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SECTION 2

RULES GOVERNING COMPETITION

2.1 OVERVIEW

The purpose of competitive procurement is to secure the best solution to the public objectives at the lowest practical cost and avoid the possibilities of graft, fraud, collusion, etc. Competitive procurement is designed to benefit the public body (the State of California, or the State, in the present context), and is not for the benefit of the Bidders. It is conducted to accomplish its purposes with sole reference to the public interest. It is based upon full and free procurement to satisfy State specifications and acceptance by the State of the most value-effective solution to the State's Requirements, as determined by the evaluation criteria contained in the RFP.

RFPs must provide a basis for full and fair competitive bidding among Bidders on a common standard, free of restrictions which unnecessarily stifle competition. RFPs must be specific and provide an environment where all competitors are evaluated on the same end objectives.

2.1.1 Definitions

a. Bid

See Appendix A.

b. Bidder

See Appendix A.

c. Contract

See Appendix A.

d. Desirable Items

See Appendix A.

e. Materiality

A deviation from a requirement is **Material** if the deficient response is not in substantial accord with the RFP Requirements, provides an advantage to one Bidder over other Bidders, or has a potentially significant effect on the delivery, quantity or quality of items proposed, amount paid to the Bidder, or for the cost to the State. Material deviations cannot be waived.

The State may or may not waive any immaterial deviation or defect in a Proposal. The State's waiver of an immaterial deviation or defect shall in no way modify the RFP documents or excuse the Bidder from full compliance with the RFP specification if the Bidder is awarded a Contract.

A **Final Proposal** may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind if the State determines that those alterations or irregularities constitute a **Material** deviation from the RFP Requirements.

f. Proposal

See Appendix A.

g. Requirements

The State of California (the State) has established certain Requirements with respect to Proposals to be submitted by prospective Bidders. The use of "shall," "must," or "will" (except to indicate simple futurity) in the RFP, indicates a requirement or condition from which a deviation, if not **Material** may be waived by the State.

The State has determined that it is best able to define its own needs and desired operating objectives expressed via the definition of Requirements in the RFP. The State will not tailor these needs to fit a solution a Bidder may have available; rather, the Bidder shall submit a Proposal to meet the State's needs as defined in the RFP.

h. Sealed Proposals

See Appendix B.

Proposals not sealed when submitted, including **Final Proposals**, will be returned for sealing if time permits the sealing prior to the due date and time.

Final Proposals that are not sealed at the time and date of submission *and* reveal the cost of the Proposal will be rejected.

Final Proposals that are not sealed at the time and date of submission and do not reveal the cost of the Proposal will be so noted by the Procurement Official and accepted as if received appropriately sealed.

i. RFP

See Appendix A.

j. Supplier

See Appendix A.

k. Writing/written

Written submissions from the Bidders (e.g., questions) and written responses from the State (e.g., Discussion Memorandum) may include electronic mail, facsimile transmission, or posting on a website (i.e., from the State or a Bidder's financial responsibility information).

2.1.2 Key Action Dates

At a minimum, the following steps will be included in the RFP's **Key Action Dates**:

- Intent to Bid
- Last Day to Submit Questions for Each Submission (Conceptual, Technical, Draft, and Final)
- Last Day to Request Changes
- Last Day to Submit an **Initial Protest**
- **Final Proposal** Due Date
- Intent to Award
- Contract Award

Additional steps may be included as appropriate to the RFP, such as:

- **Bidder's Conference**
- Proposal Due Dates other than **Final Proposal**, (e.g. Qualification Proposal), **Draft Proposal**, etc.
- Release **Discussion Agenda**¹
- Confidential Bidder Discussion
- Release **Discussion Memorandum**²
- Submission of Contract Language Changes

¹ May just be noted as "Three Business Days prior to the Confidential Bidder Discussion" or words to that effect.

² May just be noted as "Within five Business Days after the conclusion of the Confidential Bidder Discussion" or words to that effect.

2.2 PROPOSAL SUBMISSION REQUIREMENTS AND CONDITIONS

2.2.1 General

This RFP, the evaluation of responses, and the award of any resultant Contract(s) shall be made in conformance with the criteria defined herein. A competitive Proposal, once submitted and opened, is in the nature of an irrevocable offer for 180 calendar days following the scheduled date for Contract award specified in Section 1.7, KEY ACTION DATES. The Bidder's Final Proposal shall be considered a contract right of which the public Agency cannot be deprived without its consent, unless the requirements for rescission are present. A Bidder may extend the offer in writing in the event of a delay of award.

For a variance between the RFP and the responding Proposal to be such as to preclude acceptance (the Proposal must be rejected), the variance or deviation must be material. To have competition, responding Bidders must be bidding on the same Goods and Services. Proposals that prevent such competition or, in other words, allow variations that could significantly affect the cost of the Proposal or could provide an advantage or benefit not allowed other Bidders, cannot be accepted. If such a potential effect exists, the deviation is **Material**.

Responding Proposals must be for all of the Goods and Services requested in the RFP, unless the RFP specifically permits a partial response.

2.2.2 Confidentiality

- a. The Bidder participating in the RFP, as evidenced by the submission of an Intent to Bid, warrants that its company and its employees will not disclose any documents, diagrams, information and information storage media made available to it by the State for the purpose of responding to the RFP or in conjunction with any Contract arising therefrom. Only those employees who are authorized and required to use such materials will have access to them.
- b. The Bidder further warrants that all materials provided by the State will be returned promptly after use and that all copies or derivations of the materials will be physically and/or electronically destroyed. The Bidder will include with the returned materials, a letter attesting to the complete return of materials, and documenting the destruction of copies and derivations. Failure to so comply will subject this company to liability, both criminal and civil, including all damages to the State and third parties.
- c. The Bidder warrants that if its company is awarded a Contract, it will not enter into any agreements or discussions with a third party concerning such materials prior to receiving written confirmation from the State that such third party has an agreement with the State similar in nature to this one.

- d. Any disclosure by a Bidder of information designated by the State as Confidential is a basis for rejection of its Proposal and ruling the Bidder ineligible to further participate in the RFP.
- e. Final Proposals are public upon opening, however, the content of all Proposals (other than financial information that has been identified as *confidential*³), written correspondence, agenda, memoranda, and evaluation documentation which disclose any aspect of the Bidders' Proposals shall be held in the strictest confidence until the Intent to Award is published.
- f. After the Intent to Award is published, all Proposals become public records and shall be released or withheld in accordance with the California Public Records Act (Government Code §6250 et seq.)

2.2.3 RFP Documents

- a. In addition to an explanation of the State's needs, which must be met, this RFP includes instructions that prescribe the format and content of Proposals to be submitted and the model(s) of the Contract(s) to be executed between the State and the successful Bidder.
- b. If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Bidder shall immediately notify the State of such error in writing and request clarification or modification of the document.
- c. Modifications will be made by **Addenda** issued pursuant to Section 2.2.11, Addenda. Such modifications shall be given by written notice to all parties who have formally requested to participate in the RFP, without divulging the source of the request for same.
- d. If a Bidder fails to notify the State, prior to the date fixed for submission of **Final Proposals**, of a known error in the RFP or an error that reasonably should have been known to the Bidder, the Bidder shall propose at its own risk; and if awarded a Contract, the Bidder shall not be entitled to additional compensation or time by reason of the error or its later correction.

2.2.4 Disposition of Proposals

All materials submitted in response to this RFP will become the property of the State and will be returned only at the State's option and may be at the Bidder's expense. The master copy shall be retained for official files and will become a public record after the

³ The State will treat all financial information provided as confidential when designated as such. This information will only be shared with State personnel involved in the evaluation. All financial data will be returned or destroyed if requested.

date and time for **Final Proposal** submission. However, confidential financial information submitted in support of the requirement to show Bidder responsibility will be returned upon request. See *Confidentiality*.

2.2.5 Examination of the Work

The Bidder should carefully examine the entire RFP and any **Addenda** thereto, and all related materials and data referenced in the RFP or otherwise available, and should become fully aware of the nature and location of the work, the quantities of the work, and the conditions to be encountered in performing the work.

2.2.6 Questions Regarding the RFP

Bidders requiring clarification of the intent or content of this RFP or on procedural matters regarding the competitive proposal process may request clarification by submitting questions in writing to the Procurement Official listed in the RFP. To ensure a response, questions must be received by the scheduled date(s) given in the RFP's **Key Action Dates**. The question and answers will be provided to all Bidders without identifying the submitter.

A Bidder who desires clarification or further information on the content of the RFP, but whose questions relate to a proprietary aspect of the Proposal and which, if disclosed to other Bidders, would expose the Proposal, may submit such questions marked as "CONFIDENTIAL," and not later than the date specified the RFP's **Key Action Dates**, to ensure a response. The Bidder must explain why the questions are confidential in nature. If the State concurs that the disclosure of the question or answer would expose the proprietary nature of the Proposal, the question will be answered and both the question and answer will be kept in confidence. If the State does not concur with the confidential aspect of a question, the question will not be answered in this manner and the Bidder will be notified as such and given the opportunity to withdraw the question.

2.2.7 Changes Regarding the RFP

Not Applicable.

2.2.8 Oral Communications

Oral communications concerning this RFP shall not be binding on the State or the Bidder and shall in no way excuse the Bidder of its obligations as set forth in this RFP.

2.2.9 Bidder's Conference

A **Bidder's Conference** may be held, during which Bidders will be afforded the opportunity to meet with State personnel and discuss the content of the RFP and the

bidding process. Written questions received prior to the cutoff date for submission of such questions, as noted in the RFP's **Key Action Dates** will be answered at the conference without divulging the source of the query.

The State may also accept oral questions during the conference and will make a reasonable attempt to provide answers prior to the conclusion of the conference. If questions asked at the conference cannot be adequately answered during the discussion, Bidders will be asked to submit those questions in writing. Edited questions and answers will be documented and made available to all Bidders subsequent to the Bidder's Conference.

2.2.10 Intent to Bid

- a. Bidders are asked to state their intention by the date specified in the RFP's **Key Action Dates**. The State is also interested as to a Bidder's reasons for not submitting a Proposal; for example, Requirements to which they cannot be responsive or unusual terms and/or conditions, which arbitrarily raise costs. Each Bidder is asked to categorize its intent as follows:
 - Will submit a Proposal and has no problem with the RFP Requirements
 - Intends to submit a Proposal, but has one or more problems with the RFP Requirements for the reason(s) stated in its response
 - Does not intend to submit a Proposal for the reason(s) stated in its response, and has no problem with the RFP Requirements
 - Does not intend to submit a Proposal because of one or more problems with the RFP Requirements for reasons stated in its response
- b. If a Bidder has indicated significant problems with the RFP Requirements, the State will examine the stated reasons for the problems and will attempt to resolve any issues in contention, if not contrary to the State's interests, and will amend the RFP if appropriate.
- c. If after such actions, a Bidder determines that the Requirements or procedures of the RFP unnecessarily restrict its ability to propose, five (5) Business Days are allowed to submit an **Initial Protest** to those RFP Requirements or the State's action.

2.2.11 Addenda

The State may modify the RFP prior to the **Final Proposal** submission date by issuance of an **Addendum** to all Bidders who have submitted an Intent to Bid in response to the RFP at the time the **Addendum** is issued, unless the **Addenda** are such as to offer the opportunity for nonparticipating Bidders to become participating, in which case the **Addendum** will be released in the same manner as the original RFP. Addenda will be numbered consecutively. If any Bidder determines that the content of the **Addendum**

unnecessarily restricts its ability to propose, five (5) Business Days are allowed to submit an **Initial Protest** to the **Addendum**.

2.2.12 Bonds

The State reserves the right to require surety faithful performance or supply bond(s) from the Contractor in an amount not to exceed the amount listed in RFP Section 5.4.2. In the event a surety bond is required by the State that has not been expressly required by the RFP, the State will reimburse the Contractor, as an addition to the purchase price, in the amount not exceeding the standard premium on such bond.

2.2.13 Cash Discounts

The State encourages Bidders to offer cash discounts for prompt payment, however, unless provided for elsewhere in the RFP, cash discounts offered by Bidder for the prompt payment of invoices will not be considered in evaluating offers to determine the successful Bidder for award of any resulting Contract.

2.2.14 Joint Proposals

Joint Proposals will not be accepted for this procurement.

2.2.15 Bidder's Costs

Costs for participating in the RFP and developing Proposals are the responsibility entirely of the Bidder and shall not be chargeable to the State.

2.2.16 Proposal Preparation

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the Requirements of the RFP. Expensive binding, colored displays, promotions, etc., are not necessary or desired. Emphasis should be placed on conformance to the RFP instructions, responsiveness to the RFP Requirements, and on completeness and clarity of content.

2.2.17 Submission of Proposals

- a. Mail or deliver Proposals to the Procurement Official listed in the RFP. If mailed, the Bidder should consider using certified or registered mail with return receipt requested. If a delivery service is used, it is strongly suggested that a reputable delivery service be utilized.
- b. The Proposal must be received in the number of copies stated in the RFP and not later than the dates and times specified in the RFP's **Key Action Dates**. One copy must be

clearly marked "Master Copy." The Proposal submission must be sealed and plainly marked as follows:

- "CONCEPTUAL PROPOSAL," "TECHNICAL PROPOSAL", "DRAFT PROPOSAL," etc
 - RFP Number
 - Date and time for submission
- c. **Final Proposals** not received by the date and time specified in the RFP's **Key Action Dates** will be rejected. If discrepancies are found between two or more copies of the Proposal, the Proposal may be rejected. However, if not so rejected, the Master Copy will provide the basis for resolving such discrepancies. If one copy of the **Final Proposal** is not clearly marked "Master Copy," the State may reject the Proposal; however, the State may at its sole option select one copy to be used as the Master Copy immediately after Proposal opening.
- d. If no time for receipt of Proposals is specified in the RFP, the Proposal shall be due by the close of the Business Day on the date indicated. Close of the Business Day shall be 5:00 p.m. All times are Pacific Standard Time (PST)/Pacific Daylight Time (PDT).

2.2.18 Model Contract Language

The model contract language appropriate for the specific Requirements of this RFP is contained within the RFP. Any alteration by a Bidder without the express permission of the State will result in rejection of the Bidder's Proposal.

2.2.19 State's Rights

- a. The State reserves the right to reject any and all Proposals in the best interests of the State. Proposals cannot, however, be selectively rejected without cause.
- b. If, after full discussion with a Bidder, the State is of the opinion that the Bidder's Proposal cannot be restructured or changed in a reasonable time to satisfy the needs of the State, and that further discussion would not likely result in an acceptable Proposal in a reasonable time, the Bidder will be given written notice that its Proposal has been rejected and that a **Final Proposal** submission will be considered non-responsive.
- c. The State reserves the right to modify or cancel in whole or in part its RFP.

2.2.20 Air or Water Pollution Violations

Unless the contract is less than \$5,000 or with a sole source Bidder, Government Code Section 4477 prohibits the State from contracting with a person, including a corporation

or other business association, who is in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution control district, or is subject to a cease and desist order issued under Water Code Section 133011 for violation of waste discharge requirement or discharge prohibitions, or is determined to be in violation of federal law in relation to air or water pollution. Government Code Section 4481 requires the State Water Resources Control Board and the Air Resources Board to notify State agencies of such persons.

No award will be made to a person who is identified as a person in violation of State or Federal air or water pollution control laws.

2.2.21 Fair Employment and Housing Commission Regulations

The California Government Code Section 12990 requires all State Bidders to have implemented a Nondiscrimination Program before entering into any contract with the State. The Department of Fair Employment and Housing (DFEH) randomly selects and reviews State Bidders to ensure their compliance with the law. DFEH periodically disseminates a list of Bidders that have not complied. Any Bidder so identified is ineligible to enter into any State contract.

2.2.22 Follow-on Contracts

No person, firm, or subsidiary thereof who has been awarded a consulting services contract, or a contract which includes a consulting component, may be awarded a contract for the provision of Services, delivery of Goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant who contracts with a State Agency to develop formal recommendations for the acquisition of EDP products or services is precluded from contracting for any work recommended in the formal recommendations (formal recommendations include, among other things, feasibility studies.)

2.3 PROPOSAL SUBMISSION PHASES AND STEPS

2.3.1 General

2.3.1.1 Overview of Phases and Steps

The phases and steps that will be included in an RFP are dependent on the needs of the State and will vary from RFP to RFP. The applicable steps to a specific RFP will be included in the **Key Action Dates** of that RFP. References in this document to phases and steps not included in the RFP are *not* applicable to the

RFP. In general, though, the primary steps that may be contained in a RFP are as follows:

1) Compliance Phase

The compliance phase is optional and may contain one or more of the following steps:

- Conceptual Proposal
- Detailed Technical Proposal

2) Final Phase

The primary steps of the final phase are:

- Draft Proposal (optional)
- Final Proposal (mandatory)

As necessary, more than one submission of a specific Proposal may be required. For example, if after review of the Conceptual Proposal, the State determines that RFP is not eliciting the desired solution, the State may issue an Addendum and require a second submission of a Conceptual Proposal.

2.3.1.2 Content

The RFP will specify the content and format of each Proposal submission.

2.3.1.3 False or Misleading Statements

Proposals which contain false or misleading statements may be rejected. If, in the opinion of the State, such information was intended to mislead the State in its evaluation of the Proposal, and the attribute, condition, or capability is a requirement of the RFP, it will be the basis for rejection of the Proposal.

2.3.1.4 Discussion Agenda

As a result of the evaluation, the evaluation team will prepare an agenda of items to discuss with the Bidder, schedule a meeting date, and will transmit the agenda to the Bidder at least three (3) Business Days prior to the scheduled confidential Bidder discussion. The State will identify concerns, ask for clarification, and express reservations if a particular requirement of the RFP is not, in the opinion of the State, appropriately satisfied.

The Bidder may submit additions to the agenda.

2.3.1.5 Confidential Bidder Discussion

The evaluation team will meet with each Bidder for the purpose of discussing its Proposal submission in detail. The primary purpose of the discussion is to ensure that the Bidder's **Final Proposal** will be responsive. The Bidder may bring to the discussion those persons that may be required to understand the issues and answer questions. At this time, the Bidder may be asked to give a presentation of its Proposal.

While the State will not make counter proposals to a Bidder's proposed solution to the RFP Requirements, the discussion may allow for the exploration of other solutions and/or responses to Requirements. As appropriate the State may ask for, and/or the Bidder may choose to, submit additional questions in writing at the end of the discussion.

2.3.1.6 Discussion Memorandum

Throughout the discussion, the State may maintain a record of all items discussed that require modifications to the RFP in a future **Addendum**. If the State elects, these modifications to the RFP will be prepared in final form as a **Discussion Memorandum** (which will be the official State documentation of the discussion) and will be provided to the Bidder normally within five (5) Business Days of the conclusion of the discussion and at least five (5) Business Days prior to the next submission due date. If a Bidder discovers any discrepancy, omission, or other error in the memorandum, the Bidder shall immediately notify the State of such error in writing and request clarification or correction. Oral statements made by either party *not* recorded in the **Discussion Memorandum** shall not obligate either party.

2.3.1.7 Evaluation of Proposal(s)

Upon receipt of Proposals other than the **Final Proposal**, the State's evaluation team or a portion thereof will review each Proposal in accordance with the evaluation methodology outlined in the RFP for the purpose of identifying areas in which the Proposal is non-responsive to a requirement, is otherwise defective, or in which additional clarification is required.

While the State's evaluation at this stage *is* comprehensive, Bidders are cautioned to not rely on the State during these evaluations and reviews to discover and report all defects and errors. Before submitting each document, the Bidder should carefully proof it for errors and adherence to the RFP Requirements. The State will not provide any warranty that all defects have been detected and that such notification will not preclude rejection of the **Final Proposal** if such defects are later found.

2.3.1.8 Proposal Evaluation Preferences

In evaluation of Proposals, the State will give preferences in accordance with the law for Suppliers who are a California certified Small Business or a non-small business claiming 25 percent California certified small business participation. If the Bidder claims preferences under the Enterprise Zone Act (EZA), Target Area Contract Preference Act (TACPA) and Local Agency Military Base Recovery Act (LAMBRA), the Bidder must complete and return the appropriate forms. Where multiple preferences are claimed, the State will verify eligibility for the preference(s) and evaluate and apply preferences in accordance with the law and established procedures.

2.3.1.9 Submission of Amended Proposal(s)

At the conclusion of a Confidential Discussion, the State may require the submission of a written amendment to the Proposal consisting only of those items that were in question, or a complete, written re-submittal of the Proposal. Similarly, if the Bidder wishes confirmation that the changes it intends to make in its Proposal are acceptable to the State, the Bidder may request and receive permission, if time permits, to submit such amendment within a reasonable time after the conclusion of the Confidential Discussion. In either event, the State will advise the Bidder about the acceptability of the amended Proposal, and/or may schedule another Confidential Discussion, if in the State's opinion, such a discussion is desirable.

2.3.1.10 Withdrawal and Resubmission/Modification of Proposals

Other than the **Final Proposal**, a Bidder may withdraw its Proposal at any time by written notification. A Bidder may withdraw its **Final Proposal** at any time *prior* to the proposal submission time specified in the RFP's **Key Action Dates** by submitting to the Procurement Official a written notification of its withdrawal signed by the Bidder or agent authorized in accordance with **Signature of Proposal**. Thereafter, the Bidder may submit a new or modified Proposal prior to such **Final Proposal** submission time specified in the RFP's **Key Action Dates**. Modifications offered in any other manner, oral or written, will not be considered. **Final Proposals** cannot be changed or withdrawn *after* the designated time for receipt, except as provided in the RFP.

2.3.2 Compliance Phase

2.3.2.1 General

The Compliance Phase is an iterative, conversational mode of proposal development. It requires the State, working together in confidence with each Bidder to assess and discuss the viability and effectiveness of the Bidder's proposed methods of meeting the State's needs as reflected in the RFP. This phase provides the flexibility needed for the Bidder to test its solution prior to submittal of its **Final Proposal**. The Compliance Phase facilitates the correction of defects before they become **Material** to the Proposal. Release of a **Discussion Agenda**, scheduling of a Confidential Discussion, and release of a **Discussion Memorandum** may be included with these steps.

2.3.2.2 Conceptual Proposal

The **Conceptual Proposal** may be included for the purpose of allowing each Bidder to provide a general concept of its Proposal with just enough detail to enable the evaluators to determine if the Bidder is on the right track toward meeting the functional/business Requirements as stated in the RFP; and if not, where the Bidder must change its concept. This step invites the Bidder to be as innovative as the RFP Requirements allow.

2.3.2.3 Detailed Technical Proposal

The **Detailed Technical Proposal** may be included for the purpose of allowing each Bidder to provide a detailed description of its Proposal to determine at an early stage whether its Proposal appears to comply with the Requirements of the RFP, and if not, which elements are non-compliant.

2.3.3 Final Phase

2.3.3.1 General

The purpose of the Final Phase is to obtain Proposals that clearly describe the Bidder's solution and are responsive in every aspect to the RFP. This phase *may* include a **Draft Proposal** and *must* include a **Final Proposal**.

2.3.3.2 Draft Proposal

The purpose of the **Draft Proposal** is to provide the State with a complete Proposal, excluding cost data, in order to identify any non-responsive aspects of the Proposal which, if not corrected, could cause the **Final Proposal** to be rejected.

The **Draft Proposal** must contain everything that is required in the **Final Proposal** except cost data that reveals the approximate proposal cost or allows the State to derive the approximate proposal cost. Cost figures must be replaced with XX's as required by the RFP. The inclusion of cost data in the **Draft Proposal** may be the basis for rejection of the Proposal and notification to the Bidder that it may not participate further in the RFP process.

The **Draft Proposal** must contain the cover letter and the Standard Agreement (STD. 213), including the title of the person that will sign, but need not contain the **Signature**. The **Draft Proposal** shall contain the Contract with all portions completed except for the cost data.

Review of the **Draft Proposal** by the State is only intended to include an initial assessment of the Proposal's responsiveness to the minimum Requirements of the RFP, including administrative Requirements. (Points awarded for scored Requirements will not be evaluated at this step.) The State will notify the Bidder of any defects *detected* in the **Draft Proposal**, or of the fact that no defects were *detected*. Such notification is intended to minimize the risk that the **Final Proposal** will be deemed non-responsive; however, the State will not provide any warranty that all **Material** deviations have been detected and that such notification will not preclude rejection of the **Final Proposal** if such **Material** deviations are later found.

2.3.3.3 Final Proposal

The **Final Proposal** must be complete, including all required information, cost information, required **Signatures**, etc. as required by the RFP (incorporating all RFP **Addenda**). Bidders are advised that changes to the **Final Proposal**, other than the correction of potentially **Material** deviations, increase the risk that the **Final Proposal** may be found to contain **Material** deviations.

The State reserves the right to consider electronic Proposals, received prior to the closing time specified, if confirmed in writing within five (five) Business Days.

2.3.3.4 Additional Draft Proposal

The State may declare the **Final Proposal** (including cost proposals) to be an additional **Draft Proposal** in the event that the evaluation team determines that original **Final Proposals** from *all* Bidders either contained deviations or were not responsive to the State's needs, and that it is in the best interest of the State to continue the RFP process. If this occurs, the State will issue an **Addendum** to the RFP and a confidential discussion will be held with each Bidder that

submitted an original **Final Proposal**. Each Bidder will be informed of the revised submission date of the new **Final Proposal**.

2.3.3.5 Submission of Final Proposal

a. Complete Proposal

The **Final Proposal** must be complete in all aspects as required by the solicitation. A **Final Proposal** must be rejected if any such defect or irregularity constitutes a deviation from the RFP Requirements. The **Final Proposal** must contain all costs required by the RFP.

b. Signatures

- 1) The **Final Proposal** must contain an original **Signature** in two places: On the cover letter or transmittal form (which shall be considered an integral part of the **Final Proposal**) and the Standard Agreement (STD. 213).
- 2) The **Signature** must be of an individual who is authorized to bind the Bidder firm contractually. A **Final Proposal** may be signed by an agent of the Bidder only if the signatory is an officer of a corporate Bidder authorized to sign contracts on its behalf, a member of a partnership Bidder, or is properly authorized by a power of attorney or equivalent document. Such authorization must be submitted to the State prior to the submission of Proposals or with the Proposal.
- 3) The name and title or position that the individual holds in the firm must be typed immediately below the **Signature**.
- 4) An unsigned **Final Proposal** may be rejected.

2.3.3.6 Evaluation and Selection of Final Proposal

a. General

Final Proposals will be evaluated according to the procedures contained in the RFP.

b. Questions during the Evaluation

During the evaluation of the **Final Proposal**, the State may desire the presence of a Bidder's representative for answering specific questions, orally and/or in writing.

c. Demonstration

As part of the evaluation and selection process, the RFP may require a **Demonstration** of *all* responsive, responsible Bidder's responses to specific Requirements (including benchmark Requirements) before final selection in order to verify the claims made in the Proposal and corroborate the evaluation of the Proposal. The Bidder must make all arrangements for **Demonstration** facilities at no cost to the State. The Bidder will determine the location of the **Demonstration**; however, its performance within California is preferred and will be attended at the State's expense. Demonstration outside of California requires special approvals and is subject to approval by the State and will be attended only if the Bidder agrees to reimburse the State for travel and per diem expenses for all evaluation team members. Demonstration outside of the United States is prohibited.

The State reserves the right to determine whether or not a **Demonstration** has been successfully passed as described in the RFP.

d. Errors in the Final Proposal

An error in the **Final Proposal** may cause the rejection of that Proposal; however, the State may at its sole option retain the Proposal and make certain corrections.

In determining if a correction will be made, the State will consider the conformance of the Proposal to the format and content required by the RFP document, and any unusual complexity of the format and content required by the RFP document.

- 1) If the Bidder's intent is clearly established based on review of the complete **Final Proposal** submittal, the State may at its sole option correct an error based on that established intent.
- 2) The State may, at its sole option, correct obvious clerical errors.
- 3) The State may at its sole option correct discrepancy and arithmetic errors on the basis that if intent is not clearly established by the complete Proposal submittal the Master Copy shall have priority over additional copies, the Proposal narrative shall have priority over the Contract, the Contract shall have priority over the cost sheets, and within each of these, the lowest level of detail will prevail. If necessary, the extensions and summary will be recomputed accordingly, even if the lowest level of detail is obviously misstated. The total price of unit-price items will be the product of the unit price and the quantity of the item. If the unit price is ambiguous, unintelligible, uncertain for any cause, or is omitted,

it shall be the amount obtained by dividing the total price by the quantity of the item.

- 4) The State may at its sole option correct errors of omission, and in the following four situations, the State will take the indicated actions if the Bidder's intent is not clearly established by the complete Proposal submittal.
 - i. If an item is described in the narrative and omitted from the Contract and cost data provided in the Proposal for evaluation purposes, it will be interpreted to mean that the item will be provided by the Bidder at no cost.
 - ii. If a minor item is not mentioned at all in the **Final Proposal** and is essential to satisfactory performance, the Proposal will be interpreted to mean that the item will be provided at no cost.
 - iii. If a major item is not mentioned at all in the **Final Proposal**, the Proposal will be interpreted to mean that the Bidder does not intend to supply that item.
 - iv. If a major item is omitted, and the omission is not discovered until after Contract award, the Bidder shall be required to supply the item at no cost.
 - v. If a Bidder does not follow the instructions for computing costs not related to the Contract (e.g., State personnel costs), the State may reject the Proposal, or at its sole option, re-compute such costs based on instructions contained in the RFP.
 - vi. If the re-computations or interpretations, as applied in accordance with this section, result in significant changes in the amount of money to be paid to the Bidder (if awarded the Contract) or in a requirement of the Bidder to supply a major item at no cost, the Bidder will be given the opportunity to promptly establish the grounds legally justifying relief from its Proposal.

2.3.4 Award of Contract/Intent to Award

Award of Contract, if made, will be in accordance with the RFP to a responsive and responsible Bidder whose **Final Proposal** complies with all the Requirements of the RFP documents and any **Addenda** thereto, except for such immaterial defects as may have been waived by the State. Notwithstanding the above, the Department of Technology Services, Office of Network Services reserves the right, in its sole discretion, to engage

in negotiations pursuant to Public Contract Code Section 6611 and the guidelines and procedures adopted in accordance therewith including, but not limited to, Administrative Order 04-03 (issued March 5, 2004) or any amendment or replacement thereto.

The State will determine the awarded Bidder either on the basis of individual items or on the basis of all items included in its RFP, unless otherwise expressly provided in the RFP.

Written notification of the State's intent to award will be made to all Bidders. If a Bidder, having submitted a **Final Proposal**, can show that they, instead of the Bidder selected by the State, should be selected for Contract award according to the RFP, the Bidder will be allowed five (5) Business Days to submit a protest to the Intent to Award, according to the instructions contained in **Protests**.

2.3.5 Debriefing

A debriefing may be held after Contract award at the request of any Bidder for the purpose of receiving specific information concerning the evaluation. The discussion will be based primarily on the technical and cost evaluations of the Bidder's **Final Proposal**. A debriefing is not the forum to challenge RFP specifications or Requirements.

2.4 DEVELOPMENT OF CONTRACT LANGUAGE

2.4.1 Development of Agreement to be Submitted

The following instructions are provided to explain how the referenced and attached model contract language is arranged and how it may be modified to develop a mutually agreeable final contract. Because no negotiations or alterations of the contract are permitted subsequent to the time established for the receipt of the Final Proposal, it is imperative that Bidders follow these instructions carefully in order to be fully responsive, from a contractual aspect, to the RFP. Bidders should note that these contract terms are based upon approved State of California contract language, often established in statute, and that the State does not normally accept changes to this language. Therefore, any requested changes that might be approved by the State are expected to be minor in nature and only serve to clarify rather than alter the intent of the provision.

2.4.2 Preparation of Proposed Contract Language

1. Detach the CALNET-II AGREEMENT model contract from the RFP (Appendix B). This document, properly annotated, will be returned to the State for use in developing final contract language.
2. Make an appropriate entry in any portion of the contract which has a blank(). **Do not include any dollar figures or percentages related to Bid costs.**
3. Attachment 3 – Description of Services: A list of all Deliverables and Services, with descriptions, availability and unique identifiers including features shall be developed by the Contractor and provided upon Contract award for attachment to and inclusion in the Contract. Attachment 3 shall be provided by the Contractor to the State for inclusion in the preliminary Contract following receipt of the Notification of Intent to Award. This Description of Services shall be maintained on a Public Web Site in accordance with Sections 6.1.13.1, 6.2.24.1, 6.3.16.1, and/or 6.4.14.1 (e.g., A list of all products and services with descriptions, availability and unique identifier, including features) for access by End-Users. This list may be revised only via Contract Amendment. The State shall determine which Desirable items proposed by the Contractor shall be included within Attachment 3, and which items will be included on the Public Web Site.
4. Attachment 4 – Pricing: A price list shall be developed by the Contractor and provided to the State upon receipt of a Letter of Intent to Award for attachment to and inclusion in the contract. **When submitting Contract language in the Final Proposal do not include any pricing.** Attachment 4 will be obtained by the State after the Notification of Intent to Award for inclusion in the Contract prior to DGS approval. The prices contained in this list **shall correspond exactly** with the cost tables submitted with the Bidder's Final Proposal in response to Section 7, Costs. This price list shall be maintained on a Public Web Site in accordance with Section 6.1.13.1 (e.g., Products and Services rates, including features) for access by End-Users. This price list may be revised only via Contract amendment.
5. Prepare a cover letter of transmittal that identifies each requested change made to the model contract, and which explains (except where the reason for the change is obvious) the rationale for the change.
6. Make a copy of the annotated contract and retain for your files. This copy will be used during subsequent communications with the State relative to the acceptability of the proposed changes.
7. Submit the cover letter and the annotated contract to the State Procurement Officer listed in RFP Section 1.6 by the date contained in RFP Section 1.7. An early submission of the proposed contract will facilitate the State's review and approval process. If no changes are requested, simply submit the letter indicating that the model contract language is acceptable and that no changes are requested.

2.4.3 Contract Negotiation

1. Upon receipt of the proposed contract, the State will examine the document to establish the acceptability of the proposed changes. The Bidder will be notified as to which portions, if any, of the language submitted are not acceptable. If necessary, meetings between the Bidder and the State will be arranged. The State may, following such meetings, request a revised contract reflecting changes agreed upon to be prepared and returned by the Bidder.
2. Following the last date to approve contract language, the Bidder will be notified by the State of any changes required which were agreed upon during contract negotiations and any proposed language that remains unacceptable to the State.
3. Upon request, or at the State's initiation, acceptable proposed changes to the contract language will be made available by the State to all Bidders.

2.4.4 Model Contract Language

A Glossary of defined terms for this RFP is included as Appendix A.

Model contract language for RFP DGS-2053 is provided for in Appendices B-1, 2, 3, and 4 as follows:

- State of California's Standard Agreement Form 213, with:
 - Attachment 1 – General Provisions
 - Attachment 2 – Statement of Work
 - Attachment 3 – Description of Services
 - Attachment 4 – Pricing
 - Attachment 5 – Ordering Documents (with 4 exhibits:)
 - Exhibit A-1, STD Form 20
 - Exhibit A-2, Authorization To Order Under State Contract
 - Exhibit A-3, STD Form 65
 - Exhibit A-4, Work Authorization Form
 - Exhibit A-5, Individual Price Reduction Notification
 - Attachment 6 – Acceptance Testing

2.5 PROTESTS

2.5.1 Initial Protest

- a. The procedures in the RFP process are designed to give the Bidder adequate opportunity to submit questions; requirements change requests, and procedure change requests before the **Final Proposal** is due.
- b. An **Initial Protest** is a protest of the Requirements and/or the procedures of this RFP. The Initial Protest must be submitted within 5 business days from issuance of any addendum.
- c. It is made available in the event that a Bidder cannot reach a fair agreement with the State regarding its Requirements *after* exhausting these procedures (PCC §12102(h)) and must be submitted as described below.
- d. However, before an **Initial Protest** is submitted, the Bidder must make full and timely use of the process described herein to resolve any outstanding issue(s) between the Bidder and the State.
- e. Protests regarding *any issue* other than selection of the “successful Supplier” will be heard and resolved by the Deputy Director of the Department of General Services Procurement Division whose decision will be final.

2.5.2 Successful Supplier Selection Protest

2.5.2.1 Standard Protest

Unless otherwise specified in the RFP, the protest procedure specified in (PCC §12102(h)) will govern the RFP.

If a Bidder has submitted a Proposal which it believes to be totally responsive to the Requirements of the RFP and to be the Proposal that should have been selected according to the evaluation procedure described in the RFP, and the Bidder believes the State has incorrectly selected another Bidder for award, the Bidder may submit a protest of the selection as described below. Protests regarding selection of the “successful Supplier” will be heard and resolved by the California Victims Compensation and Government Claims Board whose decision will be final.

2.5.3 Protest Submission

Initial Protests must be submitted to:

The Procurement Official identified in the RFP, and
Department of General Services, Procurement Division
Deputy Director
707 3rd Street
West Sacramento, CA 95605

Successful Supplier selection protests must be submitted to:

The Procurement Official identified in the RFP, and
Department of General Services, Procurement Division
Deputy Director
707 3rd Street
West Sacramento, CA 95605

And;

Department of General Services, Procurement Division
Protest Coordinator
707 3rd Street
West Sacramento, CA 95605

A Vendor Advocate has been established in accordance with PCC§10300 as a resource to protesting Bidders seeking assistance and information. Contact the Procurement Official or contact the Procurement Division at (916) 375-4400 for assistance.