

General Rules and Conditions
Department of Health and Social Services

Vendor: The General Rules and Regulations that follow apply to all purchases and become a definite part of each formal invitation to bid, purchase order or other award, unless otherwise specified. Bidders or their authorized representatives re expected to fully inform themselves to the conditions, requirements and specifications before submitting bids; failure to do so will be at the bidder's own risk and he cannot secure relief on the plea of error.

State: State of Delaware
Department: Department of Health and Social Services
Secretary: Secretary of the Department of Health and Social Services
Director: Procurement Branch, Division of Management Services
Agency: Any State Agency, Department, Institution, Board, Bureau or Commission of the State of Delaware
Local Government: Delaware Counties, Cities, Towns and Political Subdivisions
Budget Director: Budget Director of the State of Delaware
Comptroller: Comptroller, Department of Health and Social Services
Bidder: Any individual, company, partnership or other organization bidding on proposals issued by Procurement Branch and offering to enter contracts with the State.
Contractor: Any individual, company, partnership or other organization to whom an award is made by the Procurement Branch.
Formal Bid: Sealed bid for public opening at fixed time and place resulting from newspaper advertisement or Invitation to Bid form.
Informal Quotation: Verbal or written quotation resulting from oral and solicitation or use of Price Inquiry form.

Subject to State laws and all rules, regulations and limitations imposed by legislation of the Federal Government, bids on all advertisements and invitations issued by Procurement Branch will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the Invitation to bid.

Bids and Quotations

1. **One Copy Only Required:** Unless otherwise specified only one copy of a bid or quotation will be required.
2. **Late Bids.** Formal bids, amendments thereto or requests for withdrawal of bids received by the Procurement Branch after time specified for bid opening will not be considered.
- 2.A. **Withdrawal of Bids:** A written request for the withdrawal of a bid or any part thereof will be granted if the request is received by the Procurement Branch prior to the specified time of opening.
3. **Preparation and Submission:** All written bids, unless otherwise provided for, must be submitted on and in accordance with forms provided by the Procurement Branch properly signed in **ink. Bids on typewriter will not be accepted.**
4. **Completeness:** All information required by Invitation to Bid must be supplied to constitute a regular bid.
5. **Bids Binding 30 Days:** unless otherwise specified all formal bids submitted shall be binding for thirty (30) calendar days following bid opening date. After thirty (30) days, bid may be deemed void.
6. **Conditional Bids:** qualified bids are subject to rejection in whole or in part.
7. **All or Part:** Bids or quotations may be considered and award made for all or any part of total quantities.

8. **Errors:** When an error is made in extending total prices the unit bid price will govern. Carelessness in quoting prices or in preparation of bid otherwise, will not relieve the bidder. Erasures in bids must be explained over signature of bidder.
9. **Net Prices:** Bid prices, unless otherwise specified, must be net, including transportation and handling charges fully prepaid by contractor to destination and subject only to cash discount for prompt payment of invoice.
10. **Bidders Present:** At the time fixed for the opening of formal bids their contents will be made public for the information of bidders and others properly interested who may be present either in person or by representative. Bidders are encouraged to attend all openings and to offer constructive suggestions for improvements to bid format or ways in which greater savings can be realized by the State.
11. **Taxes:** All bids and quotations shall be submitted exclusive of Federal, State and local taxes. If the bidder believes that certain taxes are properly payable to the State, he may list such tax separately directly below the respective item bid price. Shipments qualifying under Section No. 3475(b) Internal Revenue Code will be exempt from tax on transportation of property consigned to the Department. Federal Excise Tax exemption No. A158467.
12. **Literature:** Failure to attach or enclose cuts and/or descriptive literature when requested in bids may result in disqualification or non-consideration of such bids.

Guaranty and Bond

13. **Bid Guaranty Deposit:** Unless otherwise specified, bids must be accompanied by a guaranty in a sum equal to ten (10) percent of the total amount of the bid as a guaranty that the successful bidder will within twenty (20) days after being called upon to do so, furnish a performance bond with good and sufficient sureties, for the faithful performance of the contract. The bid guaranty may be a certified check payable to the order of the Department of Health and Social Services (uncertified checks will not be accepted), or a bid bond with corporate surety authorized to do business in the State of Delaware. Bidders' deposits will be returned by the Procurement Branch to unsuccessful bidders after the contract has been awarded or rejected, but in no event later than thirty (30) days after the opening of the bids, and to the successful bidder after approval of the contract and performance bond. Bid bonds will not be returned unless applied for specifically.
14. **Guarantor Liability:** When guaranty is required; failure of bidder to furnish an acceptable performance bond within twenty (20) days after receipt of notice of award shall render the guarantor liable to the State. Where bid is covered by a certified check or bond such security shall become the absolute property of the State, and shall be deposited with the State Treasurer for the benefit of the agency as liquidated damages. Agency shall forthwith proceed to collect on the bid bond.
15. **Performance Bond:** When required, a guaranty that the successful bidder will faithfully perform the obligations of his bid as accepted shall be filed. For any award a guaranty may be required in the discretion of the Branch Chief. Such guaranty must be a bond with corporate surety authorized to do business in this State, and that the contractor or contractors will be responsible for all claims or injuries to persons or damages to property or premises arising out of or in connection with his or their operations

Prior to the acceptance of the finished work or supplies, and that he or they will promptly make payments to all persons supplying him or them with labor or materials in the prosecution of the work provided for in the contract; guarantee to indemnify and save the State of Delaware and its Agencies and employees harmless from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the specifications.

Samples

16. When required, samples must be furnished not later than the time set or specified for bid opening, free of expense to the State, marked plainly with name and address of bidder, bid number and opening date of bid, also memorandum indicating if bidder desires return of sample or samples. Providing they have not been used or made useless through tests, when requested, samples submitted will be returned at bidders' risk and expense. All samples submitted are subject to mutilation as result of tests by the Department. Award samples will be retained by the Department for comparison with deliveries. Failure to submit sample when requested will result in disqualification or non-consideration of bid.

Awards

17. **Lowest Responsible Bidder:** Award will be made to the lowest responsible bidder conforming to specifications, terms and conditions or to the most advantageous bid to the State on a quality versus price basis.
18. **Other Considerations:** Quantities involved, time of delivery, purpose for which required, competency of bidder, his ability to render satisfactory service and past performance will be considered in determining responsibility.
19. **Rejection of Bids.** The Department reserves the right to reject any or all bids in whole or in part and to award by items, parts of items or by any aggregate group of items specified. The Department reserves also the right to waive technical defects when in its judgment the best interests of the State thereby will be served
20. **Notice of Acceptance.** Written notice of award to a bidder in the form of a Purchase Order or otherwise, mailed or delivered to the address shown on the bid, will be considered sufficient notice of acceptance of bid.
21. **Tie Bids.** If two or more State resident bidders submit identical bids, the decision of the Department to make award to one or more of such bidders shall be final. Cash discount will be taken into consideration in determining an award. See also Paragraph No. 49.
22. **Delaware Products.** Preference will be given to resident bidders of the State of Delaware in purchasing materials, supplies, equipment or services, for the using facilities, price and other factors being equal, except when in the judgment such purchases would operate to the disadvantage of the State.
23. **Cash Discounts.** Cash discounts offered will be considered in determining awards. Time shall be computed from date of delivery at destination or from date correct invoice is received from contractor, if latter date is later than the date of delivery.

24. **Qualifying Bidders.** Prior to solicitation and/or awarding of bid, an Agency may require submission by bidder of complete financial statement and questionnaire describing bidders' financial ability and experience in performance of similar work.
25. **Disqualification.** Awards will not be made to any person, firm or company in default of a contract with the Department, or to any bidder having as its sales agent or representative or as a member of the firm, any individual previously in default or guilty of misrepresentation.
26. **Bid Results.** Bidders may secure information pertaining to results of bids by visiting the Purchasing Office Monday through Friday, between 8:00 a.m. and 4:30 p. m.
27. **Quantities Awarded.** The Department reserves the right to increase or decrease the quantities of any item or items shown in the bid by twenty percent (20%), increases or decreases in excess of twenty percent (20%) to be by mutual agreement between Department and bidder, in writing.

Contract Provisions

28. **Acceptance Constitutes Contract.** Written acceptance by the Procurement Chief of an offer to sell shall constitute a contract, which shall bind the bidder to furnish and deliver the articles specified and ordered at the prices shown in and in accordance with all conditions of said accepted bid. A formal contract containing all provisions of the contract signed by both parties shall be used when required by the Procurement Chief.
29. **Contract Quantities.** Where quantities are specifically stated, acceptance will bind the Agency to order total quantities specified and to pay for, at contract prices, all such articles delivered that meet specifications and conditions of the contract. However, the Agency will not be required to accept delivery of any balances unordered as of the contract expiration date, unless contractor furnished the Director with a statement of unordered balances not later than ten (10) days after the termination date. On "Requirements" bids acceptance will bind the Agency to pay for at unit prices only quantities ordered and delivered. On "Estimated Quantities" the Agency may purchase more or less than the estimates. The contractor, however, shall not be required to deliver more than ten percent (10%) in excess of the estimated quantity of each item, unless otherwise provided.
30. **Availability of Funds.** A contract shall be deemed executory only to the extent of appropriations available to each Agency for the purchase of such articles. Purchase Orders issued by Agencies require certification by the State Budget Director as to availability of funds.
- 30A. **Payment of Invoices.** Vendors must submit request for payment using standard company forms indicating all pertinent information such as purchase order number, ordering agency and products.
31. **Contract Alterations.** No alterations or variables in the terms of a contract shall be valid or binding upon the Department unless made in writing and signed by the Director or his authorized agent.

32. **Termination of Contracts.** Contracts will remain in force for full periods specified and until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements.
 - b. Extended upon written authorization of the Procurement Chief and accepted by contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
33. **Assignments.** No contract may be assigned, sublet or transferred without consent of the Procurement Chief.
34. **Cancellations.** A contract may be cancelled or annulled by the Procurement Chief upon non-performance or violation of contract provisions and an award made to next low bidder or articles specified may be purchased on the open market. In either event, the defaulting contractor (or his surety) shall be liable to the Department for costs to the Department in excess of the defaulted contract prices.
35. **Delivery Failures.** Failures of a contractor to deliver within the time specified or within reasonable time as interpreted by the Procurement Chief or failure to make replacements of rejected articles as directed by the Procurement Chief, shall permit the Director to purchase in the open market articles of comparable grade to take the place of those rejected or not delivered. On all such purchases the contractor shall reimburse the Department, within a reasonable time specified by the Procurement Chief for any expenses incurred in excess of contract prices. Such purchases will be deducted from contract quantities.
36. **Non-liability.** The contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure to deliver is the result of fire, flood, strike, the transporting carrier, act of God, act of government, act of an alien enemy or by any other circumstance which, in the Procurement Chief's opinion, is beyond the control of the contractor. Under such circumstances, however, the Procurement Chief may in his discretion, cancel the contract.
37. **New Goods, Fresh Stock.** All contracts, unless otherwise specifically stated, shall produce new commodities, fresh stock, latest model, design or pack.
38. **State-Wide Contracts.** Unless otherwise stated specifically in bid, successful contractor when authorized by the Procurement Division agrees to extend and make available all materials, supplies, equipment or services at the contract prices indicated in this bid to all Delaware State Agencies. Contractor further agrees to submit in writing no later than ten (10) days after expiration date of contract to the Procurement Chief, a report listing quantity, item, dollar volume and name of each agency making such purchases against this contract.
39. **Agency Purchase Orders.** State Agencies utilizing state-wide contracts as indicated in item No. 38 may place such orders direct with the contractor on State Purchase Order forms and must bear the affected contract's number and date.

Deliveries

40. **Interpretation.** Deliveries must be made as directed by the Department when not in conflict with bid or quotation. If no delivery instructions appear on an order it will be interpreted to mean prompt delivery required. The decision of the procurement Chief as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of commodities by purchaser shall rest with the contractor.
41. **Extension of Time.** Any extension of time on delivery as specified must be in writing by the Procurement Chief with such extension applicable only to the particular item or shipment affected.
42. **Method and Containers.** Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to insure acceptance by common or other carrier for safe transportation, at the lowest rate, to the point of delivery. Containers become the property of the Department unless otherwise specified by bidder.
43. **Additional Charges.** Unless bought FOB shipping point and contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is substituted on order for less expensive method specified in contract. In such cases, difference between freight or mail and express charges may be added to invoice.
44. **Point of Destination.** Destination point for truck shipments and LCL rail shipments is the premises of the agency; C/L rail shipments to the siding of the agency or, in the absence thereof, to the nearest public siding.
45. **Weight Checking.** Deliveries shall be subject to reweighing over official sealed scales designated by the State. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights, exclusive of containers or wrapping, shall be paid for by the Department.
46. **Inspection and Tests.** Inspection of equipment, materials and/or supplies shall be made by or at the direction of the Department, or by the agency to which the goods are delivered, and any articles supplied that are defective, or fails in any way to meet specifications or other requirements of the contract, will be rejected. All laboratory tests required shall be made under the direction of the Director. The decision of the Procurement Chief on acceptance shall be final.
47. **Rejected Deliveries, Payment for Used Portion.** Payment for any used portion of delivery found, as a result of test or otherwise, to be inferior to specifications or contract requirements, will be made by the Department on an adjusted price basis.

General Guaranty

48. **Contractor agrees to:**
 - a. Save the State, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented, invention, article or appliance furnished or used in the performance of the contract, of which the contractor is not the patentee, assignee, licensee or owner.
 - b. Protect the State against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.

- c. Furnish adequate protection against damages to all work and to repair damages of any kind, to the building or equipment, to his own work or to the work of other contractors, for which he or his workmen is responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made, and the State of Delaware.
- e. Protect the State from loss or damage to State owned property while it is in the custody of contractor.

Identical Binding

- 49. Executive Order No. 10936.** All identical bids submitted to the Department as a result of advertised procurement for materials, supplies, equipment or services exceeding \$1,000.01 in total amount shall be reported to the Attorney Generals of the United States and the State of Delaware in accordance with Form DJ-1510 and the Presidential Order dated April 24, 1961, for possible violation and enforcement of antitrust laws.