

**ARIZONA COMMERCE AUTHORITY (ACA)
UNIFORM INSTRUCTIONS TO OFFERORS**

- 1. Definition of Terms.** As used in these Instructions, the terms listed below are defined as follows:
- 1.1. “*ACA*” means the Arizona Commerce Authority.
 - 1.2. “*ACA Fiscal Year*” means the period beginning with July 1 and ending June 30.
 - 1.3. “*Attachment*” means any item a Solicitation requires an Offeror to submit as part of an Offer.
 - 1.4. “*Contract*” means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.5. “*Contract Amendment*” means a written document signed by the parties that is issued for the purpose of making changes in the Contract.
 - 1.6. “*Contractor*” means any person who has a Contract with the Arizona Commerce Authority (ACA).
 - 1.7. “*Days*” means calendar days unless otherwise specified.
 - 1.8. “*Exhibit*” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.9. “*Gratuity*” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.10. “*Materials*” means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.11. “*Offer*” means an offer to provide the goods and/or services specified in a Solicitation, such as a bid, proposal or quotation.
 - 1.12. “*Offeror*” means a vendor who submits an Offer to the ACA.
 - 1.13. “*Services*” means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

- 1.14. "*Solicitation*" means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
- 1.15. "*Solicitation Amendment*" means a written document that is signed by the ACA and issued for the purpose of making changes to the Solicitation.
- 1.16. "*Subcontract*" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

2. **Inquiries**

- 2.1. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
- 2.2. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other ACA or ACA employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
- 2.3. Submission of Inquiries. Inquiries must be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer. The ACA shall consider the relevancy of the inquiry but is not required to respond in writing.
- 2.4. Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the ACA. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.
- 2.5. No Right to Rely on Verbal Responses. An Offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the Solicitation.
- 2.6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
- 2.7. Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about

the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.

- 2.8. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

3. Offer Preparation

- 3.1. Forms: No Facsimile, Telegraphic or Electronic Mail Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms, unless the Solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids.

- 3.2. Typed or Ink; Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.

- 3.3. Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.

- 3.4. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the ACA in a written statement. The Offeror's preprinted or standard terms will not be considered by the ACA as a part of any resulting Contract.

- 3.4.1. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.

- 3.4.2. Request for Proposals. All exceptions that are contained in the Offer may

negatively affect the ACA's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An Offer that takes exception to any material requirement of the Solicitation may be rejected.

- 3.5. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- 3.6. Cost of Offer Preparation. The ACA will not reimburse any Offeror the cost of responding to a Solicitation.
- 3.7. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed (or acknowledgement for electronic submission, when authorized) copy of a Solicitation Amendment may result in rejection of the Offer.
- 3.8. Federal Excise Tax. The ACA is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the ACA.
- 3.9. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
 - 3.9.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the Department for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate ACA and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- 3.10. Identification of Taxes in Offer. The ACA is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item Offered in the Solicitation. When applicable, the tax rate and amount shall be identified on the price sheet. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the contractor.
- 3.11. Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If

suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

3.12. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:

3.12.1 Special Terms and Conditions;

3.12.2 Uniform Terms and Conditions;

3.12.3 Statement or Scope of Work;

3.12.4 Specifications;

3.12.5 Attachments;

3.12.6 Exhibits;

3.12.7 Special Instructions to Offerors;

3.12.8 Uniform Instructions to Offerors; and

3.12.9 Other documents referenced or included in the Solicitation.

3.13. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

3.14. Federal Immigration and Nationality Act. By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The ACA may, at its sole discretion require evidence of compliance during the evaluation process. Should the ACA request evidence of compliance, the Offeror shall have 5 days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.

3.15. Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the ACA or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the proposal.

4. Submission of Offer

- 4.1. Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The ACA may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
- 4.2. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- 4.3. Public Record. All Offers submitted and opened are public records and must be retained by the ACA. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the ACA. If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The ACA shall determine whether the identified information is confidential pursuant to applicable rules and regulations.
- 4.5. Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:
 - 4.5.1. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
 - 4.5.2. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with an applicable Federal, ACA and local laws and executive orders regarding employment.

5. Evaluation

- 5.1. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- 5.2. Taxes. If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the Offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.
- 5.3. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the Offer for the purpose of evaluating that price.

- 5.4. Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
- 5.5. Disqualifications. An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its Offer rejected.
- 5.6. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred twenty (120). If a Best and Final Offer is requested pursuant to a Request for proposals, an Offeror shall hold its Offer open for one hundred twenty (120) days from the Best and Final Offer due date.
- 5.7. Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the ACA reserves the right to:
 - 5.7.1 Waive any minor informality;
 - 5.7.2. Reject any and all Offers or portions thereof; or
 - 5.7.3 Cancel the Solicitation.

6. Award

- 6.1. Number of Types of Awards. The ACA reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the ACA. If the ACA determines that an aggregate award to one Offeror is not in the ACA's best interest, "all or none" Offers shall be rejected.
- 6.2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the ACA's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 6.3. Effective Date. The effective date of this Contract shall be the date that the ACA signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

7. Protests

- 7.1. Filing of a Protest.

7.1.1. Any interested party may protest a Solicitation issued by the ACA, or the proposed award or the award of an ACA contract.

7.1.2. Content of protest. The protest shall be in writing and shall include the following information:

1. The name, address and telephone number of the protester;
2. The signature of the protester or its representative;
3. Request for proposal number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and,
5. The form of relief requested.

7.2. Time for Filing Protests.

7.2.1. Protests concerning improprieties in a Solicitation. Protests based upon alleged improprieties in a Solicitation that are apparent before the Solicitation opens shall be filed before the Solicitation opens. Protests based upon alleged improprieties in a Solicitation that are apparent before the Solicitation closes shall be filed before the Solicitation closes. Protests concerning improprieties that do not exist in the initial Solicitation but that are subsequently incorporated into the Solicitation shall be filed by the next closing date for a response to the Solicitation following the incorporation.

7.2.2 In cases other than those covered in subsection 7.2.2 of this rule, protests shall be filed within ten days after the protester knows or should have known the basis of the protest, whichever is earlier, with the ACA.

7.2.3 If the protester shows good cause, the ACA may consider any protest that is not filed timely.

7.2.4 The ACA shall immediately give notice of the protest to all interested parties.

7.3. Stay of Procurements during Protest. If a protest is filed before the award of a contract or before performance of a contract has begun, the award may be made or contract performance may proceed, unless the ACA stays the contract award or performance on determining in writing that there is a reasonable probability that the protest will be sustained or that stay is not contrary to the best interests of the ACA.

7.4. Confidential Information.

7.4.1. Material submitted by a protester shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law.

7.4.2. If the protester believes the protest contains material that should be

withheld, a statement advising the ACA of this fact shall accompany the protest submission.

7.5. Decision by ACA.

7.5.1 The ACA shall issue a written decision within 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision and a statement that the decision may be appealed to an administrative law judge as an appealable agency action as provided by law.

7.5.2. The ACA shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

7.5.3. If the ACA fails to issue a decision within the time limits set forth in subsection 7.5.2, the protester may proceed as if the ACA had issued an adverse decision.

7.6. Remedies.

7.6.1. If the ACA sustains the protest in whole or part and determines that the request for proposal award does not comply with applicable law and policies, the ACA officer shall implement an appropriate remedy.

7.6.2. In determining an appropriate remedy, ACA shall consider all the circumstances surround the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the government, the urgency of the procurement, and the impact of the relief on the ACA's mission.

7.6.3. An appropriate remedy may include one or more of the following:

1. Decline to exercise an option to renew under the contract;
2. Terminate the contract;
3. Amend the solicitation;
4. Issue a new solicitation;
5. Award a contract consistent with procurement statutes and regulations; or
6. Such other relief as is determined necessary to ensure compliance with procurement statutes and regulations.

7.7. Appeals.

7.7.1. A decision by the ACA under section 7.5, above, shall be considered an appealable agency action, and therefore shall be appealable pursuant to, Title 41, Chapter 6, Article 10 of the Arizona Revised Statutes and Arizona administrative rules adopted thereunder.

- 7.7.2 The ACA shall file a complete report on the appeal with the Office of Administrative Hearings within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the ACA's decision, if applicable, and any other documents that are relevant to the claim.
- 7.7.3 If a stay was issued pursuant to section 7.3, above, the filing of an appeal shall automatically continue the stay unless the ACA makes a written determination that the award of the request for proposal without delay is necessary to protect substantial interests of the ACA.
- 7.8 Applicable Law. Arizona law shall govern all disputes arising out of Solicitations. (Please note: The ACA is exempt from Title 41, Chapter 23 of the Arizona Revised Statutes (the Procurement Code)).