



PROCUREMENT

The UNIVERSITY *of* OKLAHOMA

SOLICITATION RULES OF USAGE AND DEFINITIONS

These Solicitation Rules of Usage and Definitions (“Definitions”) are a Contract Document and part of the Solicitation issued by the University. The Definitions set forth the way all terms, conditions, provisions, requirements, specifications, and other language set forth in any Solicitation, Contract, Contract Document, or other document, part, specification, or requirement included with, referenced in, or incorporated into a Solicitation are used and defined unless specifically stated otherwise therein. The Definitions apply to all Solicitations issued by the University, are incorporated by reference to all resulting Contracts, and may only be amended as set forth in the General Terms or the Instructions.

1. Rules of Usage. Unless specified otherwise, the following rules shall apply to all Contracts, including all Solicitations and other Contract Documents.

1.1. Actions in Writing. Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” “approval,” or similar action hereunder by any Party must, unless the form thereof is specifically provided, be in writing and signed by a duly authorized representative of such Party.

1.2. Gender. Words importing a gender include any gender.

1.3. “Including.” The words “including” and “includes,” and words of similar import shall be deemed to be followed by the phrase “without limitation.”

1.4. “Or” Not Exclusive. The word “or” is not exclusive.

1.5. Priority. (a) The Solicitation, Contracts, and Contract Documents shall be read to be consistent and complementary. Any conflict among the preceding shall be resolved by giving priority in the following order of precedence: (i) any Exception, or specific modification to the Solicitation, expressly incorporated by an Addendum, (ii) the Solicitation, (iii) any successful Bid as may be modified by an Addendum to the extent it does not conflict with the Solicitation or Law, and (iv) any statement of work, purchase order, or other similar ordering, purchasing, or transactional document, to the extent they are executed by both Parties and do not conflict with the foregoing. (b) If there is a conflict between terms contained in the Solicitation, including, without limitation, these Definitions, the General Terms, Instructions, Insurance Requirements, and Solicitation Packet, and terms provided by or on behalf of the Bidder or Supplier, including, without limitation, linked, incorporated, or supplemental documents that alter or diminish the University’s rights, the conflicting terms provided by the Bidder or Supplier shall not alter or override the Solicitation terms except as specifically stated and expressly agreed in an Addendum.

1.6. References to a Contract, Contract Document, Agreement, or other Documents as Amended. A reference to a document includes an amendment, modification, or supplement to, or replacement, restatement, substitution, or novation of, that document, in each case, with the consent of all parties required to consent to the same.

1.7. References to Document as a Whole; Other Documents. (a) The words “in this Solicitation/Contract/Contract Document,” “hereof,” “herein,” and “hereunder,” or words of similar import, shall be deemed to refer to the Solicitation, Contract, or Contract Document as a whole and not to the specific section or provision where such word appears. (b) Any terms defined by or included by reference in the Solicitation, Contract, Contract Document, or another instrument or document shall continue to have the meaning ascribed thereto, whether such other instrument or document remains in effect.

1.8. References to Laws as Modified. A reference to any statute, regulation, proclamation, ordinance, or Law includes all statutes, regulations, proclamations, ordinances, or applicable Laws varying, consolidating, or replacing them, and a reference to a statute includes all regulations, proclamations, and ordinances issued or otherwise applicable under that statute.

1.9. References to Persons. Reference to any Person includes such Person’s successors and assigns, but only such successors and assigns as are permitted by this Contract, and reference to a Person in a particular capacity excludes such Person in any other capacity.

1.10. Singular and Plural. Words importing the singular include the plural and vice versa.

1.11. Undefined Words, Terms, or Phrases. Words, terms, or phrases used in this Solicitation, the Contract, or other Contract Documents shall have the meaning ascribed in these Definitions unless otherwise agreed in writing. Undefined words, terms, or phrases shall have the prevailing and customary meaning as understood in the industry. If there is no generally accepted meaning in the industry, according to its common usage.

2. Definitions. Unless otherwise defined in the Solicitation, Contract, or Contract Document, capitalized terms used in the foregoing shall have the meanings set forth below:

2.1. “Addendum” means a mutually executed, written modification to a Contract Document.

2.2. “Alternate Bid” means a Bid that contains an intentional substantive variation to a basic provision, specification, term, or condition.

2.3. “Amendment” means the University’s written change, addition, correction, or revision to terms, conditions, or requirements of the Solicitation.

2.4. “Bid” means the applicable Bidder’s response to the Solicitation.

2.5. “Bidder” means a Person submitting a Bid in response to the Solicitation.

2.6. “Bidder Parties” means the Bidder and its current and former officers, directors, agents, employees, representatives, contractors, assignees, invitees, Subcontractors, and designees thereof.

2.7. “Board of Regents of the University of Oklahoma” or “University” means the Board of Regents of the University of Oklahoma, including its constituent parts, campuses, and programs within the State of Oklahoma, unless otherwise specified in the Solicitation, Contract, or Contract Documents.

2.8. “Bonds” means performance, payment, and defect bonds or other bonds required by applicable Law or the University for protecting the University against the risk that the Supplier or any other Supplier Party fails to perform contractual obligations under the Contract. All Bonds must be (i) of a type and form suitable to the University, (ii) issued under Oklahoma Laws, and (iii) issued from a duly authorized surety company satisfactory to the University that is licensed to do business in Oklahoma.

2.9. “**Business Day**” means any day other than (a) a Saturday or a Sunday, (b) a day on which the University is closed or closes before 12:00 p.m. Central Standard Time, or (c) a day observed as a holiday by the University of Oklahoma, the State of Oklahoma, or the federal government.

2.10. “**Confidential Information**” means any information of the disclosing Party, including information relating to the disclosing Party’s intellectual property, products, services, students, employees, alumni, developments, inventions, processes, designs, drawings, plans, engineering, finances, and information relating to any current, future, or proposed disclosing Party program, project, business practice, method of operation, funder, or marketing plan, that is marked or otherwise identified as confidential or proprietary, or that a reasonable person would understand to be considered confidential by the Party to which it pertains (even if not so marked or identified). The preceding notwithstanding, Confidential Information shall not include any information which: (i) is already known by means not subject to a confidentiality obligation of the receiving Party at the time disclosed by the disclosing Party; (ii) is or becomes available through public sources apart from any unauthorized disclosure by the receiving Party; or (iii) is obtained by the receiving Party from a third party who has the right to disclose the same.

2.11. “**Contract**” means the binding agreement between the University and the applicable Supplier. The Contract terms and conditions are set forth in the Contract Documents, subject to the Solicitation and Addenda.

2.12. “**Contract Documents**” means (i) this Solicitation, including, without limitation, these Definitions, the Solicitation Packet, Instructions, General Terms, and Insurance Requirements, including all attachments and Amendments thereto; (ii) the successful Bid; (iii) any statement of work, purchase order, or other similar ordering, purchasing, or transaction document related hereto, to the extent executed by both Parties; and (iv) any Addenda.

2.13. “**Contract End Date**” shall have the meaning as set forth in **Section 1** of the General Terms.

2.14. “**Deliverables**” means any work product, including, but not limited to, original reports, policies, manuals, training materials, writings, recordings, drawings, files, notes, memoranda, calculations, and data or any information regardless of form or completeness gathered, compiled, developed, or in any way created by the Supplier for the University under this Contract.

2.15. “**Dispute**” means written notice from one Party to the other Party outlining or alleging any disagreement, dispute, or controversy arising out of or relating to a Contract. A Dispute shall not include disagreements, disputes, or controversies arising from the Solicitation before its award.

2.16. “**Effective Date**” means the date identified at the University’s reasonable discretion in the notice of award, or the date of award if no Effective Date is identified therein. Where notice of award is in the form of a mutually executed Contract, “Effective Date” means the date of commencement identified therein, or the date the last Party signs the Contract if no date of commencement is identified therein.

2.17. “**Environmental Requirements**” mean any Law, standard, or requirement of any Governmental Authority relating to the protection of human health or the environment or otherwise regulating or restricting the management, use, storage, disposal, treatment, handling, Release, or transportation of a “Hazardous Substance,” in each case which applies to Supplier or other activities on University Property or any of the other transactions contemplated by the Contract.

2.18. “**Exceptions**” means any revision, deletion, or other omission by the Bidder of any term or condition of the Solicitation. Exceptions are excluded from the terms and conditions of the Bid and any resulting Contract unless, in accordance with the Instructions, they are included in the Exceptions Form and incorporated into the Contract by an Addendum.

2.19. **“General Terms and Conditions”** or **“General Terms”** means the written general terms, conditions, and contractual rights and obligations prepared and published by the University that form the bases of the Contract awarded to a Bidder resulting from a Solicitation. There are two General Terms, one addressing Requests for Proposals (RFP) and one addressing Invitations to Bid (ITB). The General Terms applicable to the Solicitation is the one marked in the Solicitation Packet. If neither is marked, the General Terms for RFPs shall apply.

2.20. **“Goods and Services”** means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature provided or performed under the Contract. “Goods” includes goods not in existence when the transaction is entered. “Services” include both personal and professional services. “Goods and Services” does not include interests in real property.

2.21. **“Governmental Authority”** shall mean any federal, state, county, municipal, local, or other governmental, regulatory, or administrative authority, agency, board, body, commission, instrumentality, court, judicial body, tribunal, arbitral body, or quasi-governmental authority with jurisdiction over the property, activity, or the Person in question.

2.22. **“Insurance”** means the limits, conditions, and requirements for Solicitations issued by the University and all resulting Contracts as set forth in the Insurance Requirements.

2.23. **“Insurance Requirements”** means the written document prepared and published by the University setting forth the required insurance types and limits (as applicable), conditions, and requirements for Solicitations and Contracts issued or awarded by the University.

2.24. **“Laws”** shall mean all (i) existing and future laws, rules, regulations, acts, statutes, treaties, constitutions, codes, ordinances, permits, certificates, orders, rulings, decrees, and interpretations from, of, or by any Governmental Authority; (ii) judgments, decrees, injunctions, writs, orders, rulings or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction; and (iii) requirements of applicable insurance companies or insurance regulatory agencies, in each instance, to the extent applicable under the particular facts and circumstances.

2.25. **“Lowest and Best Bidder”** means the Bidder(s), based on the evaluation criteria, determined to be the most responsive, responsible, and advantageous Bidder whose Bid conforms in all material respects to the requirements and criteria in Solicitation including, but not limited, price, skill, business practices, previous work record, experience, financial resources, quality of materials, facilities, personnel, service reputation, and ability to comply with state, federal, and local laws. Bidders failing to provide the required information shall not be considered the Lowest and Best Bidder. The Bidder with the lowest cost may not be the Lowest and Best Bidder.

2.26. **“Non-Responsive Bid”** means a Bid that does not conform in all material respects to the Solicitation.

2.27. **“Party”** or **“Parties”** shall mean the University or Supplier, individually or collectively, as the case may be.

2.28. **“Person”** means any natural person, firm, joint venture, limited liability company, association, trust, partnership, corporation, Governmental Authority, or other legal entity.

2.29. **“Pre-Bid Questions”** means questions and requests for clarification regarding the meaning or interpretation of any part of the Solicitation. Pre-Bid questions should be concise, identify the relevant document, include specific section references, and avoid using tables or special formatting (use simple lists).

2.30. **“Pre-Bid Question Deadline”** means the deadline designated in the Solicitation Packet for the Bidder to submit questions relating to the Solicitation.

2.31. **“Proper Invoice”** means a written request for payment that contains, at a minimum, the (i) the Contractor’s name, (ii) the Contractor’s supplier number, (iii) invoice number, (iv) purchase order number, (v) a description of the Goods or Services provided, including dates provided, (vi) and detail of amount(s) billed.

2.32. **“Record”** means a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

2.33. **“Release”** means depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing. The Supplier, at its sole cost and expense, shall operate its business on University Property in strict compliance with all Environmental Requirements and all requirements of the Contract.

2.34. **“Scope of Work”** means the qualifications, specifications, pricing, costs, evaluation criteria, and other information relating to the Solicitation as set forth in the Solicitation Packet.

2.35. **“Solicitation”** means the documents and attachments thereto prepared and published by the University soliciting Bids for the acquisition of Good or Services, including, without limitation, these Definitions, the Solicitation Packet, Instructions, General Terms, and Insurance Requirements, including all Amendments thereto.

2.36. **“Solicitation Exceptions Form”** or **“Exceptions Form”** means the University-provided form on which the Bidder may, in accordance with the Instructions, request Exceptions to Solicitation terms which would otherwise govern the resulting Contract.

2.37. **“Solicitation Instructions”** or **“Instructions”** means the written rules, requirements, and process prepared and published by the University governing the bidding and selection process for the University’s acquisition of Goods and Services through a competitive process.

2.38. **“Solicitation Number”** means the number designated in the Solicitation Packet used to identify this Solicitation.

2.39. **“Solicitation Packet”** means the document prepared and published by the University, identified by a specific Solicitation Number, requesting Bids to provide Goods and Services particularly described in the Scope of Work and Solicitation Specifications.

2.40. **“Solicitation Specifications”** means the additional qualifications, specifications, pricing, costs, evaluation criteria, and other information relating to the Scope of Work for the Solicitation as set forth in the Solicitation Packet.

2.41. **“Subcontractor”** means a Person or entity with a direct contract with the Supplier to perform or provide Goods or Services under the Contract.

2.42. **“Supplier”** means a successful Bidder, or a Person that otherwise does or seeks to do business with the University by supplying or offering to supply Goods or Services.

2.43. “**Supplier Parties**” means the Supplier and its current and former officers, directors, agents, employees, representatives, contractors, assignees, invitees, Subcontractors, and designees thereof.

2.44. “**Travel and Subsistence Expenses**” means the costs, fees, or other amounts to be or actually reimbursed by the University in the Supplier’s performance of a Contract resulting from a Solicitation award. Travel and Subsistence Expenses consist of the reasonable cost for hotel, food during travel, and transportation expenses actually incurred and documented by the Bidder outside of the state in which Bidder’s principal office is located. If the Bidder’s principal office is in Oklahoma and within 150 miles of a University campus, Travel and Subsistence Expenses do not include cost for travel, food, or other transportation incurred by a Person while coming or leaving (i) to and from the University or Person’s usual place of work or (ii) to or from where the Person normally lives or resides. Only the type and costs, fees, or other amount specifically included or identified in a Bid and included within the total Bid price shall be considered Travel and Subsistence Expenses.

2.45. “**University Contact**” means the University employee identified on the Solicitation Packet responsible for processing the Solicitation and performing other procurement-related tasks.

2.46. “**University Parties**” means the University and its current and former regents, officers, directors, agents, employees, representatives, contractors, assignees, invitees, students, and designees thereof.

2.47. “**University Property**” means real or personal property, as applicable, owned, leased, or otherwise controlled by the University.