

STANDARD TERMS AND CONDITIONS - RFP

ACCEPTANCE OF CONTRACT

- a. By submitting a response to this RFP, offeror accepts the contract included in Prerequisites. Much of the language included in the contract reflects the requirements of Montana law.
- b. Offerors requesting additions or exceptions to the contract terms, shall submit them to the Q & A board by the date and time specified for questions submission. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address nonmaterial requests for exceptions to the contract language with the highest scoring offeror during contract negotiation.
- c. The State shall identify any revisions to the contract language either in the Q & A Board or in an addendum to this RFP. The addendum will apply to all offerors submitting a response to this RFP. The State will determine any changes to the contract.

ACCEPTANCE/REJECTION OF PROPOSALS

The State reserves the right to accept or reject any or all proposals, wholly or in part, and to make awards in any manner deemed in the best interest of the State.

ALTERATION OF SOLICITATION DOCUMENT

In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

AUTHORITY

The RFP is issued under 18-4-304, Montana Code Annotated (MCA) and Administrative Rules Montana (ARM) 2.5.602. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. The State shall use only the evaluation criteria outlined in this RFP.

CLASSIFICATION AND EVALUATION OF PROPOSALS:

- a. Initial Classification of Proposals as Responsive or Nonresponsive. The State shall initially classify all proposals as either "responsive" or "non-responsive" (ARM 2.5.602). The State may deem a proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFP criteria; or (3) the proposal does not meet RFP requirements and specifications. The State may find any proposal to be nonresponsive at any time during the procurement process. If the State deems a proposal nonresponsive, it will not be considered further.
- b. Determination of Responsibility. The procurement officer shall determine whether an offeror has met the standards of responsibility consistent with ARM 2.5.407. An offeror may be determined non-responsible at any time during the procurement process if information surfaces that supports a non-responsible determination. If an offeror is found non-responsible, the procurement officer will notify the offeror by mail. The determination will be included within the procurement file.

- c. Evaluation of Proposals. An evaluator/evaluation committee shall evaluate all responsive proposals based on stated criteria and recommend an award to the highest scoring offeror. After receipt of proposals and prior to the recommendation of award, the procurement officer may initiate discussions with one or more offerors should clarification be necessary. In scoring against stated criteria, the evaluator/evaluation committee may consider such factors as accepted industry standards and a comparative evaluation of other proposals in terms of differing price and quality. These scores will be used to determine the most advantageous offering to the State.
- d. Completeness of Proposals. Selection and award will be based on the offeror's proposal and other items outlined in this RFP. Proposals may not include references to information such as Internet websites, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion, negotiation, or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.
- e. Best and Final Offer. Under Montana law, the procurement officer may request a best and final offer if additional information is required to make a final decision. The State reserves the right to request a best and final offer based on price/cost alone. Please note that the State rarely requests a best and final offer on cost alone.
- f. Evaluator/Evaluation Committee Recommendation for Contract Award. The evaluator/evaluation committee shall provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer shall review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the evaluator's/evaluation committee's recommendation.
- g. Request for Documents Notice. Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer shall request from the highest scoring offeror the required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material (e.g., proposal, response to clarification questions, and/or best and final offer), and any other necessary documents. Receipt of this request does not constitute a contract and no work may begin until a contract signed by all parties is in place. The procurement officer shall notify all other offerors of the State's selection.
- h. Contract Execution. Upon receipt of all required materials, a contract incorporating the highest scoring offeror's proposal will be provided to the highest scoring offeror for signature. The highest scoring offeror shall accept and agree to all material requirements contained in contract included with this RFP. If the highest scoring offeror does not accept all material requirements, the State may move to the next highest scoring offeror or cancel the RFP. Work under the contract may begin when the contract is signed by all parties.

CONTRACT PERIOD

The contract period is stated in the contract included with this RFP. The parties may mutually agree to a renewal of this contract in any interval that is advantageous to the State. Renewal is solely the State's option.

DEBARMENT

Contractor certifies, by submitting this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or Agency. If Contractor cannot certify this statement, attach a written explanation for review by the State.

FAILURE TO COMPLY WITH INSTRUCTIONS

Offerors failing to comply with the instructions for Submitting a Proposal may be subject to point deductions. Further, the State may deem a proposal nonresponsive or disqualify it from further consideration if it does not follow the response format, is difficult to read or understand, or is missing requested information.

FAILURE TO HONOR PROPOSAL

If an offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the offeror for a period of time from entering into any contracts with the State of Montana.

OFFER IN EFFECT FOR 120 CALENDAR DAYS

Offeror agrees that it may not modify, withdraw, or cancel its proposal for a 120-day period following the RFP closing date or receipt of best and final offer, if required.

OFFEROR COMPETITION

The State encourages free and open competition to obtain quality, cost-effective services and supplies. The State designs specifications, proposal requests, and conditions to accomplish this objective.

OFFEROR'S REPRESENTATIONS – SIGNATORY AUTHORITY, AND NO COLLUSION

Offeror represents that the person submitting the response to this RFP is authorized to legally bind the offeror to the proposal. The offeror may not withdraw the proposal for lack of authority. Offeror shall provide proof of authority of the person signing the RFP to bind the offeror upon State's request. The offeror further represents that the proposal has been made without collusion.

OWNERSHIP OF TIMELY SUBMITTED MATERIALS

The State owns all materials submitted in response to this RFP.

PERSONAL PROPERTY TAX

All personal property taxes will be paid by the vendor.

QUESTION-AND-ANSWER BOARD

Offerors having questions or requiring clarification or interpretation of any section within this RFP must submit their questions to the Q & A board by the date specified for questions submission. Offerors shall submit questions on the Q & A Board. Questions received after the deadline may not be considered.

RECEIPT OF PROPOSALS AND PUBLIC INSPECTION:

- a. Public Information. Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Before awarding a contract, the department shall provide a notice of intent to award a contract and allow for seven days of written public comment regarding the proposed award. Before releasing the proposals

and other information received from offerors, the Contracts Officer shall evaluate whether the public disclosure must be limited as required by 18-4-303 and 18-4-304 (8). The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA.

- b. Procurement Officer Review of Proposals. Upon opening the proposals in response to this RFP, the procurement officer will review the proposals for information that meets the exceptions referenced above, providing the following conditions have been met:
- c. Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal. The proposal does not contain confidential material in the cost or price section.
- d. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the [State's website](#) or by calling (406) 444-2575.
- e. Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

RECIPROCAL PREFERENCE

The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for non-construction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, go to the [State Procurement website](#).

RESULTING CONTRACT

This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

REVIEW RFP

Offerors shall carefully review the entire RFP terms and conditions. Offerors shall promptly notify the procurement officer of any ambiguity, inconsistency, unduly restrictive specifications, or error that they discover. In this notice, the offeror shall include any terms or requirements within the RFP that preclude the offeror from responding or add unnecessary cost. Offerors shall provide an explanation with suggested modifications. The notice must be received by the deadline for questions set forth in the RFP. The State will determine any changes to the RFP.

STATE NOT RESPONSIBLE FOR PREPARATION COSTS

Offeror is solely responsible for all costs it incurs prior to contract execution.

STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the offeror's ability to provide the supplies and/or perform the services specified. The State reserves the right to reject a proposal if the information submitted by, or investigation of, the offeror fails to satisfy the State's determination that the offeror is properly qualified to perform the obligations of the contract. This includes the State's ability to reject the proposal based on negative references.

STATE'S RIGHTS RESERVED

While the State has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP that would not have significant impact on any proposal (ARM 2.5.505);
- Not award a contract, if it is in the State's best interest not to proceed with contract execution (ARM 2.5.602); or
- If awarded, terminate any contract if the State determines adequate state funds are not available (18-4-313, MCA).

UNDERSTANDING OF SPECIFICATIONS AND REQUIREMENTS

By submitting a response to this RFP, offeror acknowledges it understands and shall comply with the RFP specifications and requirements.