

NEBRASKA DEPARTMENT OF ADMINISTRATIVE SERVICES

NOTICE OF PUBLIC HEARING

December 23, 2020

2:00 p.m. Central Time

Fourth Floor – Conference Room D

1526 K Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 9, Chapters 1, 2, 3, 4, and 5 of the Nebraska Administrative Code, which are the rules and regulations pertaining to the Material Division of the Department of Administrative Services. These rules govern the conditions and terms of competitive bid solicitation and contracting. The purpose of the proposed changes is to eliminate provisions that mirror statute(s), reduce regulatory burden, and to simplify and clarify the rules. There is no expected fiscal impact on state agencies, political subdivisions, or persons being regulated.

The proposed rules as amended are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and online at <http://www.sos.ne.gov>.

All interested persons are invited to attend and make oral or written comments at the hearings. Interested persons may also submit written comments prior to the hearings, which will be made part of the hearing record at the time of the hearing if received by the Department of Administrative Services on or before the hearing time on December 18, 2020. Written comments should be sent to the General Counsel of the Department of Administrative Services by mail to 1526 K Street, Suite 140, Lincoln, Nebraska 68509 or by email to amara.block@nebraska.gov.

Due to COVID-19, members of the public may participate in the public hearing by calling the phone conference line at 888-820-1398; Participant Code 8181679#.

Reasonable accommodations will be provided to persons with disabilities by contacting Amara Block at (402) 471-4114 or amara.block@nebraska.gov by December 17, 2020.

FISCAL IMPACT STATEMENT

Agency: DAS	
Title: 9	Prepared by: Kenny Zoeller
Chapter: 1-5	Date prepared: 8/28/2020
Subject: Materiel Division Rules and Regulations	Telephone: 531-207-2944

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & a Description of Impact:

State Agency:

Political
Subdivision:

Regulated
Public:

If indeterminable, explain why:

TITLE 9 MATERIEL DIVISION

CHAPTER 1 PROCUREMENT AND CONTRACTING

001. REMOVAL FROM BIDDING. Any vendor whose performance has been unsatisfactory may be suspended or debarred from bidding. The vendor will be given written notification of debarment or suspension action and its duration. Conditions that may warrant removal or suspension include:

- (A) Failure to respond to three consecutive bid invitations (NOTE: a reply of "no bid" is an acceptable response);
- (B) Improper or no delivery;
- (C) Failure to perform or adhere to a contract with the State of a political subdivision; and
- (D) Unsatisfactory performance or customer service;

002. METHOD OF PROCUREMENT. The State Purchasing Bureau (SPB) shall determine the method of procurement to be utilized in the acquisition of any needed goods or services.

003. STANDARD CONDITIONS AND TERMS. A request is used to solicit competitive bids from vendors. The following conditions and terms apply to the completion of the request by the vendor:

003.01 PRE-BID MEETING. At SPBs discretion a pre-bid meeting may be held for the purpose of explaining specifications or other aspects of the request. All interested vendors are eligible to attend.

003.02 COMPLIANCE WITH REQUESTS. Bids must comply with the requirements and instructions found in the individual requests. The State reserves the right to waive requirements in each request and reserves the right to reject any and all bids.

003.03 COLLUSIVE BIDDING. The bidder's signature on the request is a guarantee that the prices quoted have been arrived at without collusion with other eligible bidders and without effort to preclude the State of Nebraska from obtaining the lowest possible competitive price.

003.04 CORRECTION OF BIDS. A correction may be made to a bid by a vendor if such correction is received by the SPB prior to the date and time of the bid opening. A correction may be made after bid opening in the discretion of SPB.

003.05 BID OPENINGS. Bids received by the SPB on or before the time and date specified on the request are eligible for award. Bids received after this time and date will be returned to the vendor unopened. The SPB is not be responsible for late bids or lost requests. Bids will be opened and read publicly on the date and at the hour designated on the request.

004. AWARDING OF CONTRACT

004.01 METHOD OF AWARD. The State reserves the right to award the bid item-by-item, by groups or as a total, unless otherwise specified by the bidder. The State reserves the right to waive any technicality in any bid.

004.02 TIE BIDS AND PREFERENCE. Bids which are equal in all respects and tied in price will be resolved by drawing lots. Nebraska vendors will be given preference. Tie bids involving more than one Nebraska vendor will be resolved by drawing lots among the Nebraska vendors.

004.03 GRIEVANCES. Any vendor grievances related to an action or determination of the SPB shall be expressed in writing to the Administrator of the Materiel Division of the Department of Administrative Services. A protest of an award must be filed with the Materiel Administrator within ten (10) business days after the intent to award is posted to the SPB's website.

004.04 NOTIFICATION OF AWARD. Notification of award to the successful vendor will be sent by SPB.

005. EXECUTION OF CONTRACT.

005.01 DELIVERY ACCEPTANCE. All deliveries are subject to inspection and approval. Items that do not meet the specifications of the purchase order or are not delivered in good condition may be rejected. Any item rejected by the State shall be removed at the vendor's expense.

005.02 CHANGE ORDER. A change order will be utilized by the SPB to notify a vendor of a change in the purchase order. The change order will identify the affected portion(s) of the original purchase order, corresponding change(s) required, and the reason(s) for the change(s).

005.03 PERFORMANCE AND DEFAULT. The State may require a performance bond from the successful bidder without expense to the State. In case of default by the contractor, the State may procure the articles from other sources and hold the contractor responsible for any excess costs occasioned thereby.

005.04 ACTS OF SUBCONTRACTORS. Vendors are responsible for all acts and performance of subcontractors or secondary suppliers utilized in providing goods or services to the State. Vendors are responsible for payment of all subcontractors and secondary suppliers.

005.05 CANCELLATION OF PURCHASE ORDER. The State of Nebraska may cancel a purchase order for noncompliance with the purchase order or if the related contract has been cancelled. The vendor will be notified in writing that a purchase order has been canceled.

DEPARTMENT OF ADMINISTRATIVE SERVICES
MATERIEL DIVISION
TITLE 9

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DEPARTMENT OF ADMINISTRATIVE SERVICES

CHAPTER 1 - STATE PURCHASING BUREAU BIDDERS LIST

001 Inclusion on Bidders List

Any firm or individual wishing to do business with the State of Nebraska shall submit to the State Purchasing Bureau an "Application For Inclusion on Bid List" form. A vendor who has been placed on a bid list may receive periodically "Invitations To Bid" on the items which they have specified on their applications. Applications may be obtained from the State Purchasing Bureau at the following address:

State Purchasing Bureau
P.O. Box 94947
301 Centennial Mall South
Nebraska State Office Building
Lincoln, Nebraska 68509
Telephone (402) 471-2401

Any firm or individual who is not on the list of bidders for a particular item may submit bids, but they shall not receive periodic invitations to bid as they would were they on the list. All goods or services for which bids are requested shall be posted in the State Purchasing Bureau. An interested vendor may obtain a bid form upon request.

002 Removal From Bidders List

Any vendor whose performance has been unsatisfactory may be removed from a bidders list or suspended from bidding for a specified period of time. The vendor shall be given written notification of removal or suspension action and its duration. Conditions which may warrant removal or suspension include:

002.01 Failure to respond to three consecutive bid invitations
(NOTE: a reply of "no bid" is an acceptable response);

~~002.02~~ Late delivery;

~~002.03~~ Failure to deliver;

~~002.04~~ Unauthorized substitution of goods other than specified;

~~002.05~~ Defective products or products damaged other than in shipment;

~~002.06~~ Service deficiencies; and

~~002.07~~ Billing errors.

~~CHAPTER 2 - METHOD OF PROCUREMENT~~

~~001 Method of Procurement~~

~~The State Purchasing Bureau shall determine the method of procurement to be utilized in the acquisition of any needed goods or services. Methods utilized include:~~

~~001.01 Competitive Formal Sealed Bids~~—price quotations are secured from vendors by means of a “Quotation Request” form. A minimum of fifteen days shall elapse between the time formal sealed bids are advertised or called for and the time of their opening. Bids shall be opened publicly at the time and date specified in the Quotation Request. Award shall be made to the lowest responsible bidder.

~~001.02 Informal Competitive Bids~~—price quotations are secured and documented in a manner determined to be the most appropriate for the goods or services involved. Award shall be made to the lowest responsible bidder;

~~001.03 Contract Procurements~~—the State Purchasing Bureau may enter into contract purchase agreements for certain items, groups of items or services when continuous procurement is anticipated as opposed to one-time procurements. Formal competitive bidding procedures may be utilized with award being made to the lowest responsible bidder; and

~~001.04 Direct Purchases~~—the State Purchasing Bureau may authorize an agency to purchase directly from a vendor as opposed to utilizing the services of State Purchasing. It may be determined that due to the nature of the items needed, the quantity desired, the anticipated price involved, the location of the requesting agency, time limitations or other circumstances the interests of the State will best be served by permitting direct purchase. For miscellaneous needs under \$35.00, approval by State Purchasing shall not be required.

~~CHAPTER 3 - STANDARD CONDITIONS AND TERMS OF COMPETITIVE BID SOLICITATION AND OFFER~~

~~001 Standard Conditions and Terms of Competitive Bid Solicitation and Offer~~

~~A Quotation Request is used to solicit competitive bids from vendors. The following conditions and terms apply to the completion of the Quotation Request by the vendor.~~

~~001.01 Bid Preparation~~—The Quotation Request shall be prepared in ink or typewritten. Erasures and alterations shall be initialed in ink by the bidder. Telephone or voice bids shall not be acceptable as formal competitive bids. Telegraphic bids shall be accepted only if they fully comply with all other conditions in the invitation to bid, and are later confirmed by a properly completed Quotation Request.

~~001.02 Pre Bid Meeting~~ In certain instances a pre bid meeting may be scheduled by the State Purchasing Bureau for the purpose of explaining specifications or other aspects of the Quotation Request. All interested vendors are eligible to attend.

~~001.03 Specifications~~ The brand names or descriptions used in the Quotation Request are the standard by which alternate or competitive material offered shall be judged. Competitive items must be equal to the standard described and be of the same reputation for quality and workmanship. If a bidder submits an alternate proposal, the bidder shall state in detail in the proposal wherein such alternate bid differs from the specifications. Substitutes must be identified by manufacturer and stock number. The State Purchasing Director shall be the sole judge of equivalency. In the absence of any stated deviation, or exception, the bid shall be accepted as in strict compliance with all terms, conditions and specifications and the bidder shall be held liable therefor. Unless otherwise specified in the Quotation Request, the items offered in response to the specifications must be new and the latest model, crop or manufacture.

~~001.04 Prices~~ Prices quoted shall be net. Unless otherwise specified, the quoted price shall be a delivered price, F.O.B. Destination named in the Quotation Request, with all transportation and delivery charges fully prepaid by the vendor. Unless otherwise specified, the quoted price shall be a firm price exclusive of escalation clauses. No additional charges shall be allowed for packing, packages, or partial delivery costs.

~~001.05 Discounts~~ Prices quoted shall be inclusive of all trade discounts. Only cash discount terms of thirty days or longer shall be considered in determining the award. Cash discount periods shall be computed from the date of receipt of the properly executed claim voucher or the date of completion of delivery of all items in satisfactory condition, whichever is later.

~~001.06 All or None Bid or Lump Sum Bids~~ An "All or None" bid means a conditional bid which requires the purchase of all items on which quotations are offered and the bidder declines to accept the award on individual items. A "Lump Sum" bid is one in which the bidder offers a lower price than the sum of the individual quotations if all items are purchased, but agrees to deliver individual items at the prices quoted. Bidders may submit a proposal on an "all or none" or "lump sum" basis but should also submit a quotation on an item by item basis.

~~001.07 Collusive Bidding~~ The bidder's signature on the Quotation Request is a guarantee that the prices quoted have been arrived at without collusion with other eligible bidders and without effort to preclude the State of Nebraska from obtaining the lowest possible competitive price.

~~001.08 Taxes~~ Prices quoted by the vendor shall be exclusive of all taxes. The State of Nebraska is exempt from the payment of federal excise taxes and exemption certificates shall be furnished upon request. The State of Nebraska is also exempt by statute from the payment of state and local taxes (Section 77-2704(1)(m), R.R.S. 1943). The exemption by statute shall preclude the furnishing of State exemption certificates.

~~001.09 Bid Security~~ The State Purchasing Bureau may specify in the Quotation Request that a vendor's bid be accompanied by bid security. The bid security may be in the form of a certified check or bid bond executed by a surety company. The amount of security required shall be

~~specified in the Quotation Request. The bid security shall be provided as protection to the State of Nebraska against the withdrawal of a bid and in payment of liquidated damages should the successful bidder fail to enter into contract. After the award is made, the bid security shall be returned to those vendors who were unsuccessful. The bid security of the successful vendor shall be returned after the award or upon receipt of a performance bond, if one is required.~~

~~001.10 Correction of Bids A correction may be made to a bid by a vendor; provided, the correction shall be made or received prior to the date and time of the bid opening. A correction may be made in person or in writing.~~

~~001.11 Samples Samples of items shall be submitted to the State Purchasing Bureau when the Quotation Request so stipulates. Each sample shall be labeled clearly and identify the bidder's name, the Quotation Request number and the item number.~~

~~Samples shall be provided at no cost to the State. Samples not destroyed by testing or examination, upon request, shall be returned at the bidder's expense. The request for return of samples shall be made within ten days of the bid opening date.~~

~~Samples submitted shall be representative of the commodities or equipment which would be delivered if awarded the contract.~~

~~001.12 Bid Openings The time and date of the bid opening shall be specified on the Quotation Request. Bids received by the State Purchasing Bureau on or before this time and date are considered eligible for award. Bids received after this time and date shall be returned to the vendor unopened. The State Purchasing Bureau shall not be responsible for late bids or lost requests due to mail service inadequacies, traffic or other similar reasons.~~

~~Bids shall be opened and read publicly on the date and at the hour designated on the Quotation Request. Unless otherwise specified, openings shall be conducted at the State Purchasing Bureau and be performed by an authorized representative of the office, normally the individual who is responsible for procurement of the goods or services involved. If an error is made in reading the bid aloud, the price specified in the bid shall govern. Vendors are invited to be present at the opening and record the results.~~

~~001.13 Bid Information Notes may be taken at the public reading of a bid or a personal inspection may be made of the bid after the award has been made. In lieu of a visit, a tabulation of an awarded bid may be obtained by written request. The request must include the bid number, a self-addressed envelope and one dollar for each bid tabulation requested. The remittance must be by check payable to the State Purchasing Bureau.~~

~~001.14 Bid Signature A bid which has not been signed by a representative of the vendor shall not be considered eligible for award.~~

CHAPTER 4 – AWARDING OF CONTRACT

001 Lowest Responsible Bidder

All procurements which are based on competitive bids shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, consideration shall be given to the following:

- ~~001.01~~ The best interests of the State of Nebraska;
- ~~001.02~~ The quality or performance of the goods or services to be supplied;
- ~~001.03~~ Conformity with specifications;
- ~~001.04~~ The purposes for which required;
- ~~001.05~~ Delivery time;
- ~~001.06~~ The life cost of the goods in relation to their purchase price and specific use;
- ~~001.07~~ The performance of the goods taking into consideration any commonly accepted test and standards of product usability and user requirements;
- ~~001.08~~ The energy efficiency ratio as stated by the bidder for alternative choices of appliances or equipment;
- ~~001.09~~ When deemed applicable by the State Purchasing Director, each bidder shall furnish life-cycle costs between alternatives for all classes of equipment, evidence of expected life, repair and maintenance costs, and energy consumption on a per year basis;
- ~~001.10~~ The results of the United States Environmental Protection Agency tests on fleet performance of motor vehicles;
- ~~001.11~~ The ability, capacity and skill of the bidder to perform the contract as required;
- ~~001.12~~ The character, integrity, reputation, judgement, experience and efficiency of the bidder;
- ~~001.13~~ Whether the bidder can perform the contract within the time specified;
- ~~001.14~~ The quality of performance of previous contracts;
- ~~001.15~~ The previous and existing compliance by the bidder with laws relating to the contract;
- ~~001.16~~ Such other information as may be secured having a bearing on the decision to award the contract.

002 Method of Award

~~The State of Nebraska shall reserve the right to award the bid item by item, by groups or as a total whichever shall be to the advantage of the State, unless otherwise specified by the bidder. The State of Nebraska shall further reserve the right to waive any technicality in any bid.~~

003 Tie Bids and Preference

~~Bids which are equal in all respects and tied in price shall be resolved by drawing lots. Nebraska vendors shall be given preference. Tie bids involving more than one Nebraska vendor shall be resolved by drawing lots among the Nebraska vendors.~~

~~A resident bidder shall be allowed a preference as against a non-resident bidder from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the non-resident bidder.~~

~~A resident bidder means any person, partnership, association, or foreign or domestic corporation authorized to engage in business in the State of Nebraska and who shall have met the residency requirement of the state of the non-resident bidder, necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced, or shall have had a bona fide establishment for doing business within this state for the length of time established by the state of the non-resident bidder, necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced.~~

004 Bid Rejection

~~The State of Nebraska shall reserve the right to reject any or all bids, wholly or in part. If the proposed purchase is not abandoned, new invitations to bid may be issued.~~

005 Grievances

~~Any vendor grievances related to an action or determination of the State Purchasing Bureau shall be expressed in writing to the Administrator of the Materiel Division of the Department of Administrative Services.~~

006 Notification of Award

~~006.01 Purchase Order Notification of award to the successful vendor shall be accomplished by means of a purchase order. An unsigned purchase order should be verified with the State Purchasing Bureau as to its validity.~~

~~006.02 Change Order A change order shall be utilized by the State Purchasing Bureau to notify a vendor of a change in the purchase order. The change order shall identify the affected portion(s) of the original purchase order, corresponding change(s) required, and the reason(s) for the change(s).~~

~~006.03 Confirmation Purchase Order On occasion, a confirmation purchase order may be issued by the State Purchasing Bureau to a vendor as a follow up to an earlier verbal order. A vendor who receives a confirmation purchase order should verify the receipt and issuance of the~~

earlier request. A confirmation purchase order shall be identified with the words “Confirmation—Do Not Duplicate”.

~~CHAPTER 5 – EXECUTION OF CONTRACT~~

~~001 – Packing~~

~~All items shall be packed in accordance with prevailing commercial practices and in such a manner as to insure delivery in good condition and as specified in the purchase order. Packages shall properly identify the consignee and the number of the purchase order involved. A packing list shall accompany each shipment for verification purposes.~~

~~002 – Delivery Acceptance~~

~~All deliveries shall be subject to inspection and approval. Items which do not meet the specifications of the purchase order or are not delivered in good condition shall be rejected. Any item rejected by the State of Nebraska shall be removed at the vendor’s expense.~~

~~003 – Performance and Default~~

~~The State of Nebraska shall reserve the right to require a performance bond from the successful bidder, as provided by law, without expense to the State. A bond shall be provided as protection to the State of Nebraska against default by the contractor or failure to perform the contract as specified. Upon satisfactory completion of the contract, the performance bond shall be returned to the vendor. In case of default by the contractor, the State may procure the articles from other sources and hold the contractor responsible for any excess costs occasioned thereby.~~

~~004 – Assignment of Purchase Order~~

~~A vendor shall not assign a purchase order to another party without prior written approval from the State Purchasing Bureau.~~

~~005 – Acts of Subcontractors~~

~~Vendors shall be responsible for all acts and performance of subcontractors or secondary suppliers which they might utilize in providing goods or services to the State of Nebraska. Vendors shall also be responsible for payment of all subcontractors and secondary suppliers.~~

~~006 – Nondiscrimination~~

~~The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska, and their subcontractors from discriminating against any employee or applicant for employment, to be employed in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex or national origin.~~

~~The bidder’s signature to the Quotation Request is a guarantee of compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from the bid.~~

~~007 – Strikes, Lockouts or Acts of God~~

Whenever a vendor's place of business or source of supply has been disrupted by strike, lockout or an act of God, it shall be the responsibility of the vendor to so notify the State Purchasing Bureau.

008 Cancellation of Purchase Order

The State of Nebraska may cancel a purchase order for any of the following reasons:

- 1.1 — The delivery date specified by the purchase order has not been met;
- 1.2 — The requirements of the purchase order have not been performed (default);
- 1.3 — The goods or services provided do not conform with the specifications of the purchase order;
- 1.4 — Goods delivered are defective or damaged; and
- 1.5 — Any other reason for noncompliance with the purchase order.

The vendor shall be notified in writing that a purchase order has been canceled.