
- M/WBE / EEO Compliance Documentation Forms
- Sample Contract

## **B. SAMPLE OUTLINE FOR A “REQUEST FOR PROPOSALS”**

The following provides an example of sections and clauses that can be considered for inclusion in a Request for Proposal (RFP). Depending on the scope and nature of the specific RFP, not all of these sections or clauses may apply. Further, the scope and nature of the RFP may require clauses that are not listed here. For additional information, refer to the agency’s policy and procedures.

### **1. INTRODUCTION**

- 1.1 Overview
- 1.2 Designated Contact
- 1.3 Minimum Qualifications
- 1.4 Key Events/Timeline

### **2. PROPOSAL SUBMISSION**

- 2.1 Intent to Submit a Proposal
- 2.2 RFP Questions and Clarifications
- 2.3 Proposal Format and Content
- 2.4 Instructions for Bid Submission
  - 2.4.1 Packaging of RFP Response

### **3. ADMINISTRATIVE INFORMATION**

- 3.1 Issuing Office
- 3.2 Method of Award
- 3.3 Term of Contract
- 3.4 Price (Including Price Adjustment Provisions)
- 3.5 Method of Payment
- 3.6 Electronic Payment
- 3.7 Reserved Rights
- 3.8 Exceptions to RFP
- 3.9 Waiver of Rights
- 3.10 Dispute Resolution
- 3.11 Inspection of Books
- 3.12 Prime Contractor Responsibilities
- 3.13 Glossary of Terms
- 3.14 Rules of Construction

### **4. EVALUATION AND SELECTION PROCESS**

- 4.1 Proposal Evaluation
  - 4.1.1 Technical Evaluation
  - 4.1.2 Cost Evaluation
- 4.2 Notification of Award

### **5. SCOPE OF WORK**

- 5.1 Operations Standards
- 5.2 Scope
- 5.3 Resources and Specific Requirements

- 5.3.1 What the Contractor shall provide:
- 5.4 Performance Guarantees (i.e. Progress Payments, Letters of Credit)
- 5.5 Contract Representative
- 5.6 Reporting Requirements

## **6. CONTRACT CLAUSES AND REQUIREMENTS**

- 6.1 Order of Precedence
- 6.2 Procurement Lobbying Requirement
- 6.3 Contractor Insurance Requirements
- 6.4 Tax Law Section 5-A Clause
- 6.5 Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses
- 6.6 Freedom of Information Law/Trade Secrets
- 6.7 General Requirements
- 6.8 Contract Terms
- 6.9 Procurement Rights
- 6.10 Termination
- 6.11 New York State Standard Vendor Responsibility Questionnaire
- 6.12 Ethics Compliance

## **Attachments to an RFP**

Agency practices differ. However, the solicitation should set forth any required documents, such as those listed below, and any additional statutory requirements pertaining to the particular service being procured (such as consulting disclosure forms), that the bidder should be aware of and should complete and submit as necessary.

- Appendix A: Standard Clauses for New York State Contracts
- Standard Vendor Responsibility Questionnaire (SVRQ)
- Taxation and Finance Form ST-220 CA,
- Procurement Lobbying Forms
- Cost Proposal Form
- M/WBE / EEO Compliance Documentation Forms
- Sample Contract

